

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

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Legislative Document

No. 1216

S. P. 379

In Senate, February 16, 1965

Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

EDWIN H. PERT, Secretary

Presented by Senator Stern of Penobscot.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-FIVE

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AN ACT Amending the Banking Laws.

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

**Sec. 1. R. S., T. 9, § 1, amended.** The last sentence of the 2nd paragraph of section 1 of Title 9 of the Revised Statutes is amended to read as follows :

'A deputy bank commissioner designated by the commissioner shall perform the duties of the commissioner whenever the latter shall be absent from the State, ~~or~~ whenever he shall be directed by the commissioner, ~~or~~ whenever there shall be a vacancy in the office of the commissioner **or whenever the commissioner shall be incapacitated from illness.**'

**Sec. 2. R. S., T. 9, § 1, amended.** The 2nd paragraph of section 1 of Title 9 of the Revised Statutes is amended by adding at the end the following sentence :

**'In the event of a vacancy in the office of the commissioner, his incapacitating illness or absence from the State at a time when there is no deputy commissioner able to perform the duties of the commissioner, the Governor may designate a special deputy commissioner to perform the duties of the commissioner for a time not exceeding 6 months.'**

**Sec. 3. R. S., T. 9, § 131, amended.** Section 131 of Title 9 of the Revised Statutes is amended to read as follows :

**§ 131. Dates established**

Any day of public thanksgiving, **mourning or disaster, proclaimed or appointed** by the Governor or by the President of the United States, the first day of January, the 22nd day of February, the 19th day of April, the 30th day of May, the 4th day of July, the first Monday of September, Veterans Day, Novem-

ber 11th, and the 25th day of December are declared to be bank holidays. If a bank holiday falls on Sunday the following Monday shall be deemed a bank holiday for the purposes of this Title. Any financial institutions or credit union under the supervision of the Department of Banks and Banking may close for part of any business day for good cause, on permission of the Bank Commissioner. Any such institution or credit union may close on permission of the commissioner when federal banking institutions are permitted to close.'

Sec. 4. R. S., T. 9, § 134, additional. Title 9 of the Revised Statutes is amended by adding a new section 134, to read as follows:

‘§ 134. Branches, walk-up and drive-up windows, open after hours

Any savings bank, trust company, industrial bank, loan and building association, savings and loan associations or credit union organized under the laws of the State, or any national banking association, federal savings and loan association, federal credit union, or licensed small loan agency doing business in the State may permit any of its branches or walk-up or drive-up windows of its main office or branches to remain open, or open for limited functions only during such hours as it may determine from time to time after its main office is closed. Any hours on which said branch or walk-up or drive-up window of its main office or branch is open for limited functions only after its main office is closed shall be, with respect to such institution, a holiday and not a business day.

Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution during hours at which said branch or walk-up or drive-up window of its main office or branch is open for limited functions only after its main office is closed may be so performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay.

Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument or any other transaction by a bank or trust company in this State because done or performed during such hours a branch or walk-up or drive-up window of its main office or branch is open or open for limited functions only after its main office is closed.'

Sec. 5. R. S., T. 9, § 223, amended. The first paragraph of section 223 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

‘Whenever it shall appear to the Governor that the welfare and security of financial institutions and credit unions under the supervision of the Bank Commissioner, or their depositors, shareholders, staffs or customers, require, or that the welfare of the State, any section thereof, the inhabitants thereof, banking institutions, credit unions, their depositors, shareholders or staffs have been or may be adversely affected by actual or threatened national emergency, forces of the natural elements, fires, explosions, strikes, epidemics, civil strife or commotion, or any other circumstances hazardous or dangerous to life, limb or property, the Governor may proclaim that a banking emergency exists. The Governor may declare such banking holidays as in his judgment such emergency

**conditions may require and that any bank, banks, credit union or credit unions shall be subject to special regulation as provided until the Governor, by a like proclamation, declares the period of such emergency to have terminated if he has not defined such period in the original proclamation.'**

**Sec. 6. R. S., T. 9, § 223, amended.** The last 3 paragraphs of section 223 of Title 9 of the Revised Statutes are amended to read as follows:

'During the period of any banking emergency declared, the commissioner, in addition to all other powers conferred upon him, shall have authority to order one or more financial institutions **or credit unions** to restrict all or any part of their business and to limit or postpone for any length of time the payment of any amount or proportion of deposits or shares in any of the departments thereof as he may deem necessary or expedient and may regulate further payments therefrom as to time and amount as the interest of the public or of such financial institutions **or credit unions** or depositors or shareholders thereof may require, and any order or orders made by him may be amended, changed, extended or revoked, in whole or in part, whenever in his judgment circumstances warrant or require. After the termination of any such banking emergency, any such order may be continued in effect as to any particular financial institution **or credit union** if in the judgment of the commissioner circumstances warrant or require and the Governor approves.

