

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 477, L.D. 614, Bill, "An Act to Amend the Mutual Holding Company Laws"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 9-B MRSA §316, sub-§1, ¶A, as enacted by PL 1975, c. 500, §1, is amended to read:

A. The number of directors on the board of a stock financial institution shall may not be less than 5. With respect to a subsidiary savings institution established pursuant to a reorganization under chapter 102-A from and after the time that subsidiary savings institution includes stockholders other than the mutual holding company, the articles of incorporation of the subsidiary savings institution must be amended to provide for proportionate representation of the minority stockholders on the board of directors of the subsidiary savings institution based on the percentage of common stock owned by the minority stockholders in the aggregate relative to the total amount of common stock then issued and outstanding, but the minority stockholder representatives on the board of directors or the subsidiary savings institution may not be fewer than 2. A director or officer of a mutual holding company or subsidiary savings institution or any affiliate of that company or institution is prohibited from serving as a designated minority stockholder representative on the board of directors of the subsidiary savings institution. Shares of stock of the subsidiary savings institution owned directly or indirectly by an individual director or officer

COMMITTEE AMENDMENT

of the mutual holding company are deemed to be owned by the mutual holding company for purposes of determining proportionate representation of minority stockholders on the board of directors of the subsidiary savings institution. Representatives of the mutual holding company that serve on the board of directors of the subsidiary savings institution must be selected in accordance with chapter 102-A.

Sec. 2. 9-B MRSA §317, sub-§2, as enacted by PL 1975, c. 500, §1, is amended to read:

2. Compensation. The compensation of officers shall be fixed by the board of directors. With respect to a subsidiary savings institution established pursuant to a reorganization under chapter 102-A, from and after the time that subsidiary savings institution includes stockholders other than the mutual holding company, employee stock options or other incentive plans directly related to the performance of the stock of the subsidiary savings institution must address the potential conflict of interest inherent in the plan in an organization, the majority owner of which is a mutual holding company. An employee stock option or incentive compensation plan must receive prior written approval from the superintendent before implementation.

Sec. 3. 9-B MRSA c. 102-A is enacted to read:

CHAPTER 102-A

MUTUAL HOLDING COMPANY

§1031. Purpose

This chapter authorizes mutual financial institutions to reorganize into mutual holding companies.

§1032. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Mutual financial institution. "Mutual financial institution" means any institution as defined in section 131, subsection 27.

2. Mutual holding company. "Mutual holding company" means any corporation organized pursuant to this chapter.

3. Subsidiary savings institution. "Subsidiary savings institution" means any savings bank or savings and loan

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2 association organized under the laws of this State; at least 51%
3 of the voting stock of which is wholly owned by a mutual holding
4 company.

6 **§1033. Formation of mutual holding company**

8 **1. Reorganization.** Notwithstanding any other provision of
9 law, a mutual financial institution may reorganize so as to
10 become a mutual holding company by:

12 **A. Chartering, pursuant to chapter 31, a subsidiary savings**
13 **institution; and**

14 **B. Transferring a substantial part of its assets and**
15 **liabilities, including all of its insured liabilities to the**
16 **subsidiary savings institution. The subsidiary savings**
17 **institution must meet or exceed minimum capital requirements**
18 **prescribed by federal law or regulations or state law or**
19 **rules. Persons having liquidation rights with respect to**
20 **the mutual financial institution pursuant to chapter 36, at**
21 **the time of the formation of the subsidiary savings**
22 **institution, have those rights with respect to the mutual**
23 **holding company.**

24 **2. Plan.** A plan of reorganization authorized under this
25 chapter must be approved by a majority of the board of directors,
26 corporators and members, or members, of the mutual financial
27 institution.

