

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE
One Hundred and Sixth Legislature
1ST SPECIAL SESSION
JANUARY 2, 1974 TO MARCH 29, 1974
AND BY THE
One Hundred and Seventh Legislature
REGULAR SESSION
JANUARY 1, 1975 TO JULY 2, 1975

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH THE REVISED STATUTES OF 1964, TITLE 3,
SECTION 164, SUBSECTION 6.

THE KNOWLTON AND MCLEARY COMPANY
FARMINGTON, MAINE
1975

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
One Hundred and Seventh Legislature

1975

- Sec. 59. 34 MRSA § 710, as last amended by PL 1973, c. 647 is repealed.
- Sec. 60. 34 MRSA § 753 is repealed.
- Sec. 61. 34 MRSA § 753-A, as enacted by PL 1971, c. 539, § 23, is repealed.
- Sec. 62. 34 MRSA § 754 is repealed.
- Sec. 63. 34 MRSA § 755, as last amended by PL 1973, c. 75, is repealed.
- Sec. 64. 34 MRSA § 756, as last amended by PL 1973, c. 582, § 7, is repealed.
- Sec. 65. 34 MRSA § 802, as last amended by PL 1971, c. 544, § 118-B, is repealed.
- Sec. 66. 34 MRSA § 807, as last amended by PL 1973, c. 567, § 20, is repealed.
- Sec. 67. 34 MRSA § 853, as last amended by PL 1973, c. 788, § 171, is repealed.
- Sec. 68. 34 MRSA § 859, as last amended by P & SL 1973, c. 221, § 7, is repealed.
- Sec. 69. 34 MRSA § 865, as enacted by PL 1967, c. 391, § 25, is repealed.
- Sec. 70. 34 MRSA §§ 1631 - 1634, as amended, are repealed.
- Sec. 71. 34 MRSA §§ 1671 - 1679, as amended, are repealed.

Directors note: Refer to P.L. 1975, c. 623, §§ 83 and 84 concerning the effective date of sections 2 to 71 of this Act.

CHAPTER 500

AN ACT to Revise the Laws Relating to Financial Institutions.

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

Sec. 1. 9-B MRSA is enacted to read:

TITLE 9-B
FINANCIAL INSTITUTIONS
PART 1
GENERAL PROVISIONS
CHAPTER 11
POLICY

§ 111. Declaration of policy

By enactment of this Title, it is declared to be the policy of the State of Maine that the business of all financial institutions shall be supervised by the Bureau of Banking in a manner to assure the strength, stability and efficiency of all financial institutions, to assure reasonable and orderly competition, thereby encouraging the development and expansion of financial services advantageous to the public welfare and to maintain close cooperation with other supervisory authorities.

§ 112. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act shall be severable.

CHAPTER 12

ADMINISTRATION

§ 121. Bureau of Banking

There is created under this Title a Bureau of Banking, which shall have the responsibility of administering the provisions of this Title.

CHAPTER 13

DEFINITIONS

§ 131. Definitions

In addition to the definitions set forth elsewhere in this Title, and subject to such definitions as the superintendent may promulgate pursuant to regulations hereafter, for purposes of this Title:

1. Agency. "Agency" means an office of a financial institution at which all or part of the business of the institution is conducted, but the records pertaining to such business are maintained at another office or branch of the institution, and not at such agency office.

2. Authorized to do business in this State. "Authorized to do business in this State" means that a financial institution or credit union is:

- A. Organized under provisions of this Title;
- B. Organized under provisions of prior laws of this State, and subject to the provisions of this Title; or
- C. Organized under provisions of federal law and maintains its principal office in this State.

3. Branch. "Branch" means any office or facility of a financial institution where the business of such financial institution is conducted other than the institution's main office.

4. Bureau. "Bureau" means the Bureau of Banking.

5. Business of banking. "Business of banking" or "business of financial institutions" means soliciting, receiving or accepting of money or its equivalent on deposit and the loaning of money as a regular business by any person.

6. Capital account. "Capital account" or "total capital" for a stock financial institution means the sum of its paid-in capital stock, paid-in capital surplus, reduction surplus, if any, undivided profits, capital notes and debentures, and other capital reserves.

7. Commercial bank. "Commercial bank" means a trust and banking company or a national bank.

8. Commercial loan. "Commercial loan" means a loan to a person, regardless of the nature of any property securing such loan, the proceeds of which are used for business or industrial purposes and not primarily for personal, family or household purposes.

9. Commissioner. "Commissioner" means the Commissioner of the Department of Business Regulation.

10. Consumer loan. "Consumer loan" means a loan defined as such pursuant to Title 9-A, section 1.301, subsection 14.

11. Credit card. "Credit card" means a credit device by which a cardholder obtains loans or otherwise obtains credit from the card issuer or other persons authorized to extend such credit by the card issuer or his agent.

12. Credit union. "Credit union" means a cooperative, nonprofit corporation organized pursuant to Part 8, or under corresponding provisions of any earlier law, and subject to the conditions and limitations as shall be set forth in Part 8.

13. Director. "Director" means a member of the board of directors of a financial institution; and, in the case of a savings bank organized under provisions of prior law relating to savings banks, a member of the board of trustees of said institution.

14. Electronic funds transfer system. "Electronic funds transfer system" (EFTS) means a computer payment system for transferring funds from one party to another.

15. Federal association. "Federal association" means a savings and loan association organized pursuant to the Act of Congress entitled "Home Owners' Loan Act of 1933", as amended, or any subsequent Act of Congress relating thereto.

16. Federally-chartered credit union. "Federally-chartered credit union" means a credit union organized pursuant to the Act of Congress entitled "Federal Credit Union Act", as amended, or any subsequent Act of Congress relating thereto.

17. Financial institution. "Financial institution" means a trust company, savings bank, industrial bank or savings and loan association organized under the laws of this State; and each shall represent a type of institution. As the term "financial institution" is used in Parts 1 and 2 and in chapter 46, it shall include credit unions organized pursuant to the laws of this State.

18. Financial institution holding company. "Financial institution holding company" means any company which is deemed to be a holding company pursuant to the provisions contained in chapter 101.

19. Demand deposit. "Demand deposit" means a deposit in a financial institution which is payable on demand and subject to withdrawal by negotiable or transferable instruments for the purpose of making transfers to 3rd parties, but upon which deposits no interest or dividends are paid by the financial institution accepting such deposits. Such deposits shall not be restricted as to the nature of the depositor and shall include all checking deposits, including "personal demand deposits" as defined herein.

20. His. "His", as used in this Title, shall mean "his or her"; while "he" shall mean "he or she".

21. Indirect loan. "Indirect loan" means a loan made to an individual, partnership, joint venture, syndicate or corporation which is an agent of another individual, partnership, joint venture, syndicate or corporation, the proceeds of which are used by the party for which the borrower is an agent.

22. Industrial bank. "Industrial bank" means a company organized under chapter 91 or having the powers possessed by companies so organized.

23. Interested party. "Interested party" means a person having a substantial interest in, or who is or may be aggrieved by, any act or impending act, or any report, rule, regulation, amendment, decision or order of the superintendent.

24. Limited-time branch. "Limited-time branch" means a branch office of a financial institution established pursuant to this Title which is authorized to be open for the transaction of business only for specified hours or for specified days during a week, which periods shall be less than the hours which the main office or a full-time branch office of the institution is opened.

25. Making a loan. "Making a loan" means a loan made to a borrower by a single financial institution, or the purchase of a loan as authorized in section 434.

26. Mobile branch. "Mobile branch" means any office or facility of a financial institution which is not permanent and which is capable of being moved or transferred from one location to another for periods of 30 days or less for the purpose of transacting business of the financial institution.

27. Mutual financial institution. "Mutual financial institution" means any financial institution organized pursuant to chapter 32, in which the earnings and net worth of the institution inure to the ultimate benefit of the depositors or members.

28. National bank. "National bank" means a bank or bank and trust company organized pursuant to the Act of Congress entitled "The National Bank Act", as amended, or any subsequent Act of Congress relating thereto.

29. NOW account. "NOW account" means a deposit or account in a financial institution from which withdrawals may be made by negotiable or transferable instruments for the purpose of making transfers to 3rd parties, and on which interest or dividends are paid by the institution to the holder of such deposit or account.

30. Person. "Person" means an individual, corporation, partnership, joint venture, trust, estate or unincorporated association.

31. Personal demand deposit. "Personal demand deposit" means a deposit in a financial institution made by individuals solely for personal purposes and not for the purpose of, or in connection with, the carrying on of any business, trade, occupation or profession. Such deposits are payable on demand and subject to withdrawal by negotiable or transferable instruments for the purpose of making transfers to 3rd parties, but upon which no interest or dividends are paid by the institution to the depositor thereof.

32. Savings account. "Savings account" or "savings deposit" means a deposit or account in a financial institution:

A. Which consists of funds deposited to the credit of one or more individuals, or of a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; or in which the entire beneficial interest is held by one or more individuals or by such a corporation, association, or other organization; and

B. With respect to which the depositor is not required by the deposit contract but may at any time be required by the financial institution to give notice in writing of an intended withdrawal not less than 30 days before such withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

C. In the case of a thrift institution, savings deposits meeting the requirements of paragraph B may also be made by a public or private corporation.

33. Savings and loan association. "Savings and loan association", "association" or "loan and building association" means a financial institution authorized to exercise the powers set forth in Part 7, subject to such conditions and limitations on the exercise of said powers as shall be set forth therein.

34. Savings bank. "Savings bank" or "institute for savings" means a financial institution authorized to exercise the powers set forth in Part 5, subject to such conditions and limitations on the exercise of said powers as shall be set forth therein.

35. Satellite facility. "Satellite facility" or "off-premise facility" means an electronic terminal or facility at which an existing financial institution customer may initiate banking transactions including, but not limited to, cash deposits to and withdrawals from his account, cash advances on a preauthorized credit line, transfers between his checking and savings account or pay-

ment transfers from his account to accounts of other financial institution customers. Such a facility is not part of a main office or branch office of a financial institution. Such an off-premise facility may be part of an electronic funds transfer system.

36. Seasonal branch. "Seasonal branch" means any branch office of a financial institution established pursuant to this Title which is authorized to be open only during specified weeks of the year for the purpose of transacting business of the financial institution.

37. Service corporation. "Service corporation" means a corporation substantially all the activities of which consist of originating, purchasing, selling and servicing loans and participation interests therein; or clerical, bookkeeping, accounting and statistical or similar functions related to a financial institution or real estate activities; or management, personnel, marketing or investment counseling related to a financial institution or real estate activities.

38. Sociological composition. "Sociological composition" means the reflection of broad social and economic characteristics of the communities in which a mutual financial institution derives a substantial part of its deposit and loan business.

39. Stock financial institution. "Stock financial institution" means any financial institution organized pursuant to chapter 31, in which the earnings and net worth of the institution inure to the benefit of its stockholders.

40. Superintendent. "Superintendent" means the Superintendent of the Bureau of Banking.

41. Surplus account. "Surplus account" or "total surplus" for a mutual financial institution means the sum of its capital reserves, surplus funds, undivided profits, and capital notes and debentures.

42. Thrift institution. "Thrift institution" means a savings bank or a savings and loan association.

43. Time deposit. "Time deposit" means "time certificate of deposit" and "time deposit, open account".

44. Time certificate of deposit. "Time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

A. On a certain date, specified in the instrument, not less than 30 days after the date of the deposit; or

B. At the expiration of a certain specified time not less than 30 days after the date of the instrument; or

C. Upon notice in writing which is actually required to be given not less than 30 days before the date of repayment; and

D. In all cases only upon presentation and surrender of the instrument.

45. Time deposit, open account. "Time deposit, open account" means a deposit other than a "time certificate of deposit", with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than 30 days after the date of the deposit; or prior to the expiration of the period of notice which must be given by the depositor in writing not less than 30 days in advance of withdrawal.

46. Trust company. "Trust company" or "trust and banking company" means any financial institution authorized by its articles of incorporation to exercise the powers set forth in Part 6, subject to such conditions and limitations on the exercise of said powers as shall be set forth therein.

CHAPTER 14

HOLIDAYS

§ 141. Financial institution holidays

1. Holidays established. Any day of public thanksgiving, mourning or disaster, proclaimed or appointed by the Governor or by the President of the United States, the first day of January; Washington's Birthday, the 3rd Monday in February; Patriot's Day, the 3rd Monday in April; Memorial Day, the last Monday in May; the 4th day of July; Labor Day, the first Monday of September; Columbus Day, the 2nd Monday in October; the 11th day of November; and the 25th day of December are declared to be financial institution holidays. If the first day of January, the 4th day of July, the 11th day of November or the 25th day of December falls on Sunday, the following Monday shall be deemed a financial institution holiday for the purposes of this Title.

2. Permission to close for cause. Any financial institution or credit union under the supervision of the Bureau of Banking may close for part of any business day for good cause, on permission of the superintendent. Any such institution or credit union may close on permission of the superintendent when federally-chartered financial institutions are permitted to close.

3. Emergency closing. Any such institution under the supervision of said Bureau or a federal regulatory agency may close for all or part of any business day for good cause any of its offices, branches or facilities if, in the opinion of the institution's management, such action is required by emergency conditions and if it is impossible, in the case of an institution under the supervision of said bureau, to communicate by ordinary means with the superintendent or his deputy.

4. Posting of closing notice required. A financial institution closing any of its offices, branches or facilities pursuant to subsections 1, 2 or 3 for all or part of any business day, shall post a conspicuous notice of the closing at all points of public access to the closed offices, branches, or facilities. No closing shall become effective until such notice is posted at the office, branch or facility to be closed and posting of such notice shall relieve the institution from liability for failure to perform any of the business of the financial institution at such closed offices, branches or facilities. The superintendent may by regulations establish standards governing the form and content of the

notice required hereunder and may require dissemination of the fact of closing by any other reasonable means.

5. Limitation on liability. Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution on a day on which the institution is closed under the terms of this section may be so performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.

