

MAINE STATE LEGISLATURE

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DECEMBER SPECIAL SESSION

E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 170

New Draft of S. P. 26—L. D. 92

S. P. 67

In Senate, Dec. 14, 1933.

Reported by Mr. Page from Committee on Banks and Banking, and laid on table to be printed under Joint Rules.

ROYDEN V. BROWN, Secretary.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND THIRTY-THREE

AN ACT to Provide for Issuance of Preferred Stock by Trust Companies.

Emergency Preamble. Whereas, the banking situation in this state appears to require that state banks should be authorized to issue preferred stock and also to dispose of the same to the Reconstruction Finance Corporation, and to enable them to take advantage of the benefits of the Federal Deposit Insurance Corporation; and

Whereas, the requirements of the Reconstruction Finance Corporation do not appear to be fully met by the existing law relative to the issuance of preferred stock under the terms, conditions and restrictions required, in order to make immediately available to state banks funds for capital purposes to safeguard their financial stability and promote the industrial and commercial welfare and prosperity of our state, it is necessary that the enactment of the following act additional to and amendatory of the banking laws should become effective forthwith; and

Whereas, in the judgment of the legislature these facts create an emergency within the meaning of section 16 of Article XXXI of the constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety, now, therefore

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

P. L., 1933, c. 93, § 5, repealed. Section 5 of chapter 93, of the public laws of 1933, is hereby repealed, and the following is enacted as section 71-A of chapter 57 of the revised statutes to read as follows :

‘Sec. 71-A. Authority to issue preferred stock. Notwithstanding any other provision of law, any company organized under sections 61 to 70, both inclusive, or any company organized under special act of the legislature, may, with the approval of the bank commissioner, by vote of stockholders owning a majority of the stock of such company, at a meeting duly called and held for that purpose, or by the Agreement of Association signed by, or vote of, its incorporators in case of a newly organized trust company which has not yet issued common stock, issue preferred stock of one or more classes in such amount and with such par value as shall be approved by the bank commissioner, and make such amendments to its Agreements of Association, Articles of Organization, charter and/or by-laws as may be necessary for this purpose.

No shares of such preferred stock shall be issued until the par value of such shares shall have been actually paid in in cash or its equivalent as determined by the bank commissioner whose certificate shall be conclusive as to the facts stated therein ; and

Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock, or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends at a rate not exceeding 6% per year and shall have such voting rights, including that of cumulative voting (which may be granted also to the holders of common stock) and conversion rights and such control of management, and such stock shall be subject to retirement in such manner and upon such conditions as may be determined by such vote, with the approval of the commissioner.

Prior to or simultaneously with the retirement of such preferred stock, the company, without further action on the part of the holders of stock of any class, or on the part of the bank commissioner (if its articles or organization, as amended, so provide) may, and to the extent necessary to maintain the capital of the company at the minimum required by law, shall declare on the common stock, out of surplus or net profits of the company, a dividend in an amount equal to the par value of the preferred stock so to be retired, payable at the time of or in connection with such retirement in common stock of the company, pro rata to the holders of common stock.

The designations, preferences, powers, restrictions, qualifications, terms and provisions affecting shares or classes of stock issued by any com-

pany which shall create 2 or more kinds or classes of stock, as set forth in its articles of organization or in any amendment thereof, shall control in all cases where any vote, consent of stockholders or other action is now or hereafter required or authorized by statute, unless such statute shall provide expressly to the contrary, and the provision of any statute requiring a specific vote of all, a majority or a fractional part of the stock issued or of the stock outstanding, or any similar provision, shall be construed as limited by any such restrictions, qualifications and other provisions set forth in said articles.

The holders of such preferred stock shall not be held individually responsible as such holders for any debts, contracts or engagements of such company, and shall not be liable for assessments to restore impairments in the capital of such company and such preferred stock shall not be subject to assessment, as now provided by law with reference to common stock and the holders thereof.

No dividends shall be declared on common stock of such company until cumulative dividends on the preferred stock shall have been paid in full; and, if the company is placed in voluntary liquidation or a conservator or receiver is appointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends.

If any trust company is in need of funds for capital purposes either in connection with the organization or reorganization of such association or trust company or otherwise, it may request the Reconstruction Finance Corporation to subscribe for preferred stock in such association or trust company, or to make loans secured by such stock as collateral under such terms, conditions, restrictions and privileges as shall be approved by the bank commissioner.'

Emergency clause. In view of the emergency created as recited in the preamble this act shall take effect when approved.