30 **3. Approval.** Mutual financial institutions seeking to
31 establish a mutual holding company pursuant to this chapter or a
32 mutual holding company seeking to convert to a stock financial
33 institution holding company shall do so pursuant to section 344,
34 except that the conversion plan of a mutual holding company to a
35 stock financial institution holding company is subject to the
36 approval of a 2/3 vote of all the eligible account holders of all
37 the financial institutions that are subsidiaries of the holding
38 company. If there is more than one subsidiary financial
39 institution, the eligible account holders are combined and 2/3 of
40 the combined eligible account holders must approve the
41 conversion. Only account holders of financial institutions that
42 are subsidiaries of the holding company are eligible to vote on
43 the conversion plan. Shareholders of nonbank stock subsidiaries
44 are not eligible to vote on the conversion plan.

46 **4. Issuance of stock and securities.** A subsidiary savings
47 institution has the power to issue to persons other than the
48 mutual holding company of which it is a subsidiary an amount of
49 common stock and securities convertible into common stock that in
50 the aggregate does not exceed 49% of the issued and outstanding

2 common stock of that subsidiary savings institution. For
3 purposes of the 49% limitation, any issued and outstanding
4 securities that are convertible into common stock including
5 warrants, options and rights to purchase common stock are
6 considered issued and outstanding common stock of the
7 subsidiary. Each time common stock of the subsidiary savings
8 institution is offered by the institution to the general public
9 for a price payable in cash, each eligible account holder of the
10 subsidiary savings institution of the mutual holding company
11 receives, without payment, nontransferable subscription rights to
12 purchase that common stock at the same price and in accordance
13 with guidelines or rules as may be adopted by the
14 superintendent. For purposes of this chapter, an offer to the
15 general public means an offer by means of public advertising or
16 general solicitation and does not include:

17 A. Issuances to the mutual holding company; or

18 B. Offers or sales that are exempt from registration by
19 virtue of Title 32, section 10502, subsection 2, paragraph
20 L, N or R.

21 5. Reporting. A subsidiary savings institution that
22 issues, or has issued and outstanding, any common stock or
23 securities convertible into common stock to persons other than
24 the mutual holding company of which it is a subsidiary shall file
25 consolidated financial statements, reports or proxy materials as
26 required under federal law. If the consolidated financial
27 statements, reports or proxy materials are not required to be
28 filed with any federal authority or agency, copies of the
29 consolidated financial statements, reports or proxy materials
30 must be filed with the Superintendent and must be public records.

31 6. Powers of subsidiary savings institutions. A subsidiary
32 savings institution may continue to exercise its powers, rights
33 and privileges and is subject to limitations not inconsistent
34 with this chapter and applicable to a savings bank or savings and
35 loan association organized under the laws of the State,
36 including, but not limited to, the powers of a stock financial
37 institution organized under chapter 31.

38 §1034. Corporate existence and powers

39 1. Legal existence. Upon the reorganization of a mutual
40 financial institution pursuant to this chapter, the legal
41 existence of the mutual financial institution does not terminate,
42 but continues, not as a deposit-taking institution, but as a
43 mutual holding company.

2 2. Governance. A mutual holding company must be governed
3 by a board of corporators and in accordance with the charter and
4 bylaws of the mutual holding company, as adopted or amended, in
5 connection with a reorganization authorized under this chapter or
6 as amended by the corporators thereafter. With respect to a
7 mutual holding company that has been formed through the
8 reorganization of a savings bank, the board of corporators
9 initially consists of the board of corporators of the savings
10 bank as constituted pursuant to section 325. The corporators
11 shall, after the formation of the mutual holding company,
12 continue to serve as corporators for the balance of the terms to
13 which they are elected under section 325. The corporators shall
14 elect a board of directors provided that the superintendent has
15 the authority to comment upon the composition of the board. The
16 corporators and the board of directors are governed by and
17 authorized to undertake the activities as set forth in sections
18 325 and 326. With respect to a mutual holding company that has
19 been formed through the reorganization of a savings bank, the
20 board of corporators initially consists of the board of
21 corporators of the savings bank as constituted pursuant to
22 section 325. The corporators, after the formation of the mutual
23 holding company, continue to serve as corporators for the balance
24 of the terms to which they are elected under section 325.