§ 142. Saturday hours

1. Authorization. Any state-chartered financial institution or credit union, and any federally-chartered financial institution or credit union authorized to do business in this State, may remain closed, open or may open for limited functions only, on such Saturdays as it may determine from time to time. Any Saturday on which such institution remains closed or open for limited functions only shall be, with respect to such institution, a holiday and not a business day.

2. Limitation on liability. Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution on a Saturday on which the institution is closed or open for limited functions only may be so performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay.

§ 143. Acts performed after noon Saturday

1. Validity of transactions. Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a financial institution in this State because done or performed on any Saturday between 12 o'clock noon and midnight; provided that such payment, certification, acceptance or other transaction would be valid if done or performed before 12 o'clock noon on such Saturday.

2. Closing permitted. Nothing herein shall be construed to compel any financial institution doing business in this State which by law or custom is entitled to close at 12 o'clock noon on any Saturday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid on any Saturday after such hour, except at its own option.

CHAPTER 15

EMERGENCIES

§ 151. Declaration of emergency by Governor

Whenever it shall appear to the Governor that the welfare and security of financial institutions and credit unions under the supervision of the superintendent, or their depositors, shareholders, staffs or customers, require, or that the welfare of the State, any section thereof, the inhabitants thereof, financial institutions, credit unions, their depositors, shareholders or staffs have been or may be adversely affected by actual or threatened national emergency, forces of the natural elements, fires, explosions, strikes, epidemics, civil strife or

commotion, or any other circumstances hazardous or dangerous to life, limb or property, the Governor may proclaim that a banking emergency exists. The Governor may declare such banking holidays as in his judgment such emergency conditions may require and that any financial institution or institutions and credit union or credit unions shall be subject to special regulation as provided until the Governor, by a like proclamation, declares the period of such emergency to have terminated if he has not defined such period in the original proclamation.

§ 152. Superintendent's powers during emergency

1. Restrict banking transactions. During the period of any banking emergency declared, the superintendent, in addition to all other powers conferred upon him, shall have authority to order one or more financial institutions or credit unions to restrict all or any part of their business and to limit or postpone for any length of time the payment of any amount or proportion of deposits or shares in any of the departments thereof as he may deem necessary or expedient and may regulate further payments therefrom as to time and amount as the interest of the public or of such financial institutions or credit unions or depositors or shareholders thereof may require, and any order or orders made by him may be amended, changed, extended or revoked, in whole or in part, whenever in his judgment circumstances warrant or require. After the termination of any such banking emergency, any such order may be continued in effect as to any particular financial institution or credit union if in the judgment of the superintendent circumstances warrant or require and the Governor approves.

2. Permit special deposits. The superintendent may by order authorize financial institutions or credit unions during such emergency and thereafter to receive new deposits or share funds, as the case may be, and such new funds shall be special deposits or shares, as the case may be, and so designated and segregated from all other such deposits or shares and may be invested only in assets approved by the superintendent as being sufficiently liquid to be available when needed to meet withdrawals on new deposits or shares, as the case may be. Such assets shall not be merged with other assets but shall be held in trust for the security and payment of new funds except that income from such assets may, to the extent authorized by the superintendent, be used for other purposes of the institution. Withdrawal of such new deposits or shares shall not be subject in any respect to restrictions or limitations made applicable to previously existing accounts under this section.

3. Establish fair value of assets. In determining the action to be taken under this section, the superintendent may place such fair value on the assets of any financial institution or credit union as in his discretion seems proper under the conditions prevailing and circumstances relating thereto.

PART 2

BUREAU OF BANKING

CHAPTER 21

ADMINISTRATION

§ 211. Superintendent

1. Appointment; term; qualifications. The activities of the Bureau shall be directed by a superintendent who shall be appointed by the Commissioner

of the Department of Business Regulation, with the advice and consent of the Governor and Council. The superintendent shall hold office for a term of 5 years, or until his successor is appointed and qualified; provided, however, that the superintendent may be removed from office by the Governor and Council for cause. Any person appointed as superintendent shall have knowledge of, or experience in, the theory and practice of banking.

2. Salary. The superintendent shall receive a salary commensurate with his responsibilities in accordance with Title 5 and shall receive all actual travel expenses incurred in the performance of official duties.

3. Powers and duties. The superintendent shall have authority to organize the Bureau in such a manner as he deems necessary to carry out his responsibilities under this Title. Such organization shall take into account both the need for examination and surveillance of individual institutions to assure that each is financially sound and complies with state and applicable federal law and regulations; and the need for promotion of reasonable and orderly competition among financial institutions and for promoting the provision of financial services consistent with the public interest.

4. Vacancy. If the office of superintendent is vacant for any reason except the superintendent's illness or temporary absence from the State, appointment of a successor shall be made, as provided for in subsection 1, within 6 months of the creation of such vacancy.

§ 212. Deputy superintendents and other personnel

1. Deputy superintendents.

A. The superintendent may employ 2 or more deputy superintendents, subject to applicable Personnel laws and regulations.

B. The superintendent shall designate one of the deputy superintendents to perform the duties of the superintendent whenever the latter shall be absent from the State, whenever the deputy superintendent shall be directed to do so by the superintendent, whenever there shall be a vacancy in the office of superintendent or whenever the superintendent shall be incapacitated by illness. In the event of a vacancy in the office of the superintendent, his incapacitating illness or absence from the State at a time when there is no deputy superintendent, the Commissioner of the Department of Business Regulation may designate a special deputy superintendent to perform the duties of the superintendent for a period not to exceed 6 months.

2. Examiners and employees.

A. The superintendent may employ as many examiners, other professional employees and clerical personnel as the business of the bureau may require, subject to the commissioner's approval and in accordance with the Personnel laws of this State; provided that the qualifications of such personnel reflect the needs and responsibilities relating to the bureau's regulatory functions pursuant to this Title.

B. The superintendent may employ or engage such expert, professional or other assistance as may be necessary to assist the bureau in carrying out its functions.

C. In addition to salaries or wages, all employees of the bureau shall receive their actual expenses incurred in the performance of their official duties.

3. Training of bureau personnel. At the expense of the bureau, the superintendent may train the deputy superintendents and bureau's employees, or have them trained, in such manner as the superintendent deems desirable; provided that training programs shall not place such undue emphasis upon safety and soundness of financial institutions that institutions would be inhibited by the bureau from engaging in unusual activities or loans which are in the public interest.

§ 213. Prohibited relationships with supervised institutions

1. Stockholder; payment from.

A. Neither the superintendent nor any employee of the bureau shall, during his term of office or while employed by the bureau, be an officer, director, corporator, employee, attorney or stockholder in any financial institution or financial institution holding company subject to supervision or regulation by the bureau.

B. The superintendent and employees of the bureau shall not, during their terms of office, receive directly or indirectly any payment or gratuity from any financial institution subject to supervision or regulation by the bureau. The prohibitions contained in this paragraph shall not be construed as prohibiting such person from being a depositor or member in any such financial institution on the same terms as are available to the public generally.

2. Loans from supervised institutions.

A. If the superintendent, a deputy superintendent, examiner, or other professional personnel of the bureau, or a member of such person's immediate family, obtains a loan from any financial institution subject to supervision or regulation by the bureau, the fact of such loan, together with the terms and conditions thereof, shall be disclosed immediately to the superintendent in writing by the person obtaining the loan and by the institution making such loan. If the superintendent is the borrower, such written disclosure shall be made to the Commissioner of the Department of Business Regulation.

B. A record of any indebtedness described in paragraph A shall be kept on file in the bureau so long as such indebtedness is outstanding.

C. The superintendent, or the commissioner if the superintendent is the borrower, may make an investigation of such loan to insure that its terms, conditions and amount are reasonable and proper under the circumstances, and that no preferential treatment has been given in the process of granting such loan.

§ 214. Revenues and expenses

1. Examination expenses. The expenses of the bureau necessarily incurred in the examination of financial institutions under its supervision shall be chargeable to such financial institutions as follows:

A. Every financial institution shall be assessed for the actual expenses incurred by the bureau in connection with any examination or investigation, whether regular or special, such assessments to include the proportionate part of the salaries of the examiners while engaged at such institutions and the board, room and travel expenses of such persons while away from home.

B. Such assessment shall be made by the superintendent as soon as feasible after the close of such examination or investigation and notice thereof shall forthwith be sent to such institution.

C. All assessments so made shall be paid to the Treasurer of State by such institutions within 30 days following such notice.

2. Semiannual assessment on financial institutions.

A. To provide for the balance of the reasonable expenses incurred to fulfill the bureau's duty pursuant to this Title of the bureau, including general regulatory costs, overhead, transportation, and general office and administrative expenses, the superintendent shall assess semiannually each financial institution under his supervision at the annual rate of at least 7¢ for each \$1,000 of average deposits or share accounts, excluding deposits of other financial institutions and deposits of the United States Government. The superintendent may raise the minimum assessment rate of 7¢ per \$1,000 of average deposits or share accounts by promulgating regulations pursuant to section 251 at such time as economic conditions warrant such an increase. In no event shall the semiannual assessment be less than \$25.

B. For the period ending the last day of June in each year the assessment shall be made on or before the first day of August next following and for the period ending the last day of December in each year the assessment shall be made on or before the first day of February next following. The superintendent shall forthwith notify said financial institution of such assessment. The assessment so made shall be paid semiannually to the Treasurer of State within 10 days next following the first days of August and February in each year.

3. Operating fund. The aggregate of payments provided for by this section and elsewhere in this Title is appropriated for the use of the bureau. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in succeeding fiscal years.

4. Penalty. Any financial institution which shall fail to make such payments within the time specified shall be subject to a penalty of not more than \$100 per day for each day it is in violation of this section, which penalty, together with the amount due under foregoing provisions of this section, may be recovered in a civil action in the name of the State.

§ 215. Rules and regulations

The superintendent shall have the power to implement by rule or regulation any provision of law relating to the supervision of financial institutions or to amend or repeal such regulations, subject to section 251.

§ 216. Advisory boards

1. **Membership.** The superintendent shall create an advisory board and appoint the members thereof in such manner and form and in a number not less than 9 nor more than 15 as the superintendent deems necessary for the purposes of advising him on the regulation, supervision and structure of financial institutions. Membership on such board shall include persons associated with representative financial institutions and shall include members of the general public. Such board shall meet at least annually at a time and place designated by the superintendent.

2. **Veto power prohibited.** Advisory boards established pursuant to subsection 1 shall not have veto power over the actions of the superintendent.

3. **Expenses.** Members of such advisory boards shall serve without pay; provided that such members shall be entitled to reimbursement for actual expenses incurred as members of such boards in the performance of official duties.

CHAPTER 22

EXAMINATIONS, RECORDS AND REPORTS

§ 221. Examinations

1. **Requirement.** The superintendent shall annually, or more frequently as he may determine, examine each financial institution subject to his supervision and regulation. He shall have full access to the vaults, books and papers of such institution; and may make such inquiries as are necessary to ascertain the condition of such institution, its safety and soundness, and its ability to fulfill all engagements; and to ascertain whether the institution examined has complied with applicable laws. The directors, incorporators, officers, employees and agents of an institution being examined shall furnish statements and full information to the superintendent or his examiners related to the condition and standing of the institution and all matters pertaining to its business affairs and management.

2. **Exception.** Notwithstanding the requirements set forth in subsection 1, the superintendent may accept the examination report of a federal regulatory agency as a method of satisfying such requirements in whole or in part.

§ 222. Reports and other information from supervised institutions

1. **General requirement.** In addition to the reports required pursuant to this section, the superintendent shall have the power to require, from a financial institution subject to his supervision and regulation, reports and other information from such institutions at such times and in such form as he deems appropriate for the proper supervision and regulation of such institutions.

2. **Designation of chief executive officer.** Every financial institution subject to this Title shall submit, within 10 days of the meeting of its directors at which officers are elected pursuant to section 317, subsection 1 and section 327, subsection 1, a statement to the superintendent setting forth the name and address of that officer or director who is to have primary responsibility for the operation and management of the institution under direction

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of the board of directors. Such person shall be designated in said statement as the chief executive officer. Any change in the person having such responsibilities shall be reported in writing to the superintendent within 10 days of such change.

3. Condition and income reports.

A. Condition report. Every financial institution subject to this Title shall make semiannually, and at such other times as the superintendent may direct, a report of condition to the superintendent. Such report shall exhibit in detail and under appropriate headings the assets, liabilities and capital of the institution as of such date as the superintendent may specify. Each such report shall contain a declaration that the report is true and correct signed by an officer designated by the board of directors to make such declaration and to so act on the board's behalf. The correctness of the report shall be attested by the signatures of at least three of the institution's directors other than the officer making such declaration, together with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. The report required hereunder shall be transmitted to the superintendent within 10 days after a request therefor.

B. Income reports. Every financial institution subject to this Title shall make, within 30 days of the close of each calendar year, a report of income for that calendar year, which report shall contain a statement of the institution's income and expenses for that calendar year. Income reports required hereunder shall be signed and sworn to in the same manner as condition reports required in paragraph A.

4. Use of reports prepared for Federal agencies. The reporting requirements imposed by this section may be complied with by submitting to the superintendent copies of reports prepared for federal regulatory agencies by the institution which contain the information requested, unless the superintendent shall otherwise require.

5. Penalties. Any financial institution which shall fail to furnish reports and information required pursuant to this section, within the time specified, shall be subject to a penalty of not more than \$100 for each day it is in violation of this section, which penalty may be recovered in a civil action brought in the name of the State.

§ 223. Publication and posting of reports

1. Condition and income reports. Within 10 days after submission to the superintendent of the reports required pursuant to section 222, subsection 3, a financial institution shall cause such condition and income reports to be published, in such form as the superintendent may direct, in a newspaper of general circulation in the county where the institution's main office is located, or in such other newspapers as the superintendent may direct. Proof of such publication shall be furnished to the superintendent as he may require.

2. Reports posted in offices. Every financial institution shall make available in all of its offices at least 10 days, but not more than 30 days, prior to the annual meeting of its stockholders, corporators or members, its latest condition report or a condition report for its most recently completed fiscal year, and a report of income for the institution's most recently completed fiscal year.

