

MAINE STATE LEGISLATURE

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EIGHTY - SEVENTH LEGISLATURE

Legislative Document

No. 624

S. P. 24

House of Representatives, February 13, 1935.

Ordered, that there be printed 1,000 copies of S. P. 24 entitled: Bill "An Act Relating to Liquidation of Banks," which said bill was introduced at the December Special Session and by it referred to the 87th Legislature.

HARVEY R. PEASE, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-FIVE

AN ACT Relating to Liquidation of Banks.

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

Sec. 1. R. S., c. 57, amended, relating to the liquidation of banks. Chapter 57 of the revised statutes is hereby amended by adding thereto the following sections to be numbered and to read as follows:

'Sec. 5-L. When commissioner may take possession of bank. Whenever it shall appear to the commissioner that any bank has violated its charter or any law of the state, or is conducting its business in an unsafe or unauthorized manner, or that its capital is impaired, or if it shall refuse to submit its books, papers and concerns to the inspection of the commissioner or of his duly authorized agents, or if any officer of such bank shall refuse to be examined on oath by the commissioner or his duly authorized assistants touching its concerns, or if it shall suspend payment of its obligations, or if from an examination or from a report provided for by law the commissioner shall have reason to conclude that such bank is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, the commissioner may take possession forthwith of the property and business of such bank and may retain possession thereof until the bank shall

resume business under the provisions of law or until its affairs shall finally be liquidated as herein provided.'

'Sec. 5-M. Voluntary dissolution. Subject to the written approval of the commissioner, any savings bank or trust company may be dissolved and liquidate its affairs if authorized by a vote passed, at a meeting specially called to consider the subject, by the trustees of the savings bank, or by stockholders of the trust company representing at least 2-3 of its outstanding capital stock. A committee of 3 trustees of the savings bank or 3 stockholders of the trust company shall thereupon be elected, and, under such regulations as may be prescribed by the commissioner, shall liquidate the assets, and after satisfying all debts of the corporation shall distribute the remaining proceeds among those entitled thereto in proportion to their respective interests therein.'

'Sec. 5-N. Possession of commissioner; consequences of. Upon taking possession of the property and business of a bank, the commissioner shall forthwith give notice thereof to all banks, trust companies, associations and individuals holding or having possession of any assets of such bank. No bank, trust company, association or individual, knowing that the commissioner has taken such possession, or having been notified thereof as aforesaid, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred, against any of the assets of the bank of whose property and business the commissioner shall have taken possession as aforesaid. Such bank may, with the consent of the commissioner, resume business upon such conditions as he may approve; provided, that if, in his judgment it is for the public interest so to do, he may retain in behalf of the bank the control, prosecution or defense of any undetermined suits or claims brought in behalf of or against the bank under section 5-P during the time when the bank was in his charge, and the expense of prosecuting or defending such suits or claims shall be paid from the funds of such bank.'

'Sec. 5-O. Authority of commissioner in possession. Upon taking possession of the property and business of such bank, the commissioner may collect moneys and credits due to the bank, and do all acts necessary to conserve its assets and business, and shall proceed to liquidate its affairs as hereinafter provided. He shall collect all debts due and claims belonging to it, and upon the order or decree of the supreme judicial court, or of the superior court, or any justice thereof, may sell or compound all bad or doubtful debts, and on like order or decree may sell for cash or other

