

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 661

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S. P. 226

In Senate, February 7, 1973

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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AN ACT Providing for Judicial Review from Decisions of the  
Banking Commissioner.

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

Sec. 1. R. S., T. 9, § 7, repealed and replaced. Section 7 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 7. Orders of commissioner; notice and hearing; review

Orders issued by the commissioner shall be enforced by the Superior Court. Notice and hearing shall be provided in advance of any order, the promulgation of any rule or regulation, the issuance of any certificate of public convenience and advantage including but not limited to sections 441, 442, 991 and 1003, merger, consolidation or asset acquisition issued by the commissioner except when, in the opinion of the commissioner, immediate action is required to protect the public interest or interests of depositors or shareholders. In such case, immediate action may be taken but the commissioner shall promptly afford a subsequent hearing upon application to rescind the action taken. No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the commissioner notwithstanding a subsequent decision by a court invalidating the order, regulation or definition. Notice of such hearing shall be issued in the manner provided in Title 24-A, section 230, the procedures thereof being incorporated herein by reference.

Sec. 2. R. S., T. 9, §§ 8, 9, 10 and 11, additional. Title 9 of the Revised Statutes is amended by adding new sections 8 to 11, to read as follows:

**§ 8. Administrative procedures ; hearings in general**

1. May. The commissioner may hold a hearing without request of others for any purpose within the scope of this Title.

2. Shall. The commissioner shall hold a hearing :

A. As required by section 7, or

B. If no hearing was held pursuant to section 7, upon written application for a hearing by a person having a substantial interest and being aggrieved by any act or impending act, or by any report, rule, regulation or order of the commissioner, including, but not limited to, failure or refusal to issue a certificate of public convenience and advantage, failure or refusal to approve a merger, consolidation, asset acquisition, or purchase of stock by a bank holding company, other than an order for the holding of a hearing, or order on a hearing, or pursuant to such order, of which hearing such person had notice.

3. Application. Any such application must be filed with the commissioner within 90 days after such person knew or reasonably should have known of such act, impending act, failure, report, rule, regulation or order, unless a different period is provided for by other applicable law, and in which case such other law shall govern. The application shall briefly state the respects in which the applicant is so aggrieved, together with the ground to be relied upon for the relief to be demanded at the hearing. The commissioner may require that the application be signed and sworn to.

4. Time. If the commissioner finds that the application is timely and made in good faith, that the applicant would be so aggrieved if his grounds are established and that such grounds otherwise justify the hearing, he shall hold the hearing within 30 days after filing of the application, or within 30 days after the application has been sworn to, whichever is the later date, unless in either case the hearing is postponed by mutual consent.

5. Failure to hold hearing. Failure to hold the hearing upon application therefor of a person entitled thereto as provided shall constitute a denial of the relief sought, and shall be the equivalent of a final order of the commissioner on hearing for the purpose of an appeal under section 10.

6. Pending hearing. Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of his previous action.

**§ 9. Order on hearing**

1. Capacity of commissioner. In the conduct of hearings under this Title and making his order thereon, the commissioner shall act in a quasi-judicial capacity.

2. Orders. Within 30 days after termination of a hearing, or of any re-hearing thereof or reargument thereon, or within such other period as may be specified in this Title as to particular proceedings, or within such further reasonable period as the commissioner for good cause may require, the com-

missioner shall make his order on hearing covering matters involved in such hearing, and give a copy of the order to each party to the hearing in the same manner as notice of the hearing was given to such party.

3. —contents. The order shall contain:

A. A concise statement of facts found by the commissioner upon the evidence presented at the hearing;

B. A concise statement of the commissioner's conclusions from the facts so found;

C. His order, and the effective date thereof; and

D. Citation of the provisions of this Title upon which the order is based; but failure to so designate a particular provision shall not deprive the commissioner of the right thereafter to rely thereon.

4. —effect. The order may affirm, modify or rescind action theretofore taken or may constitute taking a new action within the scope of the notice of the hearing.

#### § 10. Conduct of hearing

The hearing shall be conducted in accordance with Title 24-A, section 231 in the same manner as if the provisions of said section were herein set out in full.

#### § 11. Appeal from the commissioner

1. Appeal. An appeal from the commissioner shall be taken only from an order on hearing, or as to a matter on which the commissioner has refused or failed to hold a hearing after application therefor under section 8, or as to a matter as to which the commissioner has failed to make his order on hearing as required by section 9.

2. —Superior Court. Any person who was a party to such a hearing, and who is aggrieved by such order, refusal or failure may appeal from such order. The appeal shall be in accordance with Rule 80 B of the Maine Rules of Civil Procedure and shall be taken to the Superior Court of Kennebec County. If the appeal is from the commissioner's order on hearing, the petitioner shall also deliver to the commissioner a sufficient number of copies of the complaint and the commissioner shall mail or otherwise furnish a copy thereof to the other parties to the hearing to the same extent as a copy of the commissioner's order is required to be furnished to the hearing parties under section 9.

3. —record. Upon receiving the complaint on appeal, the commissioner shall forthwith prepare an official record certified by him which shall contain a copy of all proceedings and orders of the commissioner appealed from and the transcript of testimony and evidence. Within 30 days after the complaint was served upon him, the commissioner shall file such official record with the court.

4. —jurisdiction. Upon filing of the complaint on appeal, the court shall have full jurisdiction of the proceeding. Such filing shall not stay the enforce-

ment of the commissioner's order or action appealed from unless stayed by order of the court.

5. —preliminary order. The court shall have power, by preliminary order, to settle questions concerning the completeness and accuracy of the commissioner's official record.

6. —remand. In its discretion, the court may remand the case to the commissioner for further proceedings in accordance with the court's direction.

### STATEMENT OF FACT

This bill establishes hearing procedures before the Banking Commissioner and provides for judicial review of the Banking Commissioner's decisions. It is very similar to the procedures recently enacted in regard to the Insurance Department.