§ 224. Records to be kept by supervised institutions

1. Records for superintendent. A financial institution shall keep within this State such books, accounts and records relating to all transactions as will enable the superintendent to insure full compliance with the laws of this State. The superintendent may authorize such records to be maintained outside of this State for good cause.

2. Loans and investments.

A. The directors or executive committee of a financial institution subject to the provisions of this Title shall keep or cause to be kept in a book or books appropriate therefor a record of all loans and investments of every description made by such institution, substantially in the order of time when such loans or investments are made.

B. Such record shall show that such loans or investments have been made with the approval of or ratified by the directors or executive committee of said institution, and shall indicate such particulars respecting such loans and investments as the superintendent may direct; and such loans or investments shall be classified in said book or books of records as the superintendent may direct.

C. Whenever requested, such record shall be submitted to the superintendent, and, if requested for the purpose of reviewing the financial responsibility of management by a vote of the directors, corporators, members or stockholders of the institution at a duly constituted meeting thereof, such record shall be submitted to such persons. Any person breaching the confidentiality of the records so submitted shall be subject to section 226, subsection 4.

3. Agreements with directors, officers and corporators. A financial institution shall maintain records of all agreements between the institution and its directors, officers and corporators and all persons acting on behalf of such persons, including, but not limited to, all loans and other contracts.

§ 225. Retention of financial institution records

1. Superintendent's authority. All records of financial institutions and of federally-chartered financial institutions, insofar as this section does not contravene paramount Federal law, shall be retained for such minimum periods as the superintendent may prescribe.

2. Minimum retention period. The superintendent may from time to time issue regulations classifying all records kept by these institutions and prescribing the minimum period for which these records shall be retained. Such periods may be permanent or for a lesser term. Such regulations may be amended or repealed from time to time; provided that any amendment or repeal shall not affect any action taken prior to such amendment or repeal.

3. Retention criteria. Prior to issuing regulations pursuant to subsection 2, the superintendent shall consider:

A. Court and administrative proceedings in which the production of these records might be necessary or desirable;

- B. State and federal statutes of limitation applicable to such proceedings;
 - C. The availability of information from other sources; and
 - D. Such other matters as the superintendent shall deem pertinent in order that the regulations will require retention of records for such reasonable period as is commensurate with the interests of customers, depositors, stockholders and the people of this State in having such records available.
4. Reproductions. Reproductions, as defined by Title 16, section 456 shall be deemed acceptable, in lieu of the originals, for purposes of the prescribed periods for which such records shall be retained.
5. Disposal of records. Institutions may dispose of any record which has been retained for the minimum period prescribed by the superintendent.

§ 226. Confidentiality

1. Requirement. Except as provided in subsections 2 and 3, information derived by or communicated to the superintendent or to any employee of the bureau shall not be disclosed or made public.

2. Disclosure to Governor; Attorney General. The superintendent may disclose such information to the Governor or to the Attorney General of this State at such times and under such circumstances as the superintendent deems necessary and appropriate to the proper discharge of his duties and responsibilities under this Title; and the superintendent shall disclose such information upon written request of the Governor or Attorney General.

3. Disclosure to others. The superintendent may disclose such information to the persons or entities set forth below; provided that the recipients thereof shall not disclose or make public information so communicated, except as authorized by the superintendent or pursuant to other provisions of this Title:

- A. The Treasurer of State and the Commissioner of the Department of Business Regulation;
- B. Advisory boards established pursuant to section 216;
- C. State departments which, in the opinion of the superintendent, require such information;
- D. Other persons, including federal regulatory officials, who, in the opinion of the superintendent, require such information to facilitate the general conduct of supervisory activities of the Bureau;
- E. A court of law or equity and then only with the written consent of the superintendent or pursuant to a special order of the court; and
- F. To comply with provisions of this Title relating to disclosure or publication of certain applications, reports, statistics and information.

4. Penalty. Whoever violates this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or by both.

§ 227. Subpoena powers

The superintendent shall have the power and authority to summon persons and subpoena witnesses, compel their attendance, require production of evidence, administer oaths and examine any person under oath in connection with any subject related to the supervision and regulation of financial institutions. Any summons or subpoena may be served by registered mail with return receipt. Powers granted under this section may be enforced by the Superior Court.

§ 228. Report of violations

1. Requirement. If, in the opinion of the superintendent, any financial institution authorized to do business in this State, or its officers, corporators, directors, employees or agents have persistently violated any provision of this Title or regulation promulgated thereunder, the superintendent shall forthwith report the same, with such remarks as he deems appropriate, to the Attorney General who may forthwith institute a prosecution therefor on behalf of the State.

2. Penalty. The penalty for such violation, unless otherwise prescribed, shall be not less than \$500 nor more than \$1000.

CHAPTER 23

CEASE AND DESIST ORDERS; REMOVAL

OF OFFICER OR DIRECTOR

§ 231. Cease and desist orders

1. Authority.

A. If, in the opinion of the superintendent, a financial institution or financial institution holding company subject to the provisions of this Title is engaging in or has engaged in, or he has reasonable cause to believe that said institution or company is about to engage, in any of the following:

- (1) An unsafe or unsound practice in conducting the business of such financial institution or company;
- (2) Violation of a law, rule or regulation relating to the supervision of such institution or company;
- (3) Violation of any condition, imposed in writing, in connection with the approval of any application by the superintendent;
- (4) Violation of any written agreement entered into with the superintendent; or
- (5) An anticompetitive or deceptive practice, or one which is otherwise injurious to the public interest under chapter 24 or otherwise,

the superintendent shall have the power and authority to issue and serve an order upon such institution or company requiring the institution or company to cease and desist from such violation or practice.

B. Where, in the opinion of the superintendent, extraordinary circumstances make such action necessary and appropriate for the protection of depositors, shareholders or the public, the superintendent may restrict the withdrawal of funds from one or more financial institutions in the order.

C. Such order may require the officers or directors of the institution or company to take affirmative action to correct any violation or practice.

2. Notice; hearing.

A. Prior to the issuance of any order to cease and desist in accordance with subsection 1, notice shall be given to the institution by the superintendent. Such notice shall contain a statement of the facts upon which the order is to be issued, and the date upon which such order is to take effect.

B. Upon petition of any interested party, a hearing conducted pursuant to section 254 shall be provided prior to the effective date of any order issued pursuant to subsection 1, except as provided in subsection 3.

3. Temporary cease and desist order.

A. Whenever, in the opinion of the superintendent, the violation or practice set forth in subsection 1 requires immediate action for the protection of depositors or shareholders, or where such violation or practice, or the continuation thereof, is likely to cause insolvency or substantial dissipation of the assets or earnings of the institution, the superintendent may issue orders pursuant to subsection 1 which shall become effective upon service thereof, without prior notice or hearing.

B. If an order is issued by the superintendent pursuant to paragraph A, the superintendent shall afford an opportunity for a hearing to rescind the order and action taken promptly thereafter, upon application by an interested party.

4. Power as additional. The power and authority granted to the superintendent by this section shall be in addition to any enforcement or regulatory powers granted elsewhere in this Title.

§ 232. Removal of officer or director

The superintendent shall have the power to remove any officer or director of a financial institution organized pursuant to this Title, in accordance with the procedures and subject to the conditions and limitations set forth in this section.

1. Grounds for removal.

A. Acts relating to the financial institution. The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit his further participation in any manner in the conduct of the affairs of the financial institution if, in the opinion of the superintendent, such officer or director has:

(1) Violated a law, rule, regulation or cease and desist order which has become final;

- (2) Engaged in or participated in any unsafe or unsound practice; or
- (3) Committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duties as such officer or director;

and the superintendent determines that as a result of such actions by the officer or director the financial institution has suffered or probably will suffer substantial financial loss or other damage, or that the interests of depositors or shareholders could be seriously prejudiced by reason of such violation, practice or breach of fiduciary duty; provided that such violation, practice or breach of fiduciary duty must be found by the superintendent to be one involving personal dishonesty on the part of such officer or director.

B. Acts relating to other business entities. The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit his further participation in any manner in the conduct of the affairs of the financial institution if, in the opinion of the superintendent, such officer or director has, by conduct with respect to any other business entity which resulted, or is likely to result, in substantial financial loss or other damage, evidenced his personal dishonesty and unfitness to continue as an officer or director.

2. Notice of intent to remove.

A. Contents. The written notice required in subsection 1 shall set forth the following:

- (1) A statement of the facts constituting the grounds for such removal or prohibition;
- (2) The time and place at which a hearing shall be held thereon, which date shall be not less than 30 nor more than 60 days after the service of the notice, unless such officer or director shall request an earlier or later hearing for good cause shown.

B. Parties to be served with notice. The superintendent shall serve such written notice in accordance with Rule 4 of the Maine Rules of Civil Procedure upon the officer or director involved and copies of such notice shall be served upon the financial institution of which he is an officer or director or in the conduct of whose affairs he has participated.

3. Effect of notice.

A. If the superintendent deems it necessary for the protection of the institution or the interests of its depositors or shareholders, such written notice may suspend the officer or director from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution.

B. Such suspension or prohibition shall become effective upon service of said notice and, unless stayed by the Superior Court pursuant to subsection 4, shall remain in effect pending completion of administrative proceedings pursuant to this section and until such time as the superintendent shall dismiss the charges specified in such notice or, if an order of removal or

prohibition is issued against the officer or director, until the effective date of any such order.

4. Stay of suspension or prohibition. Any officer or director adversely affected by a suspension or prohibition contained in a written notice pursuant to subsection 3 may apply to the Superior Court in the county where the financial institution of which he is an officer or director has its main office or in the Superior Court of Kennebec County for a stay of such suspension or prohibition pending completion of administrative proceedings required under this section, and such court shall have jurisdiction to stay such suspension or prohibition.

5. Hearing.

A. The superintendent shall hold a hearing at the time and place specified in the notice required under subsection 2, such hearing to be conducted in accordance with section 254.

B. Unless the officer or director affected shall appear at such hearing, he shall be deemed to have consented to the issuance of an order for such removal or prohibition.

C. In the event of consent pursuant to paragraph B, or if upon the record made at any such hearing the superintendent shall find that any of the grounds specified in the notice have been established, he may issue such orders of suspension or removal from office or prohibition from participation in the conduct of the affairs of the financial institution, as he may deem appropriate.

D. Notwithstanding any provision to the contrary in section 254, such orders shall be issued not later than 30 days after the close of the hearing if any, held pursuant to this section.

6. Effective date.

A. Any order issued pursuant to subsection 5 shall become effective at the expiration of 30 days after service upon the officer or director and the financial institution concerned; provided that an order issued upon consent shall become effective within the time specified therein.

B. Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the superintendent or a court having jurisdiction relating thereto.

7. Participation in a felony.

A. The superintendent may issue written notice, pursuant to subsections 2 and 3, to any officer or director charged in any information, complaint, or indictment with commission of or participation in a felony involving dishonesty or breach of trust, pursuant to laws of the State of Maine or of the United States. Such suspension or prohibition shall remain in effect until terminated by the superintendent or said information, complaint, or indictment is finally disposed of.

B. At such time as a judgment of conviction with respect to such offense is entered against such officer or director, and such judgment is not subject to further appellate review, the superintendent may issue and serve upon such officer or director an order removing him from such office or prohibiting him from further participation in the conduct of the affairs of the institution except with the written consent of the superintendent. Such order shall become effective after service upon the officer or director and the financial institution.

C. A finding of not guilty or other disposition of the charge in paragraph A shall not preclude the superintendent from instituting proceedings pursuant to this section on the grounds set forth in subsection 1.

§ 233. Enforcement by Superior Court

Orders issued by the superintendent pursuant to sections 231 and 232 shall be enforced by the Superior Court, subject to the following conditions and limitations:

1. Appeal of order.

A. Any person aggrieved and directly affected by an order of the superintendent issued pursuant to sections 231 and 232 may appeal to the Superior Court within 30 days after the issuance of such order pursuant to Rule 80B of the Maine Rules of Civil Procedure.

B. The filing of an appeal pursuant to paragraph A shall not stay the enforcement of an order, but the court may order a stay on such terms as it deems proper.

C. The court may affirm, modify, terminate or set aside, in whole or in part, the order of the superintendent if such order was issued pursuant to an invalid statute or regulation, in excess of statutory authority, or not supported by substantial evidence in the record.

D. The judgment and decree of the court shall be final, except that it shall be subject to review by the Supreme Judicial Court.

2. Limitation on liability. No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the superintendent, notwithstanding a subsequent decision by any court invalidating the order, regulation or definition.

§ 234. Notice to Federal authorities

1. Requirement. In connection with any proceeding under this chapter involving a financial institution under the concurrent supervision of a federal agency and the bureau, the superintendent shall provide the appropriate federal agency with notice of any such proceeding and the grounds therefor. Such proceeding may then be continued jointly or by either the federal agency or the superintendent.

2. Failure to notify. Failure of the superintendent to give such notice shall not constitute a ground for attacking the validity of the order.

CHAPTER 24
ANTICOMPETITIVE OR DECEPTIVE
PRACTICES

§ 241. Anticompetitive or unfair practices

1. Rules and regulations.

A. The superintendent shall have the power to promulgate rules and regulations, in accordance with section 251, defining, limiting or proscribing acts and practices which, when engaged in by a financial institution or its subsidiaries, or by a financial institution holding company or its subsidiaries, are deemed to be anticompetitive, unfair, deceptive, or otherwise injurious to the public interest.

B. Such rules and regulations may be promulgated by the superintendent upon complaint of interested parties, or in rule-making proceedings initiated by the bureau.

C. The authority granted to the superintendent herein shall be in addition to the cease and desist powers granted in section 231; and the fact that rules and regulations have not been promulgated hereunder shall not affect the validity of any cease and desist order issued pursuant to section 231, subsection 1.

2. Prices of financial services.

A. The authority granted to the superintendent in subsection 1 shall not be construed as authorizing the superintendent to establish the price at which financial services may be offered to the public, except that the superintendent may establish prices for such services upon a showing that the manner and method of actual pricing of a particular service, and the offering of such to the public, is anticompetitive or deceptive.