consideration or as provided by law all, or any part of, the real and personal property of the bank on such terms as the court shall direct; and, in the name of such bank, may take a mortgage on such real property from a bona fide purchaser to secure the whole or a part of the purchase price, upon such terms and for such periods as the court shall direct; and on like order or decree he may borrow money and issue evidence of indebtedness therefor and to secure the repayment of the same may mortgage, pledge, transfer in trust, or hypothecate any or all of the property of such institution, whether real, personal or mixed, superior to any charge thereon for expenses of liquidation. If, at any time after he has taken possession of the property and business of a trust company, the commissioner deems it necessary to enforce the individual liability of stockholders therein, as provided by law, in order to pay the liabilities of such trust company, he may file a bill in equity, in the supreme judicial court or the superior court for the county where the principal office of the trust company is located, against all persons who were stockholders therein at the time of such taking possession, to enforce such individual liability. The court may by its decree assess upon the stockholders in such suit severally sums in proportion to the amounts of stock held by them respectively at the time of such taking possession; but no such stockholder shall be liable to pay a larger sum than the amount of the par value of the stock held by him at the time of such taking possession. Such suit shall not abate by reason of the non-joinder of persons liable as respondents, unless the commissioner, after notice by plea or answer of their existence, unreasonably neglects to make them parties; nor shall it abate by reason of the death of a respondent, but his estate shall be liable in the hands of his executor or administrator, who may voluntarily appear, or who may be summoned by the commissioner to defend the suit.'

'Sec. 5-P. Litigation and sales of property. To execute and perform the powers and duties conferred upon him, the commissioner may, in the name of any such bank, prosecute and defend all suits and other legal proceedings and may, in the name of the bank, execute, acknowledge and deliver all deeds, assignments, releases and other instruments necessary and proper to effectuate any sale of real or personal property or any compromise authorized by the court; and any deed or other instrument, executed pursuant to the authority hereby given, shall be valid and effectual for all purposes to the same extent as though executed by the officers of the bank by authority of its board of directors or of its stockholders, or by the individual banker personally. In case any of the real property so sold is located in a county other than that where the application to the court for

leave to sell the same is made, the commissioner shall cause a certified copy of the order or decree of the court authorizing or ratifying such sale to be filed in the registry of deeds for the district where the said real property lies.'

'Sec. 5-Q. Agents and attorneys to assist in liquidation. The commissioner may, under his hand and seal, appoint from among his deputy or deputies, examiners and assistant examiners, an agent or agents to assist him in the duty of liquidation of banks and in the distribution of their assets, and they shall receive no additional compensation therefor. The certificates of the appointment of such agents shall be filed in the office of the commissioner, and certified copies thereof shall be filed in the office of the clerk of the supreme judicial court for the county where the principal office of such bank is located. The commissioner shall require from such agents such security for the faithful discharge of their duties as he may deem proper, and all bonds so given shall be deposited with the commissioner. The commissioner may also appoint special attorney or attorneys to assist him or his agents in the duty of liquidation of banks and their compensation shall be fixed by the commissioner, subject to the approval of the supreme judicial court or the superior court for the county in which the bank under liquidation has its principal office.'

'Sec. 5-R. Inventory. Upon taking possession of the property and assets of such bank, the commissioner shall make an audit and inventory in triplicate of the assets of the bank, one copy thereof to be filed in his office, one in the office of the clerk of the supreme judicial court for the county where the principal office of the bank is located, and one to be filed in such bank for the inspection and information of depositors and creditors.'

'Sec. 5-S. Notice and proof of claims. The commissioner shall publish weekly for 3 consecutive months, in such newspapers as he directs, a notice calling on all persons who may have claims against such bank to present the same to the commissioner and to make legal proof thereof at a place and in a time, not earlier than the last day of publication, to be therein specified. The commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank, so far as their addresses are known. If the commissioner doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant either personally or by mail. An affidavit of service of such notice, which shall be prima facie evidence thereof, shall be filed with the commissioner. An action upon the claim so rejected shall not be enter-

tained unless brought within 6 months after such service. Claims presented after the expiration of the time specified in the notice to creditors shall be entitled to share in the distribution only to the extent of the assets in the hands of the commissioner equitably applicable thereto.'

'Sec. 5-T. List of claims. Upon the expiration of the time fixed for the presentation of claims, the commissioner shall make in duplicate a full and complete list of the claims presented, including and specifying such claims as have been rejected by him. One of said lists shall be filed in his office and the other in the office of the clerk of the supreme judicial court for the county where the principal office of the bank is located. Thereafter the commissioner shall make and file in said offices, at least 15 days before every application to the court for leave to declare a dividend, a supplementary list of the claims presented since the last preceding list was filed, including and specifying such claims as have been rejected by him, and, in any event, he shall make and file the said list at least once in every 6 months after the filing of the original list, so long as he remains in possession of the property and business of the bank. Said inventory and lists shall be open to inspection at all reasonable times.'

'Sec. 5-U. Dividends; objections to claims. At any time after the expiration of the date fixed for the presentation of claims, the supreme judicial court, or the superior court, on application of the commissioner, depositor, creditor, stockholder or any party in interest, may authorize or direct the commissioner to declare out of the funds remaining in his hands, after the payment of expenses, one or more dividends, and, after the expiration of one year from the first publication of notice to creditors, or earlier if the supreme judicial court, or the superior court, so orders, the commissioner may declare a final dividend, such dividends to be paid to such persons, in such amounts, and upon such notice as may be directed by the supreme judicial court, or the superior court, for the county where the principal office of such bank was located, or as may be directed by a justice of said court. Objections to any claim not rejected by the commissioner may be made by any person interested by filing a copy of the objections with the commissioner, who shall present the same to the supreme judicial court, or the superior court, at the time of the next application for leave to declare a dividend. The court to which such application is made shall thereupon dispose of said objections, or may refer them to a master, and should the objections to any claim be sustained by the court or by the master no dividend thereon shall be paid by the commissioner until the claimant shall have established his claim by the judgment of a court of competent

jurisdiction. The court may make proper provision for unproved or unclaimed deposits.'

'Sec. 5-V. Disposition of property deposited with bank. Should any bank, at the time when the commissioner takes possession thereof, have in its possession for safe keeping and storage, any jewelry, plate, money, securities, valuable papers or other valuable personal property, or should it have rented any box, safes, or safe deposit boxes, or any part thereof, for the storage of property of any kind, the commissioner may at any time after taking possession as aforesaid cause to be mailed to the person claiming or appearing upon the books of the bank to be owner of such property, or to the person in whose name the safe, vault, or box stands, a written notice in a securely closed postpaid, registered letter, directed to such person at his post office address as recorded upon the books of the bank, notifying such person to remove, within a period fixed by said notice and not less than 60 days from the date thereof, all such personal property; and upon the date fixed by said notice, the contract, if any, between such persons and the bank for the storage of said property, or for the use of said safe, vault or box, shall cease and determine, and the amount of the unearned rent or charges, if any, paid by such person shall become a debt of the bank to such person. If the property be not removed within the time fixed by the notice, the commissioner may make such disposition of said property as the supreme judicial court, or the superior court, upon application thereto, may direct; and thereupon the commissioner may cause any safe, vault or box to be opened in his presence, or in the presence of one of his special agents and of a notary public not an officer or in the employ of the bank, or of the commissioner, and the contents thereof, if any, to be sealed up by such notary public in a package upon which the notary public shall distinctly mark the name and address of the person in whose name such safe, vault or box stands upon the books of the bank, and shall attach thereto a list and description of the property therein. The package so sealed and addressed, together with the list and description, may be kept by the commissioner in one of the general safes for boxes of the bank until delivered to the person whose name it bears, or may otherwise be disposed of as directed by the court.'

'Sec. 5-W. Application to court to enjoin proceedings of commissioner. Whenever any bank of whose property and business the commissioner has taken possession deems itself aggrieved thereby, it may, at any time within ten days after such taking possession, apply to the supreme judicial court, or superior court, for the county where the principal office of the bank is

located to enjoin further proceedings; and said court, after citing the commissioner to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties and determining the facts, may, upon the merits, dismiss such application or may enjoin the commissioner from further proceedings and direct him to surrender the said business and property to the bank.'

'Sec. 5-X. Commissioner may summon officers and witnesses; penalty for refusal to testify. The bank commissioner may summon all trustees, directors, officers, or agents and employees of any savings bank or trust company, and such other witnesses as he thinks proper, in relation to the affairs, transactions, and condition thereof, and for that purpose may administer oaths; and whoever, without justifiable cause, refuses to appear and testify when thereto required, or obstructs said commissioner in the discharge of his duty, shall be punished by a fine of not more than \$1000, or by imprisonment for not more than 2 years.'

'Sec. 5-Y. Attachments dissolved, and suits discontinued; judgment recovered, to be added to claims. The supreme judicial court or the superior court on motion of the bank commissioner in possession of any savings bank or trust company for the purpose of liquidation may dissolve all attachments on the property of such bank or trust company made within 4 months before such taking of possession; annul leases, contracts and all other pending claims, as in receivership proceedings, and discontinue all suits pending against such bank or trust company. After the commissioner enters into possession of a bank as aforesaid, no action at law shall be maintained on any claim against the bank, unless the supreme judicial court or the superior court, or a justice thereof in vacation, on application therefor within 3 months after the commission enters into possession, authorizes it, and in such case the commissioner shall be made a party; any judgment recovered as herein provided shall be added to the claims against the bank.'

'Sec. 5-Z. Relief from taxes. During the time any bank or trust company is in the hands of the commissioner or his agent in liquidation, or any national bank is undergoing liquidation, said bank or trust company or its depositors shall be relieved from the payment of any tax on the deposits therein, and said bank and its shareholders shall be relieved from any tax on the capital stock thereof, so long as it continues to be incapacitated from doing business.'

'Sec. 5-ZA. Stockholders' meeting. Whenever the commissioner has paid to every depositor and creditor of such corporation, not including stockholders, whose claims as such creditors or depositors have been duly approved and allowed, the full amount of such claims, and has made proper provision for unclaimed and unpaid deposits or dividends, and has paid all expenses of the liquidation, he shall call a meeting of the stockholders of the corporation by mailing notice thereof, not less than 30 days prior to the date of the meeting, to each stockholder of record whose address is known, and also by publishing notice of the meeting once a week for 4 successive weeks in some newspaper of general circulation published in the county where the principal office of the corporation is located, the first publication to be not less than 30 days before the date appointed for the meeting. At such meeting the stockholders shall determine whether the commissioner shall be continued as liquidator and shall wind up the affairs of the corporation, or whether an agent or agents shall be elected therefor, and in so determining the stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote; and a majority of the stock shall be necessary for the determination. If it is determined to continue the liquidation under the commissioner, he shall complete the liquidation and, after paying the expenses thereof, distribute the proceeds remaining among the stockholders in proportion to their several holdings of stock, in such manner and upon such notice as may be directed by the supreme judicial court, or superior court. If it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the commissioner a bond to the state treasurer in such amount, with such sureties and in such form as shall be approved by the commissioner, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the commissioner shall transfer and deliver to such agent or agents all undivided, uncollected or other assets of the corporation then remaining in his hands. Upon such transfer and delivery, the commissioner shall be discharged from all further liability to such corporation. Said agent or agents shall convert into cash the assets coming into his or their possession and shall account for and make distribution of the property of the corporation as provided in the case of distribution by the commissioner, except that the expenses thereof shall be subject to the direction and control of the supreme judicial court or superior court. In case of the death, removal or refusal to act of any such agents, the stockholders, on the like notice to be given by the commissioner upon proof of such death, removal or refusal to act being filed with

him, and by the like vote hereinbefore provided, may elect a successor, who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.'

'Sec. 5-ZB. Disposition of funds remaining in hands of commissioner. Unclaimed dividends and all other funds received from the liquidation of any institution, so taken possession of, and remaining in the possession of the commissioner after the expiration of 12 months from the order for the final distribution shall be paid by him to the state treasurer, to be held in trust, subject to the conditions hereinafter provided, for the several depositors with and creditors of such institution or other persons entitled thereto, according to their several interests. The commissioner shall state annually in his report to the general court the names of institutions so taken possession of and liquidated and the amounts of unclaimed dividends and other funds held by him with respect to every such institution. Upon certification by the commissioner that he has been furnished satisfactory evidence of their right to the same, the state treasurer shall pay over the money so held by him to the persons respectively entitled thereto. In cases of doubt or of conflicting claims, the commissioner may require an order from the supreme judicial court or superior court authorizing and directing payment, and any expenses incurred in connection therewith shall be deducted before payment from the amount payable. At the expiration of 6 years from the date of receipt by the state treasurer from the commissioner of any such unclaimed dividends or other funds, upon certification by the commissioner that no claim thereto has been proved to his satisfaction or is pending, the same or the balance thereof then remaining, together with the interest, if any, earned thereon, shall escheat to the state.'

'Sec. 5-ZC. Reorganization by depositors; petition; hearing; notice; order; objection; procedure. Whenever the bank commissioner shall have taken possession of the business and property of any institution under his supervision the depositors thereof representing not less than 75% of the liabilities of depositors and creditors by and with the approval and consent of the bank commissioner, may join in a plan for the reopening or reorganization of said institution or the establishment of a new bank, and may select a committee of not to exceed 12 depositors to represent them for the purpose of carrying such plan into effect. Upon receiving the approval of the plan by the bank commissioner said committee or the bank commissioner may petition the supreme judicial or the superior court, setting forth the details of the plan which have been agreed upon, and requesting the court to set a day for the hearing thereon, and the court shall thereupon

make an order fixing a day for the hearing of said petition, notice of which shall be given to the depositors and creditors in such bank by publication once in each week for not less than 2 successive weeks immediately preceding the date of hearing in some newspaper of general circulation published in the county where such application is pending, or in such other newspaper having a general circulation in the county as the court may direct. The court may adjourn such hearing from time to time and no further notice shall be required. At the time of hearing or any adjournment thereof the court shall take testimony and if it appears that it is for the best interests of the depositors that said plan be approved, may make an order approving the same and fixing the terms and conditions upon which the bank commissioner shall surrender possession and control of the business and property of such bank. In case an assessment is allowable by law, the plan shall provide for an assessment upon the stockholders of said bank, or the court shall deem an assessment necessary to satisfy the debts of such bank the court shall include in its order provisions for an assessment not exceeding the liability of such stockholders for assessments and thereupon the bank commissioner shall forthwith proceed to levy and collect such assessment in such manner as the court shall direct; provided however, that in no event, where such an assessment is allowable, shall the liability of a stockholder be waived. In the event any of the depositors or creditors of such bank file written objection to the approval of such plan, and refuses to consent thereto, the court at such hearing may direct the bank commissioner to set aside assets of such bank in such proportionate amounts as the interest of such depositor or creditor bears proportionately to the appraised value of the assets and liabilities of said bank in such manner as the court shall find just and equitable, and upon such terms as may be just and equitable shall continue the possession and control of the bank commissioner as to such assets and such dissenting depositors, and may direct the bank commissioner to turn over the remainder of the assets of such bank in his hands to such new or re-organized bank and discharge the bank commissioner from further liability in relation thereto.'

'Sec. 5-ZD. Enforcement. The supreme judicial court, or superior court, or any justice thereof, shall have jurisdiction in equity to enforce the provisions of sections 5-L to 5-ZD inclusive, and to act upon all applications and in all proceedings thereunder.'

'Sec. 5-ZE. Validity. If any provisions of sections 5-L to 5-ZD are held invalid by any court of final jurisdiction, no other provisions shall be affected by such decisions, but the same shall remain in full force and effect.'

Sec. 2. Certain laws repealed. Sections 50, 51, 54, 55 and 57 of chapter 57 of the revised statutes, and sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of chapter 93 of the public laws of 1933 are hereby repealed.

Sec. 3. R. S., c. 57, §§ 52, 53 repealed with exceptions. Sections 52 and 53 of chapter 57 of the revised statutes are hereby repealed, except as to such corporations and banks whose affairs are undergoing liquidation in a court as provided thereunder, and as to such corporations and banks these sections will apply until such liquidation is completed.