

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1139

H. P. 660

House of Representatives, February 22, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Ferris of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Regulate Bank Holding Companies.

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

Sec. 1. R. S., T. 9, Part 3-A, additional. Title 9 of the Revised Statutes is amended by adding a new Part 3-A to read as follows:

PART 3-A

HOLDING COMPANIES

CHAPTER 121

THE BANK HOLDING COMPANY ACT

§ 1401. Short title

This Part shall be known, and may be cited as "The Bank Holding Company Act."

§ 1402. Definitions

The following words and phrases when used in this Part shall have the following meanings, unless a different meaning is clearly required by the context.

1. Bank. "Bank" means any trust company, trust and banking company or industrial bank as defined by section 222, organized under the laws of this State and having its principal office in this State and, for the purpose of this Part, also includes a national banking association authorized to do business and having its principal place of business in this State.

2. Bank holding company. "Bank holding company" means any company which directly or indirectly owns, controls or holds with power to vote 25% or more of the voting shares of one or more banks or of a company which is or becomes a bank holding company, or which controls in any manner the selection of a majority of the directors of one or more banks or of a majority of the directors, trustees or managing officers of a bank holding company. Notwithstanding the foregoing, no bank and no company owning or controlling voting shares of a bank shall be a bank holding company by virtue of such bank's ownership or control of shares of stock in a fiduciary capacity, except where such shares are held for the benefit of such bank or company, or of the shareholders, employees or members of such bank or company; no company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof upon a reasonable basis; no company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation, if such solicitation is for the purpose of voting shares at the next succeeding meeting of shareholders or any adjournment thereof and not thereafter; and no bank and no company shall be a bank holding company by virtue of its acquisition of shares of any bank or bank holding company in good faith in the ordinary course of securing or collecting a debt previously contracted in good faith, provided the making of such loan and the acquisition of such shares are in the ordinary course of business and not as a means of circumventing this chapter, but any such bank or company shall dispose of such shares within a period of 5 years from the acquisition thereof, provided the commissioner may extend such period if he deems that an additional period or periods will permit the disposition of such shares without undue risk or loss.

3. Commissioner. "Commissioner" means the Bank Commissioner.

4. Company. "Company" means any corporation, joint stock company, trust, association, partnership, limited partnership, unincorporated organization or similar organization, but shall not include any corporation, the majority of the shares of which are owned by the United States or by any state; or any corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; or any corporation or partnership owning or controlling stock acquired in connection with the underwriting of securities and which is held only for such period of time as will permit the sale thereof on a reasonable basis.

5. Person. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

6. Shares. Shares held or controlled directly or indirectly by any subsidiary of a bank holding company shall be deemed to be controlled by such bank

holding company; and shares held or controlled directly or indirectly by trustees, agents or representatives for the benefit of a company, or shareholders, employees or members of a company, shall be deemed to be controlled by such company.

7. **Subsidiary.** "Subsidiary" with respect to a specified bank holding company, means any company 25% or more of whose voting shares are directly or indirectly owned or controlled by such bank holding company or are held by it with power to vote, or any company the selection of a majority of whose directors, partners, trustees or managing officers is controlled in any manner by such bank holding company.

8. **Successor.** "Successor" shall include any company which acquired, directly or indirectly, from a bank holding company, stock of any bank when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of the stock thereof. The commissioner may, by regulation, further define the word "successor" to the extent necessary to prevent evasion of the purposes of this Part.

9. **Voting shares.** "Voting shares" means any share or interest in a company, however evidenced, the ownership of which includes as an incident thereof the right, exercisable generally or in specified circumstances, to vote for the election or appointment of directors, trustees or managing officers of such company.

§ 1403. Actions requiring prior approval by commissioner

It shall be unlawful, except with the prior approval of the commissioner, for any action to be taken that causes any company to become a bank holding company; for any action to be taken that causes a bank to become a subsidiary of a bank holding company; for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5% of the voting shares of such bank; for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or for any bank holding company to merge or consolidate with any other bank holding company. The foregoing prohibitions shall not apply to stock acquired in good faith in a fiduciary capacity, except where such stock is held for the benefit of the shareholders of a bank holding company; or stock accepted in good faith as collateral security for advances made or stock acquired in the regular course of securing or collecting a debt previously contracted in good faith, provided such stock shall be sold or otherwise disposed of within the term of 5 years from the date of its acquisition.

