

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 279

S.P. 106

In Senate, February 9, 1987

Reference to the Committee on Banking and Insurance suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator CLARK of Cumberland.

Cosponsored by Senator DILLENBACK of Cumberland,
Representative JOSEPH of Waterville, Representative WEBSTER of
Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Clarify the Law Regarding Expedited
2 Charter Conversions, Mergers and
3 Consolidations.
4

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

7 Sec. 1. 9-B MRSA §345-A, as enacted by PL 1981,
8 c. 539, §1, is amended to read:

9 §345-A. Authority for expedited charter conversions

10 Notwithstanding any other provision of law, or
11 any charter, certificate of organization, articles of
12 association, articles of incorporation, or bylaw of
13 any participating institution, when a charter conver-
14 sion is approved by the directors of a financial in-
15 stitution authorized to do business in this State as

1 a component of a plan of merger or consolidation or
2 acquisition with another financial institution autho-
3 rized to do business in this State or financial in-
4 stitution holding company, regardless of this
5 institution's or holding company's domicile and fol-
6 lowing compliance with all applicable requirements of
7 federal law, if any, the superintendent may order
8 that the charter conversion become effective immedi-
9 ately. The superintendent may take such action if he
10 believes that it is necessary for the protection of
11 depositors, shareholders or the public. Any person
12 aggrieved by a charter conversion executed pursuant
13 to this section shall be entitled to judicial review
14 of the superintendent's order in accordance with the
15 Maine Administrative Procedure Act, Title 5, chapter
16 375, subchapter VII.

17 Sec. 2. 9-B MRSA §355-A is enacted to read:

18 §355-A. Authority for expedited acquisitions

19 Notwithstanding any other provision of law, or
20 any charter, certificate of organization, articles of
21 association, articles of incorporation or bylaw of
22 any participating institution, following approval of
23 a plan of acquisition of assets and an assumption of
24 liabilities by a majority vote of the boards of di-
25 rectors acquiring or assuming financial institution
26 or financial institution holding company and the
27 transferring institution and upon receipt by the su-
28 perintendent of certified copies of the authorizing
29 resolutions adopted by the respective boards of di-
30 rectors, the superintendent may order that the acqui-
31 sition of assets and assumption of liabilities become
32 effective immediately if he believes that the action
33 is necessary for the protection of depositors, share-
34 holders or the public. Any person aggrieved by a an
35 acquisition of assets and assumption of liabilities
36 pursuant to this section shall be entitled to judi-
37 cial review of the superintendent's order in accord-
38 ance with the Maine Administrative Procedure Act, Ti-
39 tle 5, chapter 375, subchapter VII.

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STATEMENT OF FACT

2 In 1981, the Legislature granted the superintend-
3 ent broad powers to effect charter conversions, merg-
4 ers and consolidations on an expedited basis if the
5 institution was in imminent danger of failing and a
6 charter conversion, merger and consolidation was con-
7 sidered necessary to protect shareholders, depositors
8 and the public. Although the legislative testimony
9 and debate over this legislation clearly indicated
10 that it was the intent of the Legislature to allow
11 the superintendent to take extraordinary actions
12 needed to protect the public and insure the continued
13 stability of the banking industry in this State, the
14 legislation enacted is technically deficient. First,
15 the legislation did not address expedited acquisi-
16 tions of assets and assumptions of liabilities. This
17 essentially occurs when one company purchases control
18 of another, but allows the target company to remain a
19 separate legal entity. An acquisition may be more
20 desirable than a merger or consolidation. Secondly,
21 section 345-A may restrict expedited charter conver-
22 sions in a situation involving institutions domiciled
23 in this State, which directly conflicts with the in-
24 terstate banking provisions. In some instances,
25 searching for an out-of-state buyer may be the only
26 viable option to resolve a distressed situation.

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