

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

6 Legislative Document

No. 1765

7  
8 H.P. 1255 House of Representatives, January 2, 1986

9 Submitted by the Department of Business, Occupational and Professional  
10 Regulation pursuant to Joint Rule 24.

11 Received by the Clerk of the House on January 2, 1986. Referred to the  
12 Committee on Business and Commerce and 1,600 ordered printed pursuant to  
13 Joint Rule 14.

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

Cosponsored by Representative Murray of Bangor, Representative  
14 Stevens of Bangor and Senator Kerry of York.

13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-SIX  
17

18 AN ACT to Provide for the Use of the  
19 So-called "Interim Bank Approach" to  
20 Facilitate the Formation of a  
21 Financial Institution Holding  
22 Company.  
23

24 Emergency preamble. Whereas, Acts of the Legis-  
25 lature do not become effective until 90 days after  
26 adjournment unless enacted as emergencies; and

27 Whereas, several state-chartered financial insti-  
28 tutions wish to form one-bank holding companies by  
29 virtue of the so-called "interim bank approach;" and

30 Whereas, the Maine Banking Code, the Maine Re-  
31 vised Statutes, Title 9-B, as interpreted by the Law  
32 Court does not permit use of the "interim bank ap-  
33 proach;" and

1           Whereas, federal law is permissive with respect  
2 to utilizing the "interim bank approach;" and this  
3 lack of parity with federal law causes undue burden  
4 on state-chartered financial institutions wishing to  
5 effect the corporate reorganizations; and

6           Whereas, in the judgment of the Legislature,  
7 these facts create an emergency within the meaning of  
8 the Constitution of Maine and require the following  
9 legislation as immediately necessary for the preser-  
10 vation of the public peace, health and safety; now,  
11 therefore,

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

14           9-B MRSA §352, sub-§1, ¶¶D and F, as enacted by  
15 PL 1975, c. 500, §1, are amended to read:

16           D. Provisions governing the manner and basis of  
17 converting the shares of the participating insti-  
18 tutions into shares or other securities of the  
19 resulting institution and, if any shares of any  
20 of the participating institutions are not to be  
21 converted solely into shares or other securities  
22 of the resulting institution, the amount of cash,  
23 property, rights or securities of any other in-  
24 stitution or corporation which is to be paid or  
25 delivered to the holders of the shares in ex-  
26 change for or upon surrender of the shares, which  
27 cash, property, rights or securities of any other  
28 institution or corporation may be in addition to  
29 or in lieu of the shares or securities of the re-  
30 sulting institution;

31           F. Provisions, if applicable, governing the man-  
32 ner of disposing of shares of the resulting in-  
33 stitution, if any, not taken by dissenting stock-  
34 holders of the participating institutions; and

35           Emergency clause. In view of the emergency cited  
36 in the preamble, this Act shall take effect when ap-  
37 proved.

1

STATEMENT OF FACT

2           The purpose of the bill is to allow state-  
3 chartered financial institutions to use the so-called  
4 "interim bank approach" when forming financial insti-  
5 tution holding companies. National banks commonly  
6 use this approach when forming a holding company and  
7 a substantial number of Maine holding company acqui-  
8 sitions have been accomplished utilizing this tech-  
9 nique. Current language precludes the use of the  
10 "interim bank approach" as the Maine Revised Stat-  
11 utes, Title 9-B, section 352, as interpreted by the  
12 Law Court in the 1970 Marcou vs. Federal Trust Compa-  
13 ny case, does not provide for the exchange of any-  
14 thing but financial institution stock for the stock  
15 of another financial institution. In the formation  
16 of a holding company, it is holding company stock  
17 which is offered. The draftsmen of the 1972 Maine  
18 Business Corporation Act, the Maine Revised Statutes,  
19 Title 13-A, addressed the "Marcou problem," and al-  
20 lows for the use of "interim corporation." In the  
21 context of corporations, the "interim approach" is  
22 more commonly known as a "statutory triangular merg-  
23 er." The proposed change to the Maine Revised Stat-  
24 utes, Title 9-B, section 352, contains language sub-  
25 stantially the same as the Maine Revised Statutes,  
26 Title 13-A, section 901, subsection 3, which provides  
27 for "triangular statutory mergers." Since state-  
28 chartered commercial banks feel this is an expedi-  
29 tious means to establish holding companies, they have  
30 considered conversion to federal charter in order to  
31 make use of the "interim bank approach" to facilitate  
32 pending holding company formations. This bill allows  
33 these banks to utilize the "interim bank approach" to  
34 establish holding companies without abandoning their  
35 state charter.

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