§ 1404. Application for approval by commissioner

Any company or bank holding company seeking to take any action requiring prior approval of the commissioner under section 1403 shall submit a written application therefor, in triplicate, to the commissioner upon such forms and containing such information as the commissioner may prescribe.

The commissioner, within 60 days after the filing of such an application, shall endorse upon each application, over his official signature, the word "Approved" or "Disapproved" as the case may be, and shall forthwith notify the applicant. In the case of approval, one of the triplicate applications shall be filed by the commissioner in his own office, another with the Secretary of State and the 3rd shall be returned to the applicant in writing. In determining whether or not to approve any such application, the commissioner shall take into consideration the declaration of policy contained in section 221; whether the effect of such action shall be either to result in the formation of a bank holding company or to expand the size or extent of the resulting or acquiring bank holding company beyond limits consistent with adequate or sound banking and the preservation thereof, or result in a concentration of assets beyond limits consistent with effective competition; whether such action may result in such a lessening of competition as to be injurious to the interest of the public or tend toward monopoly; and the public interest and the needs and convenience thereof.

§ 1405. Plans to acquire stock of banks; approval by commissioner

When such action as requires the prior approval of the commissioner under section 1403 includes the acquisition by a company or bank holding company of all the capital stock of one or more corporations organized under or subject to Part 3 or Part 5, such company or bank holding company shall submit, in triplicate, together with the application required by section 1404 and an investigation fee of \$500, a written plan of acquisition of such stock. Such plan shall be in a form satisfactory to the commissioner and shall specify, together with any additional information prescribed by the commissioner, each corporation the stock of which is to be acquired by the company or bank holding company and shall prescribe the terms and conditions of the acquisition and the mode of carrying it into effect, including the manner of exchanging the shares of each of the corporations for shares or other securities of the company or bank holding company. Any such plan may provide for the payment of cash in lieu of the issuance of fractional shares of the company or bank holding company.

There shall be submitted, in triplicate, with any such plan of acquisition, a certificate of the president or clerk or secretary of the company or bank holding company, certifying that such plan has been approved by the board of directors or other governing body of his company by a majority vote of all the members thereof, and a certificate of the president, secretary or treasurer of each corporation, the acquisition of all the capital stock of which is provided for, certifying that such plan has been approved by the board of directors of his corporation by a majority vote of all the members thereof, and that such plan was thereafter submitted to the stockholders of such corporation at a meeting thereof held upon notice of at least 15 days, specifying the time, place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the corporation and published at least once a week for 2 successive weeks in one newspaper in the county in which such corporation has its principal place of business and that such plan has been approved at such meeting by the vote of stockholders owning at least $\frac{2}{3}$ in amount of the stock of such corporation.

The commissioner, within 90 days after the filing of such a plan, together with the application for approval required by section 1404, shall endorse upon each such plan and application over his official signature the word "Approved" or "Disapproved" as the case may be, and shall forthwith notify the applicant in writing. In the case of approval, one set of the triplicate applications and plans shall be filed by the commissioner in his own office, another set with the Secretary of State and the 3rd set shall be returned to the applicant.

Upon such filing in the office of the Secretary of State, the plan and the acquisitions provided for therein shall become effective, unless a later date is specified in the plan, in which event the plan and acquisitions shall become effective upon such later date. In determining whether or not to approve any such plan and application, the commissioner shall conduct such investigation as he may deem necessary, with or without a public hearing, and he shall take into consideration all those factors referred to in section 1404.

Any stockholder, whose shares of a corporation were voted against the acquisition of said corporation pursuant to this Part may, within 30 days after the plan of acquisition becomes effective, demand in writing from such corporation payment for his stock and such corporation shall, within 90 days thereafter, pay him the value of his stock at the date upon which such acquisition became effective. In case of disagreement as to the value thereof, such value shall be ascertained by a majority of 3 disinterested persons to be chosen one by such stockholder, one by such corporation and the 3rd by the 2 thus selected, and, if their award is not paid within 60 days from its date, it shall become a debt of such corporation and may be collected as such and such stockholder, upon receiving payment therefor, shall transfer this stock to such corporation.