25 3. Powers. A mutual holding company may:

26 A. Invest in the stock of a financial institution, subject
27 to section 1013;

28 B. Acquire a mutual financial institution through merger
29 into a subsidiary savings institution or an interim
30 subsidiary savings institution of the mutual holding company;

31 C. Merge with or acquire a mutual holding company of a
32 subsidiary which is a savings bank or savings and loan
33 association;

34 D. Exercise any power, right or privilege, with the
35 exception of deposit taking, granted to mutual financial
36 institutions under the laws of the State and, unless
37 specifically noted otherwise, any reference to savings bank
38 or savings and loan association in any other law of this
39 State also applies to a subsidiary savings institution
40 chartered pursuant to this chapter;

41 E. Invest in the capital stock of a company that is a legal
42 investment for a savings bank under the laws of the State;

43 F. Exercise any power or engage in any activity authorized
44 for a bank holding company or savings and loan holding
45 company under federal law or rule or chapter 101; and

2 G. Exercise any other power or engage in any other activity
3 authorized by the superintendent.

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5 **§1035. Rules**

6 The superintendent shall adopt such rules as necessary to
7 effectuate the purposes of this chapter and to ensure that the
8 reorganization of the mutual financial institution is conducted
9 in a fair and equitable manner to ensure the safety and soundness
10 of the subsidiary savings institution and the protection of the
11 subsidiary savings institution's net worth.

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13 **§1036. Reports and examinations**

14 All mutual financial institution holding companies are
15 subject to section 1016.

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17 **Sec. 4. 32 MRSA §10502, sub-§1, ¶C,** as enacted by PL 1985, c.
18 400, §2, is amended to read:

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21 C. Any security issued by and representing an interest in
22 or a direct obligation of, or guaranteed by, any depository
23 institution or depository institution holding company, the
24 deposit accounts of which are insured by the Federal Deposit
25 Insurance Corporation ~~or Federal Savings and Loan Insurance~~
26 ~~Corporation~~ or any successor to either this agency
27 authorized by federal law or a deposit insurance fund
28 expressly authorized by state law and supervised by a state
29 governmental official or agency. This exemption does not
30 apply to securities representing an interest in a depository
31 institution that is required by law to have as its majority
32 shareholder a mutual holding company, to securities
33 convertible into those securities or to warrants, options or
34 rights to purchase those securities;

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38 **FISCAL NOTE**

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41 Elimination of a securities filing exemption will result in
42 insignificant increases of General Fund revenues from securities
43 filing fees.

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45 The Bureau of Banking will incur some minor additional costs
46 to enforce new requirements regarding mutual holding companies
47 and to adopt certain rules. These costs can be absorbed within
48 the bureau's existing budgeted resources.

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STATEMENT OF FACT

6 This amendment replaces the original bill. It renumbers the
8 current law in the Maine Revised Statutes, Title 9-B, chapter
10 102-A enacted in this amendment. It amends the laws governing
12 mutual holding companies by authorizing subsidiary savings
14 institutions to issue 49% or less of their stock to other
investors as a means of attracting capital. This change in Maine
law will maintain parity with changes made in federal law and
will help some mutual organizations raise capital while
maintaining their mutual holding company structure.

16 The amendment also removes the general securities filing
18 exemption for the sale of securities that represent a minority
20 interest in the subsidiary savings institution that is a member
of a mutual holding company and requires that the mutual holding
company retain at least a majority interest in the securities of
the subsidiary savings institution.

22 The amendment addresses potential conflicts of interest and
24 insider abuses that may arise between the mutual holding company
and subsidiary savings institution and would require minority
26 stock representation on the subsidiary savings institution board
of directors. The amendment also sets forth the procedure by
28 which a mutual holding company could convert to a stock financial
institution holding company, and grants to the Superintendent of
the Bureau of Banking broad rule-making powers.

30
The amendment adds a fiscal note to the bill.

Reported by the Committee on Banking and Insurance
Reproduced and distributed under the direction of the Clerk of the
House

5/14/93

(Filing No. H-305)