The commissioner may by order authorize financial institutions **or credit unions** during such emergency and thereafter to receive new deposits or share funds, as the case may be, and such new funds shall be special deposits or shares, as the case may be, and so designated and segregated from all other such deposits or shares and may be invested only in assets approved by the commissioner as being sufficiently liquid to be available when needed to meet withdrawals on new deposits or shares, as the case may be. Such assets shall not be merged with other assets but shall be held in trust for the security and payment of new funds except that income from such assets may to the extent authorized by the commissioner be used for other purposes of the institution. Withdrawal of such new deposits or shares shall not be subject in any respect to restrictions or limitations made applicable to previously existing accounts under this section.

In determining the action to be taken under this section, the commissioner may place such fair value on the assets of any financial institution **or credit union** as in his discretion seems proper under the conditions prevailing and circumstances relating thereto.'

**Sec. 7. R. S., T. 9, § 227, amended.** Section 227 of Title 9 of the Revised Statutes is amended by adding after the first sentence a new sentence to read as follows:

**'The books and accounts thereof involving any financial institution as defined in section 222 shall be kept in the manner and form prescribed by the commissioner, and any agreement between a financial institution and such organization shall provide that such books and accounts may be examined by the commissioner or his assistants.'**

**Sec. 8. R. S., T. 9, § 991, sub-§ 5, repealed and replaced.** Subsection 5 of

section 991 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

**‘5. Stocks, bonds and securities. To invest their funds in:**

**A. Government, state, Canadian, county, municipal and quasimunicipal obligations, qualifying as legal investments for savings banks under sections 592 to 596;**

**B. Bonds and other fixed-interest bearing obligations of domestic corporations which are rated at least bank quality, Class I, by at least one national rating service;**

**C. Stocks qualifying as legal investments for savings banks under sections 602 to 608 and section 610;**

**D. Any other securities held on the effective date hereof and not qualifying under paragraphs A, B and C until the board of directors deem that prudence requires disposal thereof.’**

**Sec. 9. R. S., T. 9, § 995, repealed and replaced.** Section 995 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

**‘§ 995. Bylaws adopted**

Any trust company organized under this Title may adopt all necessary bylaws, not inconsistent with the general laws of the State, for the management of its affairs. Bylaws of a newly organized trust company shall be submitted to the Bank Commissioner for his approval as to their legality and shall not take effect until such approval is given. In case the commissioner shall refuse or unreasonably delay to give such approval, the incorporators of the company may submit such bylaws or amendments to a Justice of the Superior Court for his approval and, if he shall approve them as legal, they shall thereafter take effect. All proposed amendments to bylaws shall be submitted to the commissioner at least 10 days prior to their being acted upon by the stockholders and the notice of such stockholders’ meeting shall provide that any comments of the commissioner concerning the proposed amendment or amendments shall be read to such meeting before being acted upon by the stockholders. Within 10 days of the adoption of any bylaws or amendments thereto, the clerk shall file with the commissioner a copy thereof.’

**Sec. 10. R. S., T. 9, § 998, repealed and replaced.** Section 998 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

**‘§ 998. Minimum subscription required**

The written articles of association mentioned in section 991 shall not be regarded as sufficient unless they show that at least 1/3 of the proposed amount of capital stock has been subscribed for, and when filed with the Bank Commissioner, they shall be accompanied by an application fee of \$500, payable to the Treasurer of State, to be credited and used as provided in section 2.’

**Sec. 11. R. S., T. 9, § 999, repealed and replaced.** Section 999 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

**‘§ 999. Minimum capital stock authorized; par value**

The minimum amount of paid-in capital stock on which a trust company may be authorized to begin business shall be determined by the Bank Commissioner, but under no circumstances shall be less than \$100,000. The par value of the shares of stock shall be not less than \$1 each and not more than \$100 each and may be changed at any time by vote of the stockholders with the approval of the Bank Commissioner.’