B. An interested party affected by the exercise of the superintendent's authority in paragraph A shall have the right to appeal such decision or order pursuant to section 233, subsection 1 and shall also be entitled to rights specified in section 233, subsection 2.

§ 242. Deceptive advertising

1. Rules and regulations. The superintendent shall have authority to promulgate rules and regulations, pursuant to section 251, defining, limiting or proscribing advertising of any kind by a financial institution, an association of such financial institutions, or a financial institution holding company, or representations made thereby, which is false, misleading or deceptive.

2. Orders against deceptive advertising.

A. The superintendent may issue an order in accordance with section 231 upon determining that any entity or entities described in subsection 1 has issued an advertisement or made a representation which is false, misleading or deceptive.

B. If an entity has already issued or published such an advertisement or representation, the superintendent may order the entity to take such affirmative corrective action as he deems necessary and appropriate under the circumstances for the purpose of informing and protecting the public and other interested parties.

C. The fact that rules and regulations have not been promulgated pursuant to this section shall not affect the validity of any order issued hereunder.

3. Appeal. An interested party affected by the exercise of the superintendent's authority in subsection 2, paragraphs A or B shall have the right to appeal such decision or order pursuant to section 233, subsection 1 and shall also be entitled to rights specified in section 233, subsection 2.

§ 243. Tie-in arrangements

1. Prohibition. A financial institution authorized to do business in this State shall not in any manner extend credit, lease or sell property, or furnish any service, or fix or vary the consideration for any of the foregoing on the condition, agreement, requirement or understanding:

A. That the customer shall obtain some additional or other credit, property, or service from such financial institution other than a loan, discount, deposit or trust service;

B. That the customer shall obtain some additional or other credit, property, or service from a subsidiary of such financial institution, a financial institution holding company of such financial institution, or from any other subsidiary of such financial institution holding company;

C. That the customer provide some additional or other credit, property, or service to such financial institution, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

D. That the customer provide some additional or other credit, property or service to a subsidiary of such financial institution, a financial institution holding company of such financial institution, or from any other subsidiary of such financial institution holding company;

E. That the customer shall not obtain some additional or other credit, property, or service from a competitor of such financial institution, a subsidiary of a competitor financial institution, a financial institution holding company of a competitor financial institution, or any other subsidiary of such competitor financial institution holding company, other than a condition or requirement that such financial institution shall reasonably impose in a credit transaction to assure the soundness of the credit.

2. Exceptions. The superintendent may, pursuant to regulations issued in accordance with section 251, permit such exceptions to the prohibitions in subsection 1 as he considers will not be contrary to the public interest and the purposes of this section.

§ 244. Exemption.

Any financial institution subject to the provisions of this chapter shall be exempt from the provisions of Title 5, chapter 10.

CHAPTER 25
ADMINISTRATIVE PROCEDURES

§ 251. Rule-making

Promulgation of rules or regulations of the bureau, and amendments thereto, shall conform to the requirements of this section.

1. Definitions.

A. A "rule" or "regulation" of the bureau means the whole or any part of a bureau statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, or issued to establish administrative procedures of the bureau, pursuant to an express or implied grant of authority contained in this Title.

B. "Rule-making" is the process for formulating, amending, repealing or promulgating a rule, regulation or amendment of and by the bureau.

2. Notice.

A. The superintendent shall give notice of any rule-making proceeding undertaken by the bureau to all persons or organizations determined by him to be interested parties and to the public. Notice to an interested party shall be given by mailing said notice to the party at its last known address and shall be given to all other persons by publications in such newspapers or such other publications as the superintendent deems appropriate under the circumstances.

B. Notice of a rule-making proceeding shall include:

(1) A reference to the legal authority under which the rule, regulation or amendment is proposed;

(2) The terms and substance of the proposed rule, regulation or amendment and a description of the subjects and issues involved in the promulgation of such;

(3) The period during which written comments on the proposed rule, regulation or amendment shall be received by the superintendent, which shall not be less than 20 days after said notice; and

(4) A statement that a hearing will be held upon a bona fide and reasonable request of any interested party; provided that such party presents a written request for such hearing to the superintendent within 20 days of the first publication of the notice.

3. Submission of written comments.

A. During the comment period set forth in the notice, an interested party or member of the public may submit written comments on the proposed rule, regulation or amendment.

B. Such comments shall be maintained in the public files of the bureau and copies shall be available to the public at cost.

C. The superintendent may, but shall not be compelled to, receive written comments after the close of the written comment period.

4. Hearing.

A. If the superintendent has received a bona fide and reasonable request for a hearing from an interested party, he shall schedule such a hearing, which shall take place not more than 45 days following the close of the written comment period. Notice of such hearing shall be given after the close of the comment period in the same manner as notice was given pursuant to subsection 2, paragraph A and shall set forth the time and place of said hearing. The notice shall be given not less than 15 days prior to the date set for such hearing.

B. The manner of acting on requests for hearings and the procedures for conducting a hearing shall be as set forth in section 254.

5. Promulgation of final regulations.

A. After consideration of all relevant matters presented in written comments and at the hearing, if any, the superintendent shall, within 30 days of the close of the comment period or within 30 days of the conclusion of the hearing, if such was held, whichever period is greater, promulgate the final rule, regulation or amendment.

B. Copies of all rules, regulations or amendments promulgated hereunder shall be made available to the public, at cost, at the office of the bureau, and the bureau shall maintain at its offices a central registry of all rules, regulations or amendments.

C. Within 5 days of promulgation, notice of the rule, regulation or amendment adopted by the superintendent setting forth a concise general statement of the content, purpose and origin of the rule, regulation or amendment, together with a statement that copies of the rule, regulation or amendment are available to the public at cost, shall be published by the superintendent in those newspapers in which the notice required in subsection 2, paragraph A was published. The superintendent may mail such notice and a copy of the rule, regulation or amendment to interested parties receiving notice pursuant to subsection 2, paragraph A.

D. If, after the comment period and hearing, if any, the superintendent determines that the proposed rule, regulation or amendment is not to be adopted, notice of withdrawal thereof shall be published within the period set forth in paragraph C.

6. Effective date. The effective date of any rule, regulation or amendment shall be 30 days after its promulgation pursuant to subsection 5, paragraph A, unless the superintendent shall specify a later date in the final notice relating thereto.

§ 252. Decision-making

Decision-making of the bureau shall conform to the requirements of this section.

1. Definition. "Decision-making" is that process by which the superintendent determines whether an application for a charter, branch, merger, acquisition, subsidiary formation, change of name or other similar request submitted to the bureau should be approved or disapproved, but shall not include applications for a change in a financial institution's articles of incorporation or bylaws, changes in the capital structure of any institution, or such other matters of a similar nature as the superintendent may determine, unless otherwise provided in this Title.

2. Notice.

A. Upon receipt and acceptance of an application subject to this section as being complete, the superintendent shall instruct the applicant to publish a notice, in such form as the superintendent may prescribe, in a newspaper of general circulation in the county where the institution's main office is located, or in such other newspapers as the superintendent may designate. Such notice shall be published once a week for 2 successive weeks. Within 3 days of the first publication of such notice, the applicant shall notify the superintendent of said publication.

B. In addition to published notice required in paragraph A, the superintendent shall give personal notice of the application to those persons or organizations determined by him to be interested parties by mailing such notice to the party's last known address.

C. Notice of decision-making proceedings shall include:

(1) A statement containing the name of the applicant and the nature of the application;

(2) A reference to the legal authority under which the decision-making proceeding is undertaken;

(3) The period during which written comments on the application shall be received by the superintendent, which shall not be less than 20 days after the first publication of notice in paragraph A.

(4) A statement that a hearing will be held upon a bona fide and reasonable request of an interested party; provided that such party presents a written request to the superintendent for such hearing within 20 days of the first publication of the notice.

3. Application on file. Applications accepted by the superintendent shall be placed on public file at the office of the Bureau, and shall be made available for public inspection or copying, at cost; provided that the superintendent shall delete from the public file copy of an application all confidential information, materials and statements regarding the applicant.

4. Submission of written comments.

A. During the comment period set forth in the notice, an interested party or member of the public may submit written comments on the proposed application.

B. Such comments shall be maintained in the public files of the Bureau, and copies shall be available to the public at cost.

C. The superintendent may, but shall not be compelled to, receive written comments after the close of the written comment period.

5. Hearing.

A. If the superintendent has received a bona fide and reasonable request for a hearing from an interested party, he shall schedule such a hearing, which shall take place not more than 45 days following the close of the written comment period. Notice of such hearing shall be given after the close of the comment period by one publication in the newspapers in which notice was published pursuant to subsection 2, paragraph A and shall set forth the time and place of said hearing. The notice shall be given not less than 15 days prior to the date set for such hearing.

B. The manner of acting on requests for hearings and the procedures for conducting a hearing shall be as set forth in section 254.

6. Decision.

A. After consideration of all relevant matter presented in the application, in any written comments, and at the hearing, if any, the superintendent shall, within 30 days after the close of the comment period or within 30 days of the conclusion of the hearing if such was held, whichever period is greater, promulgate the final order either approving or disapproving such application.

B. The final order of the superintendent shall set forth the reasons for his decision, including specific findings of fact to support such decision in accordance with section 253; and any conditions pertaining to the grant of approval which the superintendent deems necessary and appropriate under this Title.

C. Within 5 days of promulgation, notice of the final order setting forth the name of the applicant, the nature of the application and the superintendent's action thereon, together with a statement that copies of such order are available to the public at cost, shall be published by the superintendent in those newspapers in which the notice required in subsection 2, paragraph A was published. The superintendent may mail such notice and a copy of the final order to any persons or organization receiving notice of the application pursuant to subsection 2, paragraph B.

D. The final order of the superintendent shall take effect 30 days after publication thereof, unless a later date has been specified in such order.

7. Time periods. The time periods set forth in this section shall not commence to run until the superintendent certifies that the application is complete and the first publication of notice pursuant to subsection 2, paragraph A has been made by the applicant. The superintendent shall have the power to request modifications in, and additional information relating to, any application prior to certifying its completeness.

§ 253. Criteria for decision-making

The superintendent shall take into account, but shall not be limited to, the criteria set forth in this section in considering applications to change name, branch, merge, consolidate or consummate an acquisition; or to engage in

any closely-related or incidental activity; or to obtain a charter, or to convert from an existing to a different charter; or to invest in a subsidiary corporation.

1. Public convenience and advantage.

A. The superintendent shall not approve an application unless he determines that the proposed transaction contributes to the financial strength and success of the financial institution or institutions concerned, and promotes the convenience and advantage of the public.

B. Public convenience and advantage shall exist if the superintendent determines, based on all relevant evidence, information and materials, that public benefits, such as increased competition or gains in efficiency, outweigh possible adverse effects, such as decreased or unfair competition, undue concentration of resources, conflicts of interest, or unsafe or unsound practices.

2. Basis for decision. In addition to the standards set forth in subsection 1, the superintendent shall consider the following factors in determining whether the standard of public convenience and advantage has been met:

A. The character, ability and overall sufficiency of the management, including directors, or organizers, incorporators and incorporators of a new financial institution;

B. The adequacy of capital and financial resources of the institution or institutions concerned;

C. The competitive abilities and future prospects of the institution or institutions concerned;

D. The convenience and needs of the market area or areas to be served;

E. The competitive effect of the proposed transaction on the price, availability and quality of services in the market area or areas to be served;

F. The likely impact of the proposed transaction on other financial institutions in the market area or areas to be served; and

G. The fairness and equities involved in any merger, consolidation, conversion or acquisition.

3. Burden of proof. In all cases, the burden of proving that public convenience and advantage will be promoted, and that the proposed transaction contributes to the financial strength and success of the institution or institutions concerned, shall rest with the applicant.

§ 254. Hearings by superintendent

The provisions of this section shall apply whenever a hearing is provided for pursuant to the provisions of this Title, or the superintendent otherwise determines that a hearing is necessary and appropriate.

1. Request for a hearing.

A. Any person or organization entitled to request a hearing pursuant to sections 251, 252 or 255 shall submit a request to the superintendent within the time periods set forth therein, if any.

B. A request for hearing shall contain the following:

(1) The name of the person or organization requesting a hearing; and, in the case of an individual, the organization or group, if any, that the individual is representing;

(2) The subject matter, including the rule, regulation, amendment, order or application which is the basis for said request;

(3) Whether the person or organization making such request supports or opposes the subject matter set forth in subparagraph (2);

(4) A statement of the contentions, facts, decision-making criteria or other matters which the person or organization requesting a hearing seeks to put at issue in the hearing;

(5) A brief and concise statement of the grounds for placing those matters set forth in subparagraph (4) at issue.

The superintendent may require such a request to be signed and sworn to.

2. Grant or denial of request.

A. The superintendent shall, either prior to or at the close of the comment periods specified in sections 251 and 252, or within 20 days of a request for a hearing under any other provision of this Title, grant or deny a request for a hearing; provided that nothing contained herein shall require the superintendent to act upon any request which is not bona fide and reasonable, or which is improperly made or filed in an untimely manner.

B. If the superintendent denies a request for a hearing, he shall notify promptly the person or organization making the request of said denial; and said notice shall contain a statement of the grounds for such action.

3. Notice of hearing.

A. If the superintendent grants a request for a hearing, he shall publish notice of the hearing in such manner as is required under sections 251 and 252 or as he deems necessary for hearings held pursuant to any other provision of this Title; provided that notice shall be published at least 15 days prior to the date set for such hearing.

B. Notice of such hearing shall be given to:

(1) All persons requesting a hearing;

(2) All interested parties as determined by the superintendent, whether they requested a hearing or not; and

(3) Any other person or organization the superintendent believes may be affected by the hearing.

4. Conduct of hearings.

A. The superintendent, a deputy superintendent or a hearing examiner appointed by the superintendent shall preside at all hearings, and shall act in a quasi-judicial capacity.

