

# MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 804 L.D. 1891)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TENTH LEGISLATURE  
5

6 **Legislative Document**

**No. 2100**

8  
9 S. P. 950 In Senate, March 24, 1982  
Reported by Majority of the Committee on Business Legislation  
and printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

10  
11 STATE OF MAINE  
12

13 IN THE YEAR OF OUR LORD  
14 NINETEEN HUNDRED AND EIGHTY-TWO  
15

16 AN ACT To make Interstate Bank  
17 Ownership Possible.  
18

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

20 **Sec. 1.** 9-B MRSA §312, sub-§5, ¶B, as enacted by PL  
21 1975, c. 500, §1, is amended to read:

22 B. The minimum amount of paid-in capital stock shall  
23 be determined by the superintendent, but in no event  
24 shall may it be less than ~~\$100,000~~ \$500,000.

25 **Sec. 2.** 9-B MRSA §351, sub-§1, as enacted by PL 1975,  
26 c. 500, §1, is amended to read:

27 1. Applicability. The provisions of this chapter  
28 shall govern mergers and consolidations undertaken by  
29 savings banks, trust companies, savings and loan associa-  
30 tions and industrial banks subject to the laws of this  
31 State, and shall set forth the procedures for, and limita-

1 tions on, the acquisition or transfer of all or substan-  
2 tially all of the assets of such institutions by another  
3 institution.

4 Sec. 3. 9-B MRSA §352, sub-§1, ¶D, as enacted by PL  
5 1975, c. 500, §1, is amended to read:

6 D. Provisions governing the manner and basis of con-  
7 verting the shares of the participating institutions  
8 into shares or other securities of the resulting insti-  
9 tution, and if any shares of any of the participating  
10 institutions are not to be converted solely into shares  
11 or other securities of the resulting institution, the  
12 amount of cash, property, rights or securities of any  
13 other institution or corporation which is to be paid or  
14 delivered to the holders of those shares in exchange  
15 for or upon the surrender of those shares, which cash,  
16 property, rights or securities of any other institution  
17 or corporation may be in addition to or in lieu of the  
18 shares or other securities of the resulting institu-  
19 tion;

20 Sec. 4. 9-B MRSA §352, sub-§1, ¶F, as enacted by PL  
21 1975, c. 500, §1, is amended to read:

22 F. Provisions, if applicable, governing the manner of  
23 disposing of shares of the resulting institution not  
24 taken by dissenting stockholders of the participating  
25 institutions; and

26 Sec. 5. 9-B MRSA §355, first ¶, as enacted by PL 1975,  
27 c. 500, §1, is amended to read:

28 A financial institution organized under the laws of  
29 this State may acquire or receive through transfer all or  
30 substantially all of the assets of, or assume the liabili-  
31 ties of, any other financial institution authorized to do  
32 business in this State, in accordance with the procedures  
33 and subject to the conditions and limitations set forth  
34 below:

35 Sec. 6. 9-B MRSA §355, sub-§1, first sentence, as  
36 enacted by PL 1975, c. 500, §1, is amended to read:

37 The board of directors of the acquiring or assuming institu-  
38 tion and the board of directors of the transferring institu-  
39 tion shall adopt, by majority vote, a plan for such acquisi-  
40 tion, assumption, transfer or sale on such terms as shall be  
41 mutually agreed upon.

1           Sec. 7. 9-B MRSA §355, sub-§1, ¶¶B, C and F, as  
2 enacted by PL 1975, c. 500, §1, are amended to read:

3           B. A statement setting forth the material terms of the  
4 proposed acquisition, assumption, transfer or sale,  
5 including the plan for disposition of all assets and  
6 liabilities not subject to the plan;

7           C. A statement of the plan governing liquidation of  
8 the transferring institution pursuant to section 364  
9 upon execution of the plan, with said that liquidation  
10 being a required provision of the plan; except that  
11 where the superintendent determines that the transfer-  
12 ring institution is not insolvent, liquidation shall  
13 not be required;

14           F. The proposed effective date of such acquisition,  
15 assumption, transfer or sale and such other information  
16 and provisions as may be necessary to execute the  
17 transaction, or as may be required by the superinten-  
18 dent.

19           Sec. 8. 9-B MRSA §355, sub-§3, first sentence, as  
20 enacted by PL 1975, c. 500, §1, is amended to read:

21 The plan of acquisition, assumption, transfer or sale shall  
22 be presented to the stockholders, corporators, or members of  
23 the transferring institution for their approval.

24           Sec. 9. 9-B MRSA §355, sub-§4, ¶D is enacted to read:

25           D. In an instance where it has been determined that an  
26 acquisition, assumption, transfer or sale of all or  
27 substantially all assets does not require liquidation,  
28 the charter of the transferring institution shall  
29 expire upon the effective date of that acquisition,  
30 assumption, transfer or sale.