Sec. 12. R. S., T. 9, § 1001, amended. The last paragraph of section 1001 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof :

‘A bank with the prior approval of the commissioner and after obtaining the approval of stockholders holding a majority of the shares of the bank evidenced either in a writing signed by the stockholders or by vote at a stockholders’ meeting, at any time, may issue, sell or hypothecate its capital notes or debentures which may be payable upon such terms and may bear such rate of interest, if any, as may be provided therein or which may be convertible into stock with the approval of the commissioner. Such capital notes and debentures shall be subordinate to the claims of creditors and depositors and it shall be provided in any of such capital notes or debentures that in the event of liquidation all depositors and other creditors of the bank shall be entitled to be paid in full with such interest as may be provided by law before any payment shall be made on account of principal or of interest on said capital notes or debentures and it may be provided that after payment in full of all sums owing to such depositors and creditors, the holders of such capital notes or debentures shall be entitled to be paid from the remaining assets of the bank the unpaid principal amount of the capital notes or debentures plus accrued and unpaid interest thereon, before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock of the bank. It shall be provided in such capital notes or debentures that no payment shall at any time be made on account of the principal thereof, unless following such payment the aggregate of the capital, surplus, undivided profits, and capital notes or debentures thereafter outstanding shall be the equal of such aggregate at the date of the original issue of such capital notes or debentures, or as may be otherwise authorized by the commissioner.’

Sec. 13. R. S., T. 9, § 1003, amended. The 3rd and last sentences of section 1003 of Title 9 of the Revised Statutes are amended to read as follows :

‘No trust company shall be permitted to establish or operate a branch or agency except within the county of its main office or a county adjoining that of its main office: provided that this limitation shall not prevent a trust company from establishing or operating a branch or agency in any city or town or village where there is no bank regularly transacting customary banking business or where a unit bank or branch of a bank is taken over.’

‘This section shall not apply to branches or agencies authorized and in existence on ~~September 16, 1961~~ the effective date of this Act.’

**Sec. 14. R. S., T. 9, § 1004, amended.** The last sentence of section 1004 of Title 9 of the Revised Statutes is amended to read as follows:

'Any branch or agency may be closed or discontinued ~~with consent of the commissioner~~ after such public notice, as in ~~his~~ **the judgment of the commissioner**, the public interest may require.'

**Sec. 15. R. S., T. 9, § 1041, amended.** Section 1041 of Title 9 of the Revised Statutes is amended by adding after the 5th sentence a new sentence to read as follows:

'Each director shall annually take oath that his qualifying shares of stock are unencumbered and that they will remain unencumbered during the term of his office.'

**Sec. 16. R. S., T. 9, § 1041, amended.** The 6th, 7th and 8th sentences of section 1041 of Title 9 of the Revised Statutes are amended to read as follows:

'If any vacancy occurs in the board of directors or executive committee through death, resignation or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation **or until a successor is duly elected and qualified.** The oath of office of any director shall be taken within ~~60~~ **30** days of his election or his office shall become vacant. ~~The clerk of such company shall, within 10 days, notify such directors of their election and within 30 days shall publish the list of all persons who have taken the oath of office as directors.'~~

**Sec. 17. R. S., T. 9, § 1041, amended.** The 10th sentence of section 1041 of Title 9 of the Revised Statutes is amended to read as follows:

'The board of directors shall elect a president from its number, a clerk who shall be sworn to the faithful performance of his duties, **a secretary**, a treasurer and such other officers as they may deem necessary.'

**Sec. 18. R. S., T. 9, § 1042, amended.** The last sentence of section 1042 of Title 9 of the Revised Statutes is amended to read as follows:

'The treasurer or other officer having charge of such loans shall submit to the directors or executive committee ~~at intervals of not more than 6 months at least once every fiscal year~~ a full and complete list of all outstanding **unsecured** demand obligations owed to the company.'

**Sec. 19. R. S., T. 9, § 1048, amended.** Section 1048 of Title 9 of the Revised Statutes is amended by adding a new paragraph to read as follows:

'An account shall not be deemed to be inactive under the provisions of this section during such period that Bureau of Internal Revenue form 1099, or its equivalent, is sent to the depositor and is not returned by the post office department.'

**Sec. 20. R. S., T. 9, § 1049, repealed and replaced.** Section 1049 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

**§ 1049. Annual examinations**

The directors of each trust company shall annually employ an auditor or

auditors, who may be either an independent public accountant or accountants, or an elected or appointed official of the company, who shall be solely responsible to the directors.

Said auditor or auditors shall examine and analyze the books, accounts, notes, mortgages, securities and operating systems of the company, at such times and in such manner as in their judgment is necessary and appropriate, or as the directors may direct, for the protection of depositors and the efficient operation of the company, and shall make a written report of the condition of the company to the president, for the board, at such time, in such manner, and to such extent as the board may require, or as said auditor or auditors may deem necessary or proper, but at least once each year.