B. The superintendent shall allow reasonable time for oral argument, but unless waived by the persons or organizations involved, not less than one hour shall be allowed for oral argument in favor of the rule, regulation, amendment, order or application which is the subject matter of the hearing, and not less than one hour shall be allowed for oral argument in opposition to the subject matter of the hearing. In any event, both sides shall be allotted an equal amount of time for oral argument.

C. If more than one person or organization is appearing in support of, or in opposition to, the subject matter of the hearing, those arguing on the same side shall allocate the allotted time among themselves, to be divided as they deem appropriate; provided that in the event agreement is not reached among such parties, the time shall be shared equally.

D. Within the allotted time, a party to the hearing may present testimony and evidence, and may cross-examine the testimony and evidence presented by the other parties to the proceeding.

E. The official conducting the hearing shall have the authority and power to question any party to the proceeding regarding the testimony and evidence presented by such party.

F. The official conducting the hearing shall limit the testimony and evidence presented to matters which are relevant and material to the issues upon which the hearing was requested.

G. A party to the hearing may be represented by counsel or a spokesman, and such representative may present the party's testimony and evidence.

5. Written evidence. A party may submit written evidence at the hearing which is relevant and material to the issues upon which the hearing was requested, and said evidence shall become a part of the record.

6. Transcript. A transcript shall be made of any oral argument or testimony and shall be included in the record. Copies of the transcript shall be made available to the public at cost.

7. Decision.

A. The superintendent shall, within the time limits set forth in sections 251 and 252, or within 30 days of the close of a hearing which is held pursuant to any other provision of this Title, issue a decision.

B. A decision on matters arising under sections 251 and 252 shall conform with the requirements set forth therein. Any other decision shall clearly set forth the reasons for the superintendent's decision.

C. If the superintendent intends to rely on any report, recommendation or other material not presented at the hearing or during any written comment period, the superintendent shall either furnish such materials to all parties to the hearing for comment at least 15 days prior to the decision or reopen the hearing. All such materials relied on by the superintendent in making a decision shall become part of the public record and the source of such materials shall be clearly indicated in such record and in the decision.

D. Notice of the decision shall be given to all participants in the hearing and shall be published in the manner provided for in section 251, subsection 2, paragraph A.

8. Effective date. A decision by the superintendent after a hearing shall take effect 30 days after publication of notice of the decision, unless a later date is specified therein.

§ 255. Hearings on petition of 25 persons

1. Alleged noncompliance with this Title. A group of 25 or more persons may join together and petition the superintendent as an interested party to hold a hearing if such group submits to the superintendent a written petition asserting they have reason to believe that a financial institution holding company or financial institution subject to the laws of this State is not complying with the standards of public convenience and advantage set forth in section 253, or that such institution has violated or is violating any provision of this Title or regulation issued pursuant thereto.

2. Request for rule-making. A group as defined in subsection 1 may also petition the superintendent to hold a rule-making proceeding for the purpose of promulgating such rules, regulations, or amendments as may be proposed in their petition and may petition for a hearing as an interested party under sections 251 and 252.

3. Procedures for requesting hearing. A petition for a hearing pursuant to this section shall be made in accordance with section 254, subsection 1.

4. Grant or denial of request. Unless the superintendent shall deem the petition frivolous or not bona fide, he shall designate the group as an interested party and hold a hearing pursuant to section 254 for the purpose set forth in the petition. Such decision shall be made in accordance with section 254, subsection 2.

5. Treatment as interested party. A group whose petition is granted by the superintendent shall be treated as a single interested party for all purposes of this chapter, unless otherwise determined by the superintendent.

§ 256. Judicial review of superintendent's action

Any person or organization affected adversely by a rule, regulation, amendment, order, or decision on an application promulgated by the superintendent, or affected adversely by the denial of a request for a hearing, may appeal from such action. An appeal shall be taken to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure, subject to the requirements of this section.

1. When appeal may be taken.

A. An appeal from a rule, regulation, amendment, order or decision made by the superintendent pursuant to sections 251 or 252 may be taken only after the superintendent has promulgated a final rule, regulation, amendment, order or decision in accordance with the provisions contained therein.

B. An appeal from the denial of a request for hearing pursuant to section 255, or an appeal from any other order or decision of the superintendent issued pursuant to this Title, may not be taken until 15 days after such denial or issuance of such order, unless a provision of this Title sets forth a shorter period.

2. Time period for filing appeal.

A. An appeal shall be taken within 30 days of the time from which it can be taken by filing a complaint in the Superior Court.

B. Copies of the complaint shall be filed with the superintendent, and if the appeal is being taken from a rule, regulation, amendment, order or decision which was preceded by a hearing, additional copies of the complaint for the parties to such a hearing shall be filed with the superintendent, which copies the superintendent shall make available to such parties.

3. Record. Upon receiving the appellate complaint, the superintendent shall prepare an official record which shall contain copies of all proceedings, including documents, transcripts of testimony, and reports on which the rule, regulation, amendment, order or decision by the superintendent was based. Such record shall be certified by the superintendent and filed with the court within 30 days of service of the complaint upon the superintendent.

4. Jurisdiction of the court.

A. Upon filing the appellate complaint, the court shall have full jurisdiction of the proceeding; provided that the filing of the complaint shall not stay enforcement of the superintendent's action which is being appealed, unless such is stayed by order of the court.

B. The court may issue a preliminary order to settle any questions concerning the completeness and accuracy of the superintendent's official record.

5. Intervention. Parties not named in the appellate complaint may intervene in the proceeding pursuant to Rule 24 (a) or Rule 24 (b) of the Maine Rules of Civil Procedure.

6. Scope of judicial review.

A. The court reviewing the action of the superintendent on appeal shall, to the extent necessary, decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning and applicability of the terms of Bureau action.

B. The reviewing court shall compel action by the superintendent if such action has been withheld unlawfully or delayed unreasonably;

C. The reviewing court shall hold unlawful, and set aside or modify actions, findings and conclusions of the superintendent if such are found to be:

- (1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (2) Contrary to constitutional right, power, privilege or immunity;
- (3) In excess of statutory jurisdiction, authority or limitations, or short of statutory right;
- (4) Without observance of a procedure required by law, or not in accordance with valid regulations;
- (5) Unsupported by substantial evidence in accordance with the criteria of this Title; or
- (6) Unwarranted by the facts as set forth in the record.

D. The court may remand the case to the superintendent for further proceedings in accordance with its decision.

7. New material. No evidence not appearing in the record, unless the failure to include such is a ground for the appeal or if such bears on the question of abuse of discretion, shall be introduced on appeal.

PART 3

ORGANIZATION AND STRUCTURE OF FINANCIAL INSTITUTIONS

CHAPTER 31

ORGANIZATION AND MANAGEMENT OF STOCK INSTITUTIONS

§ 311. Applicability of chapter

The provisions of this chapter shall govern the organization and management of trust companies, savings banks and savings and loan associations operating as stock financial institutions.

§ 312. Permission to organize

1. Incorporators. Five or more persons, a majority of whom shall be residents of this State, may agree in writing to associate themselves for the purpose of forming a stock financial institution pursuant to this chapter.

2. Application to organize. The subscribers to the agreement of association or the incorporators shall file with the superintendent an application for permission to organize a stock financial institution, which application shall contain the following information:

- A. The name by which the institution shall be known.
- B. The purpose for which it is to be formed, including whether the incorporators seek a certificate of public convenience and advantage to conduct business as a trust company, savings bank or savings and loan association in stock form.
- C. The city or town within this State where the institution's principal office is to be located.
- D. The amount of its capital stock, the classes and types of stock, and the number of shares into which same is to be divided. The minimum amount of said capital stock shall be determined by the superintendent in accordance with subsection 5.
- E. The names, addresses and occupations of the directors of the institution who are to serve until the initial meeting of the stockholders or until their successors are elected and qualified, and the names, addresses and occupations of the directors who shall be voted on by the stockholders at the initial meeting.
- F. Subscription agreements for at least $\frac{1}{3}$ of the capital stock set forth in paragraph D, such subscriptions to contain the name, address and occupation of the subscriber, and the amount of such subscription. Each subscriber shall sign the subscription agreement if he is not an incorporator.
- G. Such additional information, including the reasons why an institution of the type specified in paragraph B is needed in the proposed location, as the superintendent may require by regulation. No application for a permission to organize shall be deemed complete unless accompanied by an application fee of \$1,000, payable to the Treasurer of State, to be credited and used as provided in section 214.

3. Publication of notice. After determining that the application required in subsection 2 is complete, the superintendent shall advise the incorporators to publish, within 15 days of such advice, a notice in such form as the superintendent may prescribe. Such notice shall appear at least once a week for 3 successive weeks in one or more newspapers of general circulation in the county where the financial institution is to be established, or in such other newspapers as the superintendent may designate. Such published notice shall specify the names, addresses and occupations of the incorporators and directors, the type of financial institution to be organized, and the name of the institution and its location as set forth in the application for permission to organize. The superintendent may require individual notice to any person or corporation, and may require that one of such publications contain the information required under section 252, subsection 2.

4. Permission from superintendent.

A. Within 10 days after the first publication of the notice required in subsection 3, the incorporators shall apply to the superintendent for a certificate that public convenience and advantage will be promoted by the establishment of a financial institution of the type set forth in their application; and such request shall be deemed as completing the application for purposes of section 252, subsection 7.

B. In determining whether public convenience and advantage will be promoted by granting permission to organize the type of institution requested, the superintendent shall make his decision in accordance with the requirements of section 253, pursuant to the procedures set forth in section 252.

C. A grant of a certificate of public convenience and advantage and permission to organize may include such terms and conditions as the superintendent may deem necessary including, but not limited to, an increase in the minimum capital stock pursuant to subsection 5.

5. Minimum capital stock required.

A. The certificate of public convenience and advantage and permission to organize, granted in writing by the superintendent, shall set forth the minimum amount of paid-in capital stock which a stock financial institution shall have to begin business.

B. The minimum amount of paid-in capital stock shall be determined by the superintendent, but in no event shall it be less than \$100,000.

C. In determining the minimum paid-in capital stock required, the superintendent may set different requirements for trust companies, savings banks and savings and loan associations, and may consider such factors as the population of the city or town where the proposed institution is to be located, competition among financial institutions in that locale, and the need to protect depositors and other creditors of the institution.

6. Effect of denial. If the superintendent denies permission to organize or refuses to issue a certificate of public convenience and advantage, the application may be renewed in the manner provided in this section after one year from the date of such denial.

§ 313. Organization

Upon receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 312, the incorporators shall comply with the following requirements:

1. Franchise during organization. The incorporators and subscribers to stock in the institution as set forth in the application for permission to organize, and who subsequently receive permission from the superintendent, shall hold the institution's franchise until such time as the requirements of this section are met, or the superintendent determines that said requirements have not been complied with.

2. First meeting: adoption of articles and bylaws; elections.

A. Within 30 days after receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 312, the first meeting of the incorporators and subscribers to stock in the institution shall be called by a notice signed by that incorporator or subscriber who was designated in the application for that purpose, or by a majority of the incorporators and subscribers. Such notice shall state the time, place

and purposes of the meeting. A copy of the notice shall, at least 3 days before the date appointed for the meeting, be given to each incorporator and subscriber, or left at his residence or usual place of business, or deposited in the post office addressed to him at his residence or usual place of business, and another copy thereof, together with an affidavit of one of the incorporators or subscribers that the notice has been duly served, shall be recorded with the records of the institution. If all the incorporators and subscribers shall, in writing indorsed upon the application to organize, waive such notice and fix the time and place of the meeting, no notice shall be required.

B. At such first meeting or at any adjournment thereof, the incorporators and subscribers shall by ballot select a temporary clerk, adopt articles of incorporation and bylaws and, in such manner as the bylaws may determine, elect directors, a president, a clerk and such other officers as the bylaws may prescribe. All the officers so elected shall be sworn to the faithful performance of their duties.

C. The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

D. Within 10 days after adoption of the articles of incorporation and bylaws, the clerk shall file with the superintendent copies thereof; and, within 15 days after receipt, the superintendent shall, after examining such articles and bylaws for conformance with the requirements of this Title, approve or disapprove of such articles and bylaws.

3. Submission to Secretary of State. Following the meeting required under subsection 2 the directors so elected shall submit an attested copy of the institution's articles of incorporation to the Secretary of State, who shall determine whether such articles satisfy the requirements of Title 13-A. If such requirements are met, and the superintendent has approved said articles, the Secretary of State shall file the articles of incorporation pursuant to Title 13-A, chapter 4. The filing of the articles of incorporation by the Secretary of State shall not authorize the transaction of business by the financial institution until all conditions of this section are satisfied.

4. Issuance of shares.

A. A financial institution organized under this chapter shall not issue any shares of stock until the par value of such shares, together with 50% additional as a surplus, shall have been actually paid in, in cash or an equivalent, as determined by the superintendent.

B. At such time as the financial institution has issued minimum capital stock required under section 312, subsection 5 a complete list of the stockholders, with the name, address, occupation and the number of shares held by each, shall be filed with the superintendent, which list shall be verified by the president and the clerk of the institution.

5. Certificate to commence business.

A. Upon receipt of the statement required in subsection 4, the superintendent shall cause an examination to be made to determine if the minimum amount of capital stock and surplus has been paid in, in cash or an equiva-

lent as he may determine, and that all requirements of this section and other provisions of law have been complied with.

B. Upon completion of his examination, and if the requirements of paragraph A are met, the superintendent shall issue a certificate authorizing the financial institution to begin transacting the business of a financial institution of the type as set forth in its articles of incorporation. Such certificate shall be conclusive of the facts stated therein and it shall be unlawful for any such stock financial institution to begin transacting business until such a certificate has been granted.

6. Failure to commence business.

A. Any stock financial institution which fails to commence business as a financial institution within one year after receiving a certificate of public convenience and advantage shall forfeit said certificate and any certificate to commence business so obtained; and shall cease all activities, which fact shall be certified to the Secretary of State by the superintendent so that said institution's articles of incorporation may be terminated by said Secretary of State.