31           Sec. 10. 9-B MRSA §355, sub-§6, as enacted by PL 1975,  
32 c. 500, §1, is amended to read:

33           6. Stock institution acquiring mutual institution.  
34 Except as the Superior Court may authorize pursuant to  
35 section 367, subsection 7, or where the superintendent  
36 determines that the exception contained in subsection 1,  
37 paragraph C, applies, a mutual institution shall not sell  
38 all or substantially all of its assets to a stock institu-  
39 tion without prior compliance with section 344 and all regu-  
40 lations promulgated thereunder.

1       Sec. 11. 9-B MRSA §463, as last amended by PL 1979, c.  
2 663, §42, is repealed.

3       Sec. 12. 9-B MRSA §463-A is enacted to read:

4 §463-A. Stock in Maine financial institutions

5       No financial institution authorized to do business in  
6 this State may acquire control of any other financial insti-  
7 tution authorized to do business in this State or of a Maine  
8 financial institution holding company without the prior  
9 approval of the superintendent. No financial institution  
10 authorized to do business in this State may acquire more  
11 than 5% of the voting shares of any other financial institu-  
12 tion authorized to do business in this State or of a Maine  
13 financial institution holding company without the prior  
14 approval of the superintendent.

15       Sec. 13. 9-B MRSA §1011, sub-§§7 to 9 are enacted to  
16 read:

17       7. Eligible Maine assets. "Eligible Maine assets"  
18 consist of:

19       A. Demand and time deposits placed with other Maine  
20 financial institutions;

21       B. Investments in bonds and other obligations issued  
22 or guaranteed by this State or issued by an instru-  
23 mentality or agency of this State or of a political  
24 subdivision thereof, whether or not the full faith and  
25 credit of the issuer is pledged, which is not in de-  
26 fault on any of its outstanding funded obligations;

27       C. Bonds, stocks and other obligations issued by any  
28 corporation which is not in default whose principal  
29 place of business is located in Maine or which has sub-  
30 stantial assets in Maine;

31       D. All obligations generally considered loans,  
32 nonrecourse asset purchase agreements, sales of federal  
33 funds and purchases of securities subject to resale  
34 agreements:

35       (1) On which residents of this State or firms,  
36 partnerships, corporations or other entities whose  
37 principal place of business is located in this  
38 State or which have substantial assets in this  
39 State are directly or contingently obligated; or

1                   (2) Which are secured by real estate located in  
2                   this State;

3                   E. Assets pledged to this State or to any agency,  
4                   instrumentality or political subdivision thereof pur-  
5                   suant to the laws of this State; and

6                   F. Such other assets as the superintendent shall  
7                   approve as assets located in, or having a substantial  
8                   connection to, this State.

9                   8. Equity capital. "Equity capital" consists of the  
10                  sum of common stock, preferred stock, surplus and undivided  
11                  profits.

12                  9. Non-Maine financial institution holding com-  
13                  pany. "Non-Maine financial institution holding company"  
14                  means a financial institution holding company, the opera-  
15                  tions of which are principally conducted outside the State.

16                  **Sec. 14. 9-B MRSA §1013, sub-§1, 2nd ¶, as enacted by**  
17                  **PL 1979, c. 349, is repealed.**

18                  **Sec. 15. 9-B MRSA §1013, sub-§2, as enacted by PL**  
19                  **1975, c. 500, §1, is repealed and the following enacted in**  
20                  **its place:**

21                  2. Acquisition by a non-Maine financial institution  
22                  holding company. A non-Maine financial institution holding  
23                  company may establish or acquire control of one or more  
24                  Maine financial institutions or Maine financial institution  
25                  holding companies with the prior approval of the superinten-  
26                  dent, subject to this section and section 1015, provided  
27                  that the Maine financial institution or Maine financial  
28                  institution holding company to be established or acquired  
29                  enters into an agreement with the superintendent to provide  
30                  reports and permit examination of its records to the extent  
31                  deemed necessary by the superintendent to insure compliance  
32                  with subsection 3 and other relevant provisions of this  
33                  chapter.

34                  **Sec. 16. 9-B MRSA §1013, sub-§§3 and 4 are enacted to**  
35                  **read:**

36                  3. Requirements for acquisition or establishment. A  
37                  non-Maine financial institution holding company may estab-  
38                  lish, acquire or maintain control of a Maine financial  
39                  institution or Maine financial institution holding company  
40                  when and for so long as the following conditions are satis-  
41                  fied.