The commissioner, in the course of his regular official examination of the company shall, and at such other times as he deems advisable, may investigate the work of such auditor or auditors to determine its adequacy for the purposes set forth, and in case he deems it inadequate he shall forthwith report his findings, with instructions, in writing to the directors, who shall, within 30 days thereafter comply therewith.

Such audit may include a verification of accounts of depositors, which if deemed adequate by the commissioner, shall relieve him from all responsibility for such verification imposed upon him by section 402 so far as applicable to said trust company; and shall relieve said company of the expense of such verification by the department which might otherwise be assessed against it.

Whenever the directors of a trust company shall have provided for such audit by the method prescribed, and, in the case of the employment, election or appointment of an auditor or auditors by them, shall have taken such action to remedy conditions as may reasonably be deemed necessary in the light of the information disclosed by any report of said auditor or auditors, and shall have complied with all reasonable recommendations of the commissioner relative thereto within the time hereinbefore prescribed, they shall not be personally liable for any loss suffered by such company, due to any subsequent wrongdoing by any officer or employee of the company, in the absence of other facts indicating negligence on the part of said directors.'

Sec. 21. R. S., T. 9, § 1051, amended. Section 1051 of Title 9 of the Revised Statutes is amended to read as follows:

‘§ 1051. Proceedings when capital stock impaired

When the capital stock of a trust company shall become impaired by losses or otherwise, the commissioner may ascertain and determine the facts and give notice in writing to such company to ~~make good~~ restore the deficiency so appearing, within such time as he may order. The directors of such trust company, unless they shall by proper vote otherwise determine, shall forthwith levy ~~an assessment~~ a requisition upon the stock thereof sufficient to ~~make good~~ restore such deficiency and shall forthwith notify each stockholder of such requisition by giving him in hand or mailing to him at his last known address, postage prepaid, a written or printed notice which shall state the amount of ~~assessment~~ requisition to be paid by him and the time within which it shall be paid, which



time shall not be less than 60 days from the date of such notice. Such ~~assessment~~ **requisition** shall be due and payable by each stockholder within the time specified in said notice and if any stockholder shall fail to pay the ~~assessment~~ **requisition** specified in said notice within the time fixed therein, the directors of said trust company shall have the right to sell at public auction to the highest bidder the stock of each delinquent stockholder, after giving previous notice of such sale by publication thereof at least once a week for 3 successive weeks in some newspaper of general circulation in the county where the principal place of business of said trust company is located. A copy of such notice of sale shall be given in hand to such delinquent stockholder or mailed to him at his last known address, postage prepaid, at least 10 days before the date fixed for said sale; or such stock may be sold at private sale and without such notice. Before making such private sale thereof, an offer in writing to purchase said stock shall first be obtained and a copy thereof served upon the owner of record of the stock sought to be sold, either personally by giving him in hand a copy of such offer or mailing the same to him at his last known address, postage prepaid, and if after service of such offer, such owner shall still refuse or neglect to pay such ~~assessment~~ **requisition** within 2 weeks from the time of the service of such offer, the said directors may accept such offer and sell such stock to the person making such offer or to any other person or persons making a larger offer than the amount named in the offer submitted to the stockholder; but such stock shall in no event be sold for a smaller sum than the valuation put on it by the commissioner in his determination and ~~requisition as to said assessment,~~ nor for less than the amount of said ~~assessment~~ **requisition** so-called for and the expense of the sale. Out of the avails of the stock so sold, the directors shall pay the amount of ~~assessment~~ **requisition** levied thereon, and the necessary costs of sale. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold and shall make the same null and void and a new certificate shall be issued by the company to the purchaser thereof. Any stockholder aggrieved by any action of the commissioner or the directors of such company under the foregoing provisions may, within ~~15~~ **15** days after receiving notice thereof, apply by appropriate proceedings to the Superior Court whose decision, after due hearing, shall be final in the matters complained of. In the event that the directors of any trust company upon notification by the commissioner shall not vote within 10 days after receipt of said notification to make ~~an assessment~~ **a requisition** upon the stock under the foregoing provisions, the commissioner or the directors of such company may file a complaint in the Superior Court, setting forth the fact that such capital stock is impaired and asking said court to order ~~an assessment~~ **a requisition** upon the capital stock sufficient to meet the impairment and make the corporation solvent. After giving due notice and hearing to all parties interested, the court shall, if it finds the capital stock to be impaired, order ~~an assessment~~ **a requisition** to be made upon such stock. Such ~~assessment~~ **requisition**, when made, shall be due and payable by each stockholder to the treasurer of said company on order of said court within ~~60~~ **30** days from the time such order is made. If any stockholder or stockholders of said company shall neglect or refuse, after due notice, to pay the ~~assessment~~ **requisition** ordered within the time specified, a sufficient amount of the capital stock of such stockholder or stockholders may, after due