B. Upon any such forfeiture, the subscribers to the stock of such institution shall be entitled to return of any amounts which they have paid to the institution as consideration for its shares, and all expenses incurred in the organization shall be borne by the original incorporators.

C. Upon failure to commence business within one year, and forfeiture of permission to organize and any certificate to commence business so obtained, the incorporators may not submit another application for permission to organize a financial institution under sections 312 or 322 for at least one year from the date of such forfeiture.

D. Notwithstanding the time limitation in paragraph A, the superintendent may extend the period in which business shall be commenced for a period not to exceed 6 months, upon written application by the institution setting forth the reasons for such extension. If an extension is granted by the superintendent, the Secretary of State shall be so notified by the superintendent.

§ 314. Corporate finance

1. Applicability of Maine Business Corporation Act.

Except as set forth in this section and in section 313, Title 13-A, shall control questions concerning the issuance of shares and rights relating to the financing of a financial institution organized under this chapter.

2. Par value. The par value of shares of a stock financial institution, whether common or preferred, shall not be less than \$1 each nor more than \$100, and may be changed at any time by a vote of the stockholders of the institution, subject to approval of the superintendent.

3. Preferred stock. Notwithstanding any provision in Title 13-A to the contrary, preferred stock issued by a financial institution organized under this chapter shall be subject to the following conditions and limitations:

A. The superintendent shall approve the issuance of, the amount, the par value and the dividend rate of any such preferred stock to be issued;

B. Holders of such preferred stock shall be entitled to receive cumulative dividends on such stock;

C. Preferred stock shall have the same voting rights, including that of cumulative voting, which may be granted to holders of common stock; provided that, except for election of directors, the articles of incorporation may specify that preferred shares shall vote as a class;

D. Holders of preferred stock shall not be held individually responsible as such holders for any debts, contracts or engagements of the institution, and preferred stockholders shall not be liable for assessments to restore impairments in the capital stock of such institution as provided for in section 315, subsection 4, nor shall such shares be subject to assessment with reference to common stock and the holders thereof;

E. In the event of voluntary liquidation, or appointment of a conservator or receiver for the institution, the holders of the common stock shall receive no payments until the holders of preferred stock shall have been paid in full such amount as may be provided in the articles of incorporation or bylaws, such amount not to exceed the purchase price of such preferred stock plus all accumulated dividends; and

F. Preferred stock may be convertible into any other class of stock having a liquidation or dividend preference less than that of the stock converted.

4. Retirement of preferred stock; dividend on common.

A. Preferred stock shall be subject to retirement in such manner and under such conditions as may be provided for in the articles of incorporation or bylaws; provided that the retirement price shall not be in excess of the purchase price thereof plus all accumulated dividends thereon.

B. Prior to or simultaneously with the retirement of preferred stock, the institution may declare without further action on the part of the holders of stock of any class or on the part of the superintendent if the articles of incorporation or amendments thereto so provide, and to the extent necessary to maintain the institution's capital at the minimum required under section 312 the institution shall declare, a dividend:

(1) On the common stock pro rata to the holders thereof, out of its surplus or undivided profits;

(2) In an amount equal to the par value of the preferred stock to be retired; and

(3) Payable in common stock at the time of, or in connection with, such retirement.

5. Provisions affecting shares. The designations, preferences, powers, restrictions, qualifications, terms and provisions affecting shares or classes of stock issued by any institution which shall create 2 or more kinds or

classes of stock, as set forth in its articles of incorporation or amendments thereto, 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 expressly provide to the contrary.

§ 315. Stockholders

1. Meetings, voting rights and powers. Except as otherwise provided in this Title, meetings, voting rights and powers of the stockholders in a financial institution organized pursuant to this chapter shall be as set forth in Title 13-A.

2. Articles of incorporation. The stockholders shall have the right to amend the institution's articles of incorporation in any manner not inconsistent with this Title; provided that such amendments are submitted to the superintendent for written approval prior to their taking effect.

3. Bylaws. Bylaws may be amended and added to by the stockholders, except to the extent limited by the articles of incorporation or unless such power has been reserved to the board of directors. Amendments to the bylaws shall be submitted to the superintendent and shall become effective 10 days after such submission unless the superintendent shall otherwise indicate to the institution.

4. Proceedings when capital stock impaired; assessments on common stock. Notwithstanding any provision in Title 13-A to the contrary, the following provisions shall operate when the capital stock of a financial institution is impaired:

A. When the capital stock shall become impaired by losses or otherwise, the superintendent may ascertain and determine the facts and give notice in writing to such institution to restore the deficiency so appearing within such time as he may order.

B. The directors of such institution shall, unless they determine otherwise by proper vote, forthwith levy a requisition upon the common stock thereof sufficient to restore such deficiency; and shall forthwith notify each common stockholder of such requisition by giving him in hand or mailing to him at his last known address, a written or printed notice which shall state the amount of requisition to be paid by him and the time within which it shall be paid, which time shall not be less than 60 days from the date of such notice.

C. Such requisition shall be due and payable by each stockholder within the time specified in said notice.

D. If the stockholder shall fail to pay the requisition specified in said notice within the time fixed therein, the directors of said financial institution shall have the right to sell at public auction to the highest bidder the common stock of each delinquent stockholder in the manner set forth below:

(1) Notice of such sale shall be published in a newspaper of general circulation in the county where the principal office of said financial institution is located or in such other newspapers as the superintendent may designate, at least once a week for 3 successive weeks; and

(2) A copy of such notice of sale shall be given in hand to such delinquent stockholder or mailed to him at his last known address, at least 10 days before the date fixed for said sale.

E. In lieu of public auction pursuant to paragraph D, the common stock may be sold at private sale in the manner set forth below:

(1) An offer in writing to purchase said stock shall first be obtained and a copy thereof served upon the owner of record of the stock sought to be sold, either personally by giving him in hand a copy of such offer or by mailing the same to him at his last known address; and

(2) If after service of such offer, such owner shall still refuse or neglect to pay such requisition within 2 weeks from the time of the service of such offer, said directors may accept such offer and sell such stock to the person making such offer or to any other person or persons making a larger offer than the amount named in the offer submitted to the stockholder.

F. Stock sold pursuant to paragraphs D and E shall in no event be sold for a smaller sum than the valuation put on it by the superintendent in his determination and requisition, nor for less than the amount of said requisition and the expense of the sale.

G. Out of proceeds from the sale of the stock, the directors shall pay the amount of requisition levied thereon and the necessary costs of sale. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the same null and void, and a new certificate shall be issued by the institution to the purchaser thereof.

H. Any stockholder aggrieved by any action of the superintendent or the directors of such institution under the foregoing provisions may, within 15 days after receiving notice thereof, apply by appropriate proceedings to the Superior Court whose decision, after due hearing, shall be final in the matters complained of.

I. In the event that the directors of any financial institution, upon notification by the superintendent, shall not vote within 10 days after receipt of said notification to make a requisition upon the stock under the foregoing provisions, or shall determine not to make a requisition on such stock, the superintendent or any of the directors of such institution may file a complaint in the Superior Court, setting forth the fact that such capital stock is impaired and asking said court to order a requisition upon the capital stock sufficient to meet the impairment and make the institution solvent. After giving due notice and hearing to all interested parties, the court shall, if it finds the capital stock to be impaired, take the following actions:

(1) Order a requisition to be made upon such stock;

(2) Such requisition when made shall be due and payable by each stockholder to the treasurer of said institution on order of said court within 30 days from the time such order is made;

(3) If any stockholder or stockholders of said institution shall neglect or refuse, after due notice, to pay the requisition ordered within the time specified, a sufficient amount of the capital stock of such stockholder or stockholders may, after due notice given, be sold under the direction of the court to pay such requisition and the costs of sale;

(4) After paying the requisition and costs from the proceeds of such sale, the balance, if any, shall be returned to the delinquent stockholder or stockholders;

(5) If no bidder can be found who will pay for such stock the amount of the requisition due thereon and the costs of the advertisement and sale, the amount previously paid by such stockholder or stockholders and said stock shall be forfeited to the institution; and such stock shall be sold by said institution as the directors shall order, within 6 months from the time of said forfeiture.

J. Nothing contained in this section or in section 615 shall be construed to take away the general rights of creditors to enforce the liability of stockholders in such financial institution, in any manner provided by statute; or the right to proceed against the institution under chapter 36.

§ 316. Board of directors

Except as provided in this section, the management and operations of a financial institution organized under this chapter shall be pursuant to Title 13-A.

1. Directors: number, election, qualifications and term.

A. The number of directors on the board of a stock financial institution shall not be less than 5.

B. At least $\frac{2}{3}$ of the directors provided for shall be residents of this State and any director removing himself from this State shall immediately be replaced if such removal results in a reduction of the number of resident directors below $\frac{2}{3}$.

C. The initial board of directors shall be elected at the first meeting of the incorporators and subscribers provided for in section 313, and the board of directors shall be elected by a vote of the stockholders at each annual meeting thereafter; provided that the articles of incorporation may provide for classification of directors in accordance with Title 13-A, section 705.

D. No person shall be eligible to serve as a director of any stock financial institution unless he is the actual owner of stock in such institution with a par value of at least \$1,000, or is a nominee of a financial institution holding company which holds stock in such institution in such an amount. Qualifying shares may not be encumbered.

E. Directors shall be sworn annually to the proper discharge of their duties, and they shall take an oath that the qualifying shares of stock required in paragraph D are unencumbered and that said shares will remain unencumbered during the term of office. Such a director's oath shall be taken within 60 days of election to office, or such office shall become vacant.

F. The stockholders, at any annual meeting, may elect from the full board of directors an executive committee of not less than 5 members, $\frac{2}{3}$ of whom shall be residents of this State and may delegate to such committee the powers of the directors in regard to the ordinary operations of the business of the institution.

2. Directors: powers and duties.

A. All corporate powers shall be exercised by the board;

B. Directors shall hold regular meetings at least once each month; and

C. The powers of the board may be exercised by the executive committee established pursuant to subsection 1, paragraph F at all times when the board of directors is not in session, subject always to any specific vote of the board. The executive committee shall keep full minutes of all business transacted by them and shall make such reports of their transactions at each monthly meeting of the board as the board or the superintendent may require.

3. Amendment of articles of incorporation and bylaws. The articles of incorporation and the bylaws of a stock financial institution may be amended and modified in the manner set forth in Title 13-A, except that prior to amendment of the articles becoming effective, the superintendent's written approval of such amendments must be obtained by the institution. Amendments to the bylaws shall be submitted to the superintendent and shall become effective 10 days after such submission unless the superintendent shall indicate otherwise to the institution.

§ 317. Officers and employees

Except as provided in this section, the powers and duties of officers and directors of a financial institution organized under this chapter shall be pursuant to Title 13-A.

1. Election. Unless another manner for election is provided in the bylaws, the board of directors shall elect annually from its members a chairman and, from its members or otherwise, a president, one or more vice presidents, a clerk or secretary, a treasurer and such other officers as it may deem advisable. Any 2 offices may be held by the same person. Officers so elected shall serve for a term of not more than one year, but shall continue in office until their successors are elected and qualified. If any office becomes vacant during the year, the board may immediately fill the same for the period remaining until the next annual meeting for election of officers.

2. Compensation. The compensation of officers shall be fixed by the board of directors.

3. Powers of officers. Each officer shall have such powers as the bylaws may provide or as may be delegated by the board. In addition, an officer may exercise the powers set forth below:

A. Chairman. The chairman of the board shall preside at all meetings of the stockholders and the board of directors, unless otherwise provided in the bylaws.

B. President. The president shall preside, in the absence of a chairman of the board of directors, at all meetings of the stockholders and the board of directors, unless otherwise provided in the bylaws.

C. Clerk or secretary.

(1) The clerk or secretary shall record or cause to be recorded the proceedings and actions of all meetings of the stockholders or directors, and give or cause to be given all notices required by law or action of the directors for which no other provision is made. If no person is elected to this office, the treasurer, or in his absence another officer of the institution designated by the directors, shall be ex officio clerk of the institution and of the directors.

(2) Within 30 days after the annual meeting of the board for election of officers, the clerk shall cause to be published in a local newspaper of general circulation in the county where the institution's principal office is located, or in such other newspapers as the superintendent may designate, a list of the officers and directors thereof. He shall return a copy of such list of officers and directors to the superintendent within said 30 days which shall be kept on file in the superintendent's office for public inspection.

(3) The clerk or secretary, in the absence of a provision in the bylaws to the contrary, shall perform the functions of clerk in accordance with Title 13-A, section 304.

D. Written instruments. All conveyances, leases, assignments, releases, transfers of stock certificates and registered bonds, and all other written instruments authorized or required by law or vote of the directors, may be executed by the president or treasurer, or by any other officials authorized and empowered by the bylaws of the institution or duly recorded vote of the directors.

4. Oath of office. Each officer, upon taking office, shall take and subscribe to an oath that he will faithfully and impartially discharge the duties of his office, and that he will not knowingly violate, or permit to be violated, any provisions of law applicable to such institution. If an officer shall fail to take such oath, the board may declare his office vacant. If an officer shall violate his oath, the board, after affording him opportunity to be heard, may declare his office vacant by a vote of $\frac{2}{3}$ of the directors present at any meeting of the board; provided that each director has been given notice of such meeting.

5. Bonds. The directors shall require security for the fidelity and faithful performance of duties by its officers, employees and agents, in such amount as the directors shall deem necessary or as the superintendent may require. Such security shall consist of a bond executed by one or more surety companies authorized to transact business in this State. The superintendent may increase such amount from time to time as circumstances may require. The expense of such bond shall be assumed by the institution.

6. Removal of officers or employees. Any officer or employee may be removed by the board of directors whenever in its judgment the best interests of the institution will be served thereby, but the removal shall be without prejudice to the contract rights, if any, of the person so removed.

CHAPTER 32
ORGANIZATION AND MANAGEMENT OF
MUTUAL INSTITUTIONS

§ 321. Applicability of chapter

The provisions of this chapter shall govern the organization and management of trust companies, savings banks and savings and loan associations operating as mutual financial institutions.