§ 1406. Use of federal registration statement and application for approval

If any action requiring prior approval of the commissioner under any provision of this Part also requires the filing of an application for the approval of the Board of Governors of the Federal Reserve System, under the Federal Bank Holding Company Act, or the filing of a registration statement under the Federal Securities Act of 1933 or the Federal Securities Exchange Act of 1934, such application for approval of registration statement may be used, with the approval of the commissioner, to provide the required information, under sections 1404 and 1405. The commissioner may require that an applicant provide any further information which the commissioner deems necessary and which is not contained in such registration statement or application.

§ 1407. Appeal

Any person aggrieved and directly affected by any action of the commissioner under this Part may appeal therefrom to the Superior Court pursuant to the procedures provided in section 7.

§ 1408. Registration of bank holding companies; reports; examinations; rules and regulations

Within 180 days after the effective date of this Part, or within 180 days after becoming a bank holding company, whichever is later, each bank hold-

ing company shall register with the commissioner on forms prescribed by him which shall include such information with respect to the financial condition, operations, management and intercompany relationships of the bank holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this chapter. The commissioner may, in his discretion, extend the time within which a bank holding company shall register and file the requisite information.

The commissioner may, from time to time, require reports under oath to keep him informed as to whether this Part and the rules, regulations and orders issued thereunder have been complied with, and, except in the case of a national banking association, he may, from time to time, make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against and paid by each holding company.

The commissioner is authorized to issue such rules, regulations and orders as are necessary to enable him to administer and carry out the purposes of this Part.

§ 1409. Penalties and enforcement

Any company which willfully violates any provision of this Part or any rule, regulation or order issued by the commissioner pursuant thereto, shall, upon conviction, be punished by a fine of not more than \$100 for each day during which the violation continues.

Any individual who willfully participates in a violation of any provision of this Part or any rule, regulation or order issued by the commissioner pursuant thereto, shall, upon conviction, be punished by a fine of not more than \$5,000 or by imprisonment for not more than 11 months, or by both.

Any individual who swears or affirms that any report required by the commissioner pursuant to this Part is true, knowing the same to be false, or who makes any false entry in any book, record or statement of a bank holding company or its subsidiary with the intent to deceive any examiner lawfully appointed to examine into its condition or into its affairs, or who with like intent, willfully omits to make a true entry of any material pertaining to the business of such company or subsidiary in any book, report, record or statement of such company or subsidiary, made, written or kept by him or under his direction shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 5 years, or by both.

If any action violates or would violate any provision of this Part or any rule, regulation or order issued by the commissioner pursuant thereto, the commissioner or his duly authorized agent may apply to the Superior Court of this State for the enforcement thereof and such Court shall have jurisdiction to enforce obedience thereto, and may issue such orders or decrees as may be necessary to remedy any such violation or threatened violation including, but not limited to, orders requiring divestiture of stock illegally acquired or held by injunction or by other process, and orders enjoining and restraining such violations or threatened violations.

§ 1410. Saving provision

Nothing herein contained shall be interpreted or construed as approving any act, action or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit or proceeding, pending or hereinafter instituted on account of any act, action or conduct prohibited by law.

STATEMENT OF FACT

The Legislature has declared it "to be the policy of the State that the business of all financial institutions shall be supervised by the Department of Banks and Banking in a manner to maintain and promote safe and sound financial practices . . . (and) reasonable and orderly competition . . ." 9 M.R.S.A. § 221.

Furthermore, Congress has declared in the Bank Holding Company Act of 1956, 12 U.S.C. § 1846, that, "The enactment by Congress of this chapter shall not be construed as preventing any state from exercising such powers and jurisdiction which it now has or may **hereafter** have with respect to banks, bank holding companies and subsidiaries thereof." (Emphasis supplied).

This legislation is proposed in order to enable the Department of Banks and Banking to fulfill its statutory obligation to carry out the foregoing declared policy of the State relative to financial institutions by authorizing the Department to regulate, in a specified manner, the organization, formation and future business activities and expansions of new bank holding companies and the business activities and future expansions of such companies which have already been organized before the effective date of this Act.