notice given, be sold under the direction of the court to pay such ~~assessment requisition~~ and the costs of sale. After paying the ~~assessment requisition~~ and costs from the proceeds of such sale, the balance, if any, shall be returned to the delinquent stockholder or stockholders. If no bidder can be found who will pay for such stock the amount of the ~~assessment requisition~~ due thereon and the costs of the advertisement and sale, the amount previously paid by such stockholder or stockholders and said stock shall be forfeited to the company; and shall be sold by said company as the directors shall order within 6 months from the time of said forfeiture.'

**Sec. 22. R. S., T. 9, § 1093, amended.** Section 1093 of Title 9 of the Revised Statutes is amended to read as follows:

**‘§ 1093. Trust assets**

Except as to common trust funds established under Title 18, section 4101, all securities, ~~money moneys~~ and property received by any trust company to be held in trust shall be kept separate and apart from the other assets of the company in a trust department to be established and maintained by such company; the assets belonging to each trust, except those held in such common trust funds, being listed and kept separate from those belonging to any other trust. A proper record of all matters relating to each such trust shall be separately kept in said trust department and shall indicate such particulars respecting each such trust as the commissioner shall direct. Nothing herein contained shall be construed to prohibit any such company from depositing **in its commercial department or**, subject to a proper ~~rate rates~~ of interest, in its ~~commercial or~~ savings department, in an account specifically stating the trust to which the same belongs, any cash income or cash principal received and held by it ~~pending distribution or permanent investment~~ in accordance with the terms of the trust under which the same is held; or such cash balances may be included in an aggregate deposit including like balances for other trusts, the books of the trust department showing the specific interest of each trust in such general deposit. The trust assets held by any such company shall not be subject to any other liabilities of said company.'

**Sec. 23. R. S., T. 9, § 1132, amended.** Section 1132 of Title 9 of the Revised Statutes is amended to read as follows:

**‘§ 1132. Loans to officers; approval recorded; vote of directors; credit expires**

No trust company shall make any loan to any of its directors, officers, agents or to any other person in its employ, or on which any such director, officer, agent or employee is an indorser, guarantor or surety, or to any firm or business syndicate of which such director, officer, agent or employee is a member, or to any person or on the indorsement or guaranty of any person who is a partner of, or member of a business syndicate with such director, officer, agent or employee, or to any corporation of which any such director, officer, agent or employee is a director, officer, superintendent or manager, until the proposition to make such loan shall have been submitted ~~by the person desiring the same~~ to the board of directors of such company, or to the executive committee thereof, if any, and accepted and approved by a majority of the entire membership of such board or committee. No director of such company who is interested in said loan in

any of the above capacities or who is connected or associated with the borrower in any of the above ways shall be regarded as voting in the affirmative on such loan. ~~For the purposes of this section each renewal shall be considered as an original loan.~~ Such approval, if the loan is made, shall be spread upon the records of the company; and ~~this record shall, in every instance, give the names of the directors authorizing the loan, except as above, unless otherwise specified,~~ it shall be assumed that all directors voted in the affirmative.

Nothing in this section or section 1131 shall make it unlawful for a trust company to give any person, firm, syndicate or corporation a line of credit to an amount not exceeding 20% of its total capital, unimpaired surplus and net undivided profits, subject to the several restrictions as to percentage of entire board and right of interested persons to vote on same contained in said sections. The records of the company shall show ~~how every director voted on the same, and when the approval or disapproval of the line of credit and if approved, and, except as above, unless it is otherwise specified, it shall be assumed that all directors voted in the affirmative.~~ When such line of credit is given, the treasurer or other authorized officer may accept notes thereunder and pay out loans in accordance therewith without further approval. A line of credit so given shall expire ~~in 6~~ no later than 12 months after its approval unless renewed in the same manner in which it is originally given.

Nothing in this section shall make it unlawful for a trust company to make a loan to a person in its employ who is not a director if the loan does not exceed \$5,000 in amount or if it is secured and if such loan is confirmed within 30 days by the board of directors or executive committee.'