§ 322. Permission to organize

1. Organizers. Any number of persons, but not less than 20, all of whom shall be residents of this State, may agree in writing to associate themselves for the purpose of forming a mutual financial institution pursuant to this chapter.

2. Application to organize. The organizers set forth in subsection 1 shall file with the superintendent an application for permission to organize a mutual financial institution, which application shall contain the following:

A. The name by which the institution shall be known;

B. The purpose for which it is to be formed, including whether the organizers seek a certificate of public convenience and advantage to conduct business as a trust company, savings bank or savings and loan association in mutual form;

C. The city or town within this State where the institution's principal office is to be located;

D. The proposed minimum amount of initial capital contributions to be deposited;

E. The names, addresses and occupations of the directors of the institution who are to serve until the initial meeting of the members or corporators or until their successors are elected and qualified, and the names, addresses and occupations of the directors who shall be voted on by the members or corporators at the initial meeting;

F. A statement setting forth the name, address, and occupation of each organizer, together with the amount of initial capital which such organizer shall deposit, subscribed to by said organizer; and

G. Such additional information, including the reasons why an institution of the type specified in paragraph B is needed in the proposed location, as the superintendent may require by regulation.

No application for permission to organize a mutual institution shall be deemed complete unless accompanied by an application fee of \$1,000, payable to the Treasurer of State, to be credited and used as provided in section 214.

3. Publication of notice. After determining that the application required in subsection 2 is complete, the superintendent shall advise the organizers to

publish within 15 days of such advice, a notice in such form as the superintendent may prescribe. Such notice shall appear at least once a week for 3 successive weeks in one or more newspapers of general circulation in the county where the financial institution is to be established, or in such other newspapers as the superintendent may designate. Such published notice shall specify the names, addresses and occupations of the organizers and directors, the type of institution to be organized, and the name of the institution and its location, as set forth in the application for permission to organize. The superintendent may require individual notice to any person or corporation, and may require that one of such publications contain the information required under section 252, subsection 2.

4. Permission from superintendent.

A. Within 10 days after first publication of the notice required in subsection 3, the organizers shall apply to the superintendent for a certificate that public convenience and advantage will be promoted by the establishment of a financial institution of the type set forth in their application.

B. In determining whether public convenience and advantage will be promoted by granting permission to organize the type of institution requested, the superintendent shall make his decision in accordance with section 253 pursuant to the procedures set forth in section 252.

C. A grant of a certificate of public convenience and advantage and permission to organize may include such terms and conditions as the superintendent deems necessary including, but not limited to, an increase in the amount of minimum capital deposits, pursuant to subsection 5.

5. Minimum initial capital contribution deposits.

A. The certificate of public convenience and advantage and the permission to organize, granted in writing by the superintendent, shall set forth the minimum amount of capital deposits which the mutual institution shall have to begin business.

B. The minimum amount of capital deposits shall be determined by the superintendent, but in no event shall it be less than \$100,000.

C. In determining the minimum amount of capital deposits, the superintendent may set different requirements for trust companies, savings banks and savings and loan associations, and may consider such factors as the population of the city or town where the proposed institution is to be located, competition among financial institutions in that locale, and the need to protect depositors and other creditors of the institution.

6. Effect of denial. If the superintendent denies permission to organize or refuses to issue a certificate of public convenience and advantage, the application may be renewed in the manner provided in this section after one year from the date of such denial.

§ 323. Organization

Upon receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 322, the organizers shall comply with the following requirements:

1. Franchise during organization. The organizers set forth in the application for permission to organize, and who subsequently receive permission from the superintendent, shall hold the institution's franchise until such time as the requirements of this section are met or the superintendent determines that said requirements have not been complied with.

2. First meeting: adoption of articles and bylaws.

A. Within 30 days after receipt of a certificate of public convenience and advantage and permission to organize pursuant to section 322 the first meeting of the organizers of the financial institution shall be called by a notice signed by that organizer who was designated in the application for that purpose, or by a majority of the organizers. Such notice shall state the time, place and purposes of the meeting. A copy of the notice shall be given to each organizer at least 3 days before the date appointed for the meeting, or left at his residence or usual place of business, or deposited in the post office and addressed to him at his residence or usual place of business, and another copy thereof, together with an affidavit of one of the organizers that the notice has been duly served, shall be recorded with the records of the institution. If all the organizers shall, in writing indorsed upon the application to organize, waive such notice and fix the time and place of the meeting, no notice shall be required.

B. At the first meeting and thereafter, the organizers of a mutual trust company and a mutual savings bank shall be known as the "corporators" and the organizers of a mutual savings and loan association shall be known as the "incorporators".

C. At such meeting or at any adjournment thereof, the corporators or incorporators shall by ballot select a temporary clerk, adopt the articles of incorporation and bylaws of the institution and, in such manner as the bylaws may determine, elect directors, a president, a clerk and such other officers as the bylaws may prescribe. All persons so elected shall qualify for their offices as provided in sections 326 and 327.

D. The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

E. Within 10 days after adoption of the articles of incorporation and bylaws, the clerk shall file with the superintendent copies thereof; and, within 15 days after receipt, the superintendent shall, after examining such articles and bylaws for conformance with the requirements of this Title, approve or disapprove of such articles and bylaws.

3. Submission to Secretary of State. Following the meeting required under subsection 2, the directors so elected shall submit an attested copy of the institution's articles of incorporation to the Secretary of State, who shall determine whether such articles satisfy the requirements of Title 13-A. If such requirements are met and the superintendent has approved said articles, the Secretary of State shall file the articles of incorporation pursuant to Title 13-A, chapter 4. The filing of the articles of incorporation by the Secretary of State shall not authorize the transaction of business by the financial institution until all conditions of this section are satisfied.

4. Payment of capital deposits.

A. A financial institution organized under this chapter shall not commence business until the minimum capital deposits required in its permission to organize have been deposited to the credit of the financial institution in a depository designated by the directors;

B. At such time as the institution has received to its credit the minimum capital deposits required in section 322, subsection 5, a complete list of the capital depositors, with the name, address, occupation and the amount of capital deposited by each shall be filed with the superintendent, which list shall be verified by the president and clerk of the institution. Such deposits shall be handled by the institution in accordance with section 324.

5. Certificate to commence business.

A. Upon receipt of the statement required in subsection 4, the superintendent shall cause an examination to be made to determine if the minimum capital deposits have been credited to the account of the institution as he may determine and that all requirements of this section and other provisions of law have been complied with.

B. Upon completion of his examination, and if the requirements of paragraph A are met, the superintendent shall issue a certificate authorizing the financial institution to begin transacting the business of a financial institution of the type as set forth in its articles of incorporation. Such certificate shall be conclusive of the facts stated therein and it shall be unlawful for any such mutual financial institution to begin transacting business until such a certificate has been granted.

6. Failure to commence business.

A. Any mutual financial institution which fails to commence business as a financial institution within one year after receiving a certificate of public convenience and advantage shall forfeit said certificate and any certificate to commence business so obtained and shall cease all activities, which fact shall be certified to the Secretary of State by the superintendent so that the institution's articles of incorporation may be terminated by said Secretary of State.

B. Upon any such forfeiture, the contributors of initial capital deposits of such institution shall be entitled to return of any amounts which they have paid to the institution and all expenses incurred in the organization shall be borne by the original organizers who were named in the application for permission to organize.

C. Upon failure to commence business within one year and forfeiture of permission to organize and any certificate to commence business so obtained, the organizers may not submit another application for permission to organize a financial institution under sections 312 or 322 for at least one year from the date of such forfeiture.

D. Notwithstanding the time limitation in paragraph A, the superintendent may extend the period in which business shall be commenced for a

period not to exceed 6 months upon written application by the institution setting forth the reasons for such extension. If an extension is granted by the superintendent, the Secretary of State shall be so notified by the superintendent.

§ 324. Corporate finance

1. Initial capital deposits.

A. The initial capital deposits required under section 323, subsection 4, for commencing business shall be paid into an account of the institution known as the "capital reserve" account.

B. The institution shall record on its books the amount which each capital depositor has contributed to such capital reserve and such amounts shall be evidenced by a certificate issued to the contributor thereof.

C. Dividends or interest may be paid upon the amounts standing to the credit of each owner of a proportionate interest in the capital reserve, in accordance with the terms of the deposit agreement, but in no event shall such dividends or interest be in excess of the maximum rate paid on shares or accounts of the institution for the same period.

D. The capital reserve established pursuant to this section shall be used as a guarantee against losses, contingencies and impairments of capital, and all losses and expenses not otherwise absorbed shall be charged against it until such time as the conditions in subsection 2 are met; provided that the amount credited to each contributor shall be reduced only by its proportionate share of such losses or expenses.

E. The capital reserve shall be subordinate to all other deposits or share accounts of the institution.

F. The capital contribution standing to the credit of each capital depositor in the capital reserve of the institution shall be transferable, together with any interest or dividends credited thereon, subject to the conditions and restrictions of this section.

2. Return of initial capital deposit. The initial capital deposits, together with any dividends or interest credited thereon, may be returned, pro rata, to the contributors, or their heirs, executors, administrators or assigns, subject to the following conditions and limitations:

A. Prior to return of all or part of the initial capital reserve, the institution shall obtain the superintendent's approval for such return;

B. A return of all or part of the capital reserve shall not reduce the institution's guaranty fund, established pursuant to sections 513, 612 or 713, below the greater of the total initial capital contributions or an amount equal to 5% of the institution's deposits or accounts;

C. Upon release and return, the contributor's proportionate share of the amount to be returned shall be credited in his name to a share account or deposit in such institution, and the contributor shall then be entitled to all rights and privileges, and shall be subject to all duties and liabilities, connected with such share account or deposit;

D. In the event of the liquidation of an institution before such contributions have been repaid in full, any portion of such contributions not required for the repayment of the expenses and the payment of creditors and other depositors in full, pursuant to section 365, may be repaid pro rata to the initial capital depositors.

3. Capital debentures as capital reserve. Subject to prior approval of the superintendent, a financial institution may issue capital notes or debentures, the proceeds from the sale of which may be used in lieu of capital deposits to establish part of the capital reserve required in subsection 1, provided that:

- A. Such capital notes or debentures are issued pursuant to section 413;
- B. Such notes or debentures are subject to conditions governing the repayment of principal and interest which are comparable to the requirements governing return of initial capital deposits as set forth in subsection 2; and
- C. Repayment of the principal amount of such capital notes or debentures issued pursuant to this section shall have priority over the return of any initial capital deposits in the capital reserve account pursuant to subsection 2.

§ 325. Corporators and members

1. Corporators of trust companies and savings banks.

A. The persons named in the articles of incorporation shall constitute the original board of corporators of a mutual trust company or mutual savings bank. Membership on such board shall continue until terminated by death, resignation or disqualification as provided herein.

B. Corporators shall retire from membership on the board of corporators upon reaching 72 years of age. This paragraph shall become effective 2 years after the effective date of this section, and any corporator who is 72 years of age or older shall immediately retire from such board on the effective date of this paragraph.

C. All corporators shall be residents of this State, and no person shall continue as a corporator of a mutual trust company or mutual savings bank after ceasing to be a resident of this State.

D. Any corporator failing to attend the annual meeting of the board of corporators for 2 successive years shall cease to be a member of the board unless reelected by a vote of the remaining corporators.

E. The number of corporators may be fixed or altered by the bylaws of the institution, and vacancies may be filled by election at any annual meeting.

F. The superintendent shall have the power to comment upon the sociological composition of the board of corporators of any mutual trust company or mutual savings bank, such comment to be made in such form and manner as the superintendent deems appropriate.

2. Members of a savings and loan association; qualifications and voting rights.

A. The members of a savings and loan association organized pursuant to this chapter shall be those in whose names accounts are established, and persons borrowing from or assuming or obligated upon a loan held by such institution or purchasing property and assuming the secured loan held by such institution.

B. A single membership in an association may be held by 2 or more persons, and a joint and survivorship relationship and successor relationship, whether investors or borrowers, shall constitute a single membership.

C. Each member 18 years of age or over shall be entitled to one vote at any meeting of the association, regardless of the number of shares or accounts standing in his name; provided that only one vote shall be allowed on an account held by 2 or more persons. No member shall vote by proxy at any meeting, unless otherwise provided in this Title. The bylaws may prohibit voting by persons who have become members within 6 months of the date when the vote is cast. When accounts or shares are pledged, the pledgor may vote thereon.

D. Membership shall terminate when the amount of a member's shares or accounts has been paid in full to him, or when the transfer of his membership to other persons has been recorded on the books of the institution, or when his status as a borrower from the institution terminates.

3. Powers and duties of corporators and members.

A. Annual meetings. Corporators or members shall hold regular annual meetings, at a time fixed in the bylaws of the institution, for the purpose of electing directors of the institution and for the transaction of any other business which may properly be brought before such meeting.

B. Special meetings. Special meetings of the corporators or members may be called at any time by the president of the institution, or in any other manner provided for in the bylaws.

C. Notice. At least 7 days' notice of the annual meeting shall be given by public advertisement in a newspaper of general circulation in the county where the principal office of the institution is located, or in such other newspapers as the superintendent may designate; provided that corporators or members shall also be sent notice by mail at their last known address. Notice of any special meeting, stating therein the purpose for which such meeting is called, shall be mailed to each corporator or member at his last known address, at least 7 days prior to such special meeting.

D. Quorum. The bylaws may prescribe the number of corporators or members which shall constitute a quorum at any annual or special meeting. In the absence of such provision, any number of corporators or members, but not less than 6, shall constitute a quorum.

E. Place. Meetings of the corporators or members shall be held at the institution's principal office, or at such other place in the area of this State served by the institution as the notice shall designate.

4. Articles of incorporation. The corporators or members shall have the right to amend the institution's articles of incorporation in any manner not inconsistent with this Title; provided that such amendments are submitted to the superintendent for his written approval prior to their taking effect.