1 A. A Maine financial institution or Maine financial  
2 institution holding company, control of which is to be  
3 acquired or held, shall have, on the date of acquisi-  
4 tion or establishment, and maintain a minimum of  
5 \$5,000,000 in equity capital and shall have, at the end  
6 of the 5th full fiscal year following the date of ac-  
7 quisition or establishment, and maintain a minimum  
8 equity capital of \$7,000,000.

9 B. A Maine financial institution or Maine financial  
10 institution holding company, control of which is to be  
11 acquired or held, shall have in its asset structure a  
12 sufficient amount of eligible Maine assets to demon-  
13 strate to the satisfaction of the superintendent that  
14 it provides an adequate level of services to persons  
15 and entities located within the geographic area it  
16 serves.

17 C. A non-Maine financial institution holding company,  
18 which acquires control of or establishes a Maine finan-  
19 cial institution or Maine financial institution holding  
20 company, shall maintain in the asset structure of the  
21 acquired or established Maine financial institution or  
22 Maine financial institution holding company, or in its  
23 own asset structure, or in the asset structure of any  
24 of its affiliates, a daily average amount of eligible  
25 Maine assets, as defined in section 1011, subsection 7,  
26 equal in the aggregate to:

27 (1) The daily average amount of eligible Maine  
28 assets for the fiscal year immediately preceding  
29 the date of acquisition of control of a Maine  
30 financial institution or Maine financial institu-  
31 tion holding company; plus

32 (2) Either 65% of the total incremental change in  
33 the total of the daily average assets of the Maine  
34 financial institution or Maine financial institu-  
35 tion holding company from its fiscal year immedi-  
36 ately preceding the date of acquisition of control  
37 to the total of daily average assets for its most  
38 recent fiscal year; or 85% of the total  
39 incremental change in deposits and other borrow-  
40 ings obtained from the following sources: Resi-  
41 dents of this State, from partnerships, corpora-  
42 tions or other entities whose principal place of  
43 business is located in this State or which have  
44 substantial assets in this State, or from the  
45 State, any political subdivision or agency thereof  
46 or other public funds derived in Maine, from the

1           fiscal year immediately preceding the acquisition  
2           of the Maine financial institution or Maine finan-  
3           cial institution holding company to the total of  
4           daily average assets for its most recent fiscal  
5           year. Deposits and funds from the borrowings de-  
6           scribed in this subsection shall be maintained in  
7           eligible Maine assets on the basis of a daily  
8           average for the most recent fiscal year of the  
9           Maine financial institution or Maine financial  
10           institution holding company.

11           The superintendent may promulgate regulations effecting  
12           changes in the percentages set forth in this subsec-  
13           tion. These regulations shall be consistent with the  
14           needs of financial institutions to operate within the  
15           framework of a competitive environment and shall recog-  
16           nize the needs of a free market economic system. Cri-  
17           teria to be considered when adjustments to the percent-  
18           ages are made shall include, but not be limited to,  
19           changes in loan demand, investment opportunities and  
20           capital and liquidity requirements.

21           D. In order to qualify for the purpose of satisfying  
22           the asset maintenance requirement of paragraph C, eli-  
23           gible Maine assets maintained in the asset structure of  
24           a non-Maine financial institution holding company or in  
25           any of its non-Maine affiliates must be acquired subse-  
26           quent to the date of acquisition or establishment of a  
27           Maine financial institution or Maine financial institu-  
28           tion holding company.

29           E. During the 5 fiscal years subsequent to the estab-  
30           lishment or acquisition of a Maine financial institu-  
31           tion or Maine financial institution holding company by  
32           a non-Maine financial institution holding company, the  
33           approval of the superintendent shall be required at  
34           least 30 days prior to declaration of dividends, if the  
35           proposed dividends to be declared by the Maine finan-  
36           cial institution or Maine financial institution holding  
37           company in any calendar year shall exceed 50% of its  
38           net income for that year combined with its retained net  
39           income of the preceding 2 years, less any required  
40           transfers to surplus or a fund for the retirement of  
41           any preferred stock. The percentage established in  
42           this subsection shall increase by annual increments of  
43           10%, beginning with the 6th fiscal year following the  
44           acquisition or establishment, until 100% is attained.

45           F. Any other assessments and fees paid by the Maine  
46           financial institution or Maine financial institution



1 holding company to the non-Maine financial institution  
2 holding company or its affiliates shall be consistent  
3 with sound banking practices and subject to review by  
4 the superintendent.

5 G. The superintendent may promulgate regulations to  
6 supplement the requirements of this section and to aid  
7 in the administration of this section, including  
8 reports to ensure compliance with the section.

9 4. Branching. A Maine financial institution to be  
10 established or acquired by a financial institution holding  
11 company shall, as a condition of being established or ac-  
12 quired, be subject to the conditions upon which a financial  
13 institution organized under the laws of this State may  
14 establish, maintain, relocate or close branch offices pur-  
15 suant to chapter 33.

16 **Sec. 17. 9-B MRSA §1014, sub-§4 is enacted to read:**

17 4. Impermissible activity. The establishment or ac-  
18 quisition of control of a Maine financial institution does  
19 not constitute an activity permitted by this section. A  
20 financial institution holding company which seeks to estab-  
21 lish or acquire control of a Maine financial institution is  
22 subject to the provisions of section 1013.

23 **Sec. 18. 9-B MRSA §1015, sub-§3, as enacted by PL**  
24 **1975, c. 500, §1, is amended to read:**

25 3. Application fee. No application for approval of an  
26 acquisition or establishment of a financial institution or  
27 financial institution holding company by a Maine financial  
28 institution holding company or required in subsection 1,  
29 paragraph D or E shall may be deemed complete by the super-  
30 intendent unless accompanied by an application fee of \$1,000  
31 payable to the Treasurer of State to be credited and used as  
32 provided in section 214. No application for approval of an  
33 acquisition or establishment of a financial institution or  
34 financial institution holding company by a non-Maine finan-  
35 cial institution holding company may be deemed complete by  
36 the superintendent unless accompanied by an application fee  
37 of \$5,000 payable to the Treasurer of State to be credited  
38 and used as provided in section 214.

39 **Sec. 19. 9-B MRSA §1019, sub-§2, as enacted by PL**  
40 **1975, c. 500, §1, is amended by adding at the end a new**  
41 **paragraph to read:**

1 Any company or Maine financial institution violating section  
2 1013, subsection 2 or 3, or any regulation promulgated under  
3 that section, shall be subject to a penalty of not more than  
4 \$1,000 a day for each day the violation continues. The  
5 superintendent shall report the violation forthwith, with  
6 such remarks as he deems appropriate, to the Attorney Gen-  
7 eral, who may forthwith institute a civil action therefor on  
8 behalf of the State.

9 Sec. 20. 9-B MRSA §1019, sub-§3 is enacted to read:

10 3. Remedy for violation of section 1013, subsection 2  
11 or 3. A Maine financial institution or any financial  
12 institution holding company which violates section 1013,  
13 subsection 2 or 3, shall be deemed to be engaged in an  
14 unsafe or unsound practice in conducting the business of the  
15 financial institution or financial institution holding com-  
16 pany and the superintendent may utilize the provisions of  
17 chapters 23 and 24 to remedy any such violation.

18 Sec. 21. 13 MRSA §802, sub-§17, ¶¶A and B, as enacted  
19 by PL 1977, c. 669, are amended to read:

20 A. An insurer subject to the provisions of Title 24-A;  
21 or

22 B. A financial institution subject to Title 9-B; or

23 Sec. 22. 13 MRSA §817, sub-§1, as enacted by PL 1977,  
24 c. 669, is amended to read:

25 1. Exception. If the target company is a public util-  
26 ity, or public utility holding company, national banking  
27 association, bank holding company, savings and loan associa-  
28 tion or saving and loan holding company subject to regula-  
29 tion by a federal agency and the takeover of the company is  
30 subject to approval by that agency, this chapter shall not  
31 apply.

## 32 STATEMENT OF FACT

33 This new draft deletes the requirement for reciprocity  
34 in order to facilitate interstate bank ownership in Maine.  
35 Additionally, it establishes a strict regulatory framework  
36 designed to safeguard the interest of Maine and its citizens  
37 if interstate bank ownership occurs. In order to establish  
38 or acquire a Maine bank, a non-Maine financial institution  
39 holding company must begin with and maintain large minimum  
40 amounts of equity capital and it must retain a significant

1 portion of its loans and investments within the State. The  
2 new draft provides the Superintendent of Banking with super-  
3 visory and enforcement powers to insure that these condi-  
4 tions are met. The new draft also accomplishes several  
5 related purposes: The existing prohibition of mergers or  
6 acquisitions between thrifts and commercial banks is  
7 removed; attempted acquisitions of Maine banks are made sub-  
8 ject to the provisions of the state takeover bid law; the  
9 minimum amount of paid-in capital required to start a stock  
10 financial institution is raised to \$500,000; greater flexi-  
11 bility is allowed in structuring bank mergers; acquisition  
12 or establishment of a Maine financial institution by a  
13 non-Maine financial institution holding company is made sub-  
14 ject to the supervision of the superintendent regarding  
15 future branches; solvent institutions are allowed to trans-  
16 fer their assets and liabilities without going through a  
17 liquidation proceeding; and solvent mutual institutions are  
18 allowed to sell their assets and liabilities to a stock  
19 institution without first converting to a stock form of own-  
20 ership.

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