5. Bylaws. Bylaws may be amended and added to by the corporators or members of the institution except to the extent limited by the articles of incorporation or unless such power has been reserved by the articles of incorporation or granted by the corporators to the board of directors. Amendments to the bylaws shall be submitted to the superintendent and shall become effective 10 days after such submission unless the superintendent shall otherwise indicate to the institution.

§ 326. Board of directors

Except as provided in this section and section 327, the management and operations of a financial institution organized under this chapter shall be pursuant to Title 13-A.

1. Directors: number, election, qualifications and term.

A. The number of directors on the board of a mutual financial institution shall not be less than 5, all of whom must be residents of this State.

B. The initial board of directors shall be elected at the first meeting of the corporators or the incorporators as provided for in section 323, and the board of directors shall be elected by a vote of the corporators or members at each annual meeting thereafter; provided that the articles of incorporation may provide for classification of directors in accordance with Title 13-A, section 705.

C. Vacancies on the board occurring during the year may be filled by the board until the next annual meeting of the corporators or members, who shall elect a director at such time to fill such position for the remainder of the term. Any vacancy which causes the number of directors to fall below the minimum required in paragraph A or in the institution's bylaws shall be filled immediately.

D. Each director, upon taking office, shall take and subscribe to an oath that he will faithfully and impartially discharge the duties of his office and that he will not knowingly violate, or permit to be violated, any provisions of law applicable to such institution. If a director shall fail to take such oath, the board may declare his office vacant. If a director shall violate his oath, the board, after affording him opportunity to be heard, may declare his office vacant by a vote of $\frac{2}{3}$ of the other directors present at any meeting of the board; provided that each director has been given notice of the purpose, time and place of such meeting.

E. The compensation of directors, which may include provision for payment of medical, surgical and hospital expenses due to accident or illness in the same manner as provided for officers and employees, may be fixed by the corporators or members at any legal meeting thereof, or, subject to the written approval of the superintendent, such may be fixed by the board of directors.

F. Directors of all mutual financial institutions shall retire from membership on the board of directors upon reaching 72 years of age. This paragraph shall become effective 2 years after the effective date of this section, and any director who is 72 years of age or older shall immediately retire from such board on the effective date of this paragraph.

G. The superintendent shall have the power to comment upon the sociological composition of the board of directors of any financial institution organized under this chapter, such comment to be made in such form and manner as the superintendent deems appropriate.

2. Meetings of the directors.

A. The directors shall hold at least one meeting per month at a time fixed in the bylaws.

B. A quorum at any meeting shall consist of not less than a majority of the board, but less than a quorum shall have power to adjourn from time to time until the next duly called meeting.

C. Full and complete records of all meetings of the board shall be kept and maintained.

3. Powers and duties of the board.

A. The board of directors may exercise any and all powers of an institution not expressly reserved to the incorporators or members by this Title or by the institution's articles or bylaws.

B. The directors shall see that all funds of the institution are invested only in accordance with the sections of this Title governing the type of institutions of which they are directors.

C. The board of directors may, in its discretion and so far as is consistent with its duties, appoint an executive committee from its members, such committee to conduct the business of the institution between meetings of the board; provided that all transactions of such executive committee shall be reported to the directors at their next meeting and incorporated into the records of such meetings.

D. The board may employ, or authorize any officer to employ, any persons necessary to conduct the business of the institution.

E. Bylaws not inconsistent with this Title governing the management and operations of the institution may be adopted by the board of directors consistent with the provisions of section 325, subsection 5; provided that a copy of such and any amendments thereto shall be submitted by the institution to the superintendent, and shall become effective 10 days after such submission unless the superintendent shall indicate otherwise to the institution.

§ 327. Officers and employees

Except as provided in this section, the powers and duties of officers and directors of a financial institution organized under this chapter shall be pursuant to Title 13-A.

1. Election. Unless another manner for election is provided in the bylaws, the board of directors shall elect annually from its members a chairman and, from its members or otherwise, a president, one or more vice presidents, a clerk or secretary, a treasurer and such other officers as it may deem advisable. Any 2 offices may be held by the same person. Officers so elected shall

serve for a term of not more than one year, but shall continue in office until their successors are elected and qualified. If any office becomes vacant during the year, the board may immediately fill the same for the period remaining until the next annual meeting for election of officers.

2. Compensation. The compensation of officers shall be fixed by the board of directors.

3. Powers of officers. Each officer shall have such powers as the bylaws may provide or as may be delegated by the board. In addition, an officer may exercise the powers set forth below:

A. Chairman. The chairman of the board shall preside at all meetings of the corporators or members and the board of directors, unless otherwise provided in the bylaws.

B. President. The president shall preside, in the absence of a chairman of the board of directors, at all meetings of the corporators or members and the board of directors, unless otherwise provided in the bylaws.

C. Clerk or secretary.

(1) The clerk or secretary shall record or cause to be recorded the proceedings and actions of all meetings of the corporators, members or directors, and give or cause to be given all notices required by law or action of the directors for which no other provision is made. If no person is elected to this office, the treasurer, or in his absence another officer of the institution designated by the directors, shall be ex officio clerk of the institution and of the directors.

(2) Within 30 days after the annual meeting of the board for election of officers, the clerk shall cause to be published in a local newspaper of general circulation in the county where the institution's principal office is located, or in such other newspapers as the superintendent may designate, a list of the officers and directors thereof. He shall return a copy of such list of officers and directors to the superintendent within said 30 days which shall be kept on file in the superintendent's office for public inspection.

(3) The clerk or secretary, in the absence of a provision in the bylaws to the contrary, shall perform the functions of clerk in accordance with Title 13-A, section 304.

D. Written instruments. All conveyances, leases, assignments, releases, transfers of stock certificates and registered bonds, and all other written instruments authorized or required by law or vote of the directors, may be executed by the president or treasurer, or by any other official authorized and empowered by the bylaws of the institution or duly recorded vote of the directors.

4. Oath of office. Each officer, upon taking office, shall take and subscribe to an oath that he will faithfully and impartially discharge the duties of his office, and that he will not knowingly violate, or permit to be violated, any provisions of law applicable to such institution. If an officer shall fail to take such oath, the board may declare his office vacant. If an officer shall violate

his oath, the board, after affording him opportunity to be heard, may declare his office vacant by a vote of $\frac{2}{3}$ of the directors present at any meeting of the board; provided that each director has been given notice of such meeting.

5. Bonds. The directors shall require security for the fidelity and faithful performance of duties by its officers, employees and agents, in such amount as the directors shall deem necessary or as the superintendent may require. Such security shall consist of a bond executed by one or more surety companies authorized to transact business in this State. The superintendent may increase such amount from time to time as circumstances may require. The expense of such bond shall be assumed by the institution.

6. Removal of officers or employees. Any officer or employee may be removed by a vote of $\frac{2}{3}$ of the directors present at a duly called meeting whenever in its judgment the best interests of the institution will be served thereby, but the removal shall be without prejudice to the contract rights, if any, of the person so removed.

CHAPTER 33

BRANCHES

§ 331. Applicability of chapter; statewide branching

1. Applicability. The provisions of this chapter shall govern the establishment of a branch office, agency or facility by a financial institution subject to the laws of this State.

2. Statewide branching. Subject to the conditions and limitations contained in this chapter, a financial institution may establish a branch office or facility anywhere within this State.

§ 332. Branch offices

1. Directors' approval. All or any part of the business of a financial institution authorized pursuant to the provisions of this Title may be transacted in a branch or agency office, as defined in section 131 if the board of directors of such institution decides accordingly.

2. Superintendent's approval. No such financial institution shall establish a branch or agency office without prior approval of the superintendent, such approval to be obtained pursuant to section 336.

§ 333. Limited-time or seasonal branch offices

1. Directors' approval. A financial institution may transact all or any part of its business in a limited-time or seasonal branch office, as defined in section 131, if the board of directors decides accordingly.

2. Superintendent's approval. No financial institution shall establish a limited-time or seasonal branch office without prior approval of the superintendent, such approval to be obtained pursuant to section 336.

3. **Restrictions.** A limited-time or seasonal branch office of a financial institution shall not be established in any location served by a full-time branch office of such financial institution, or of another financial institution of the same type or within the primary service area of a full-time branch office of another financial institution of the same type; provided that the existence of a limited-time or seasonal branch office shall not preclude the establishment of a full-time branch office in the same area, nor shall the establishment of such full-time office preclude the continuing operation of a previously established limited-time or seasonal branch office.

4. **Conversion to different type office.** A limited-time or seasonal branch office may become a full-time branch office with the prior approval of the superintendent pursuant to section 336. A full-time branch office may become a limited-time or seasonal branch office with the prior approval of the superintendent pursuant to section 336; provided that the conditions set forth in subsection 3 shall be applicable to such change in the type of branch office.

§ 334. Satellite facilities

1. **Superintendent's approval.** A financial institution may establish or participate in the establishment of a satellite or off-premise facility, as defined in section 131; provided that no such facility shall be established without prior approval of the superintendent, pursuant to section 336. Such facilities are branches for the purpose of this Title.

2. **Manned or unmanned facility permitted.** A satellite facility may be unmanned and operated by the customer himself. Such a facility may be located in the premises of an establishment that is not a financial institution and may be manned by an employee of such establishment.

3. **Ownership.** Such facility may be wholly or partly owned by the institution; or may be owned by 2 or more such financial institutions; provided that the superintendent shall approve such joint ownership.

4. **Access by other institutions.** Any satellite facility established by a financial institution shall be made available for use by other financial institutions authorized to do business in this State; provided that any institution seeking to use a satellite facility established by another institution shall obtain the prior approval of the superintendent, pursuant to section 336, for such use; and provided further that any institution receiving permission to use such satellite or off-premise facility shall share in the cost thereof.

5. **Location of facilities on premises.** Nothing shall preclude a financial institution from locating an electronic terminal on the premises of its main office or of a branch office for its customers' convenience. Access by other financial institutions to such on-premise facilities shall be at the discretion of said financial institution.

§ 335. Change of office location; closing of an office

1. **Relocation.** No main office, branch or agency office or facility of a financial institution may be moved to a new location without the prior written approval of the superintendent, pursuant to section 336.

2. Closing. Any branch or agency office or facility may be closed or discontinued with the prior written approval of the superintendent pursuant to section 336 after such public notice of the closing as the superintendent deems necessary.

§ 336. Approval powers of superintendent

1. Application required. Approval for the establishment, moving or closing of a branch or agency office or facility authorized by this chapter shall be requested by the board of directors of an institution by filing an application for permission relating thereto with the superintendent in such form and manner and containing such information as the superintendent may prescribe.

2. Application requirements. The superintendent may establish different application requirements according to the type of branch office or facility involved and the operations conducted thereat, and may permit joining of applications for the same types of branch offices or facilities; provided that the same requirements shall be applied to each application for the same type of branch office or facility.

3. Application fee. No action shall be taken on an application unless it is accompanied by a fee, to be credited and used as provided in section 214. The amount of the fee shall be established by the superintendent according to different application requirements, but in no instance shall it exceed \$500.

4. Decision-making criteria. The superintendent shall approve or disapprove an application under this chapter in accordance with the requirements of section 252; and the superintendent may condition approval of such application, as necessary, to conform with the criteria as set forth in section 253.

5. Approvals; time extensions. If the superintendent approves an application to establish and operate a branch or agency office or facility, copies of the grant of authority shall be filed with the Secretary of State and shall be furnished to the applicant institution. Such grants of authority shall lapse if, within one year of its issuance, the facility authorized thereunder has not opened and business has not begun in good faith, unless the superintendent has granted in writing an extension of time, not to exceed 6 months. Additional extensions may be granted by the superintendent for good cause shown, and no fee shall be required for such extensions.

6. Notice of opening. Within 5 days after an approved branch office or facility has opened for business, a certificate of such opening signed by the president and the clerk or secretary of the institution shall be filed with the superintendent and the Secretary of State.

§ 337. Real estate for offices and facilities

1. Authority. A financial institution may invest in improved or unimproved real estate, and in the erection or improvement of buildings thereon, together with fixtures for the purpose of providing offices or facilities for transaction of the institution's authorized business; and such buildings may include space for rental purposes.

2. Limitations. Real estate investments pursuant to subsection 1 shall not exceed 50% of its total capital and reserves in the case of an institution or-

ganized pursuant to chapter 31, or 50% of its surplus account in the case of an institution organized pursuant to chapter 32; provided that the superintendent may approve in writing, upon application by an institution and for good cause shown, a greater percentage.

§ 338. Operating hours: branch offices and facilities

1. Permissible operating hours. A financial institution authorized to do business in the State may permit any of its branch offices, facilities, or walk-up or drive-up windows of its main office or branch offices to remain open, or open for limited functions only, during such hours as it may determine from time to time, after its main office is closed. Any hours in which said branch office, facility, or walk-up or drive-up window of its main office or branch office is open for limited functions only after its main office is closed shall be, with respect to such institution, a holiday and not a business day.

2. Limitation on liability. Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution during hours at which said branch office, facility, or walk-up or drive-up window of its main office or branch office is open for limited functions only after its main office is closed may be so performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay.

3. Validity of transactions. Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument or any other transaction by a financial institution in this State because done or performed during such hours in which a branch office, facility, or walk-up or drive-up window of its main office or branch is open for limited functions only after its main office is closed.

§ 339. Prohibited branches

1. Mobile branches. Nothing contained in this Title shall be construed as permitting a financial institution to establish or operate a mobile branch office or facility, as defined in section 131, and operation of such a branch by a financial institution is expressly prohibited by this section.

2. Branches in other States.

A. Nothing contained in this Title shall be construed as permitting a financial institution to establish a branch office or facility in any State other than the State of Maine, and no financial institution not authorized to do business in this State shall establish or operate a branch office or facility in the State of Maine.

B. The operation of such a branch office or facility by such financial institution or institutions is expressly prohibited by this section.

CHAPTER 34

CHANGES IN CHARTER AND OWNERSHIP FORM

§ 341. Applicability of chapter; fees

1. Applicability. The provisions of this chapter shall apply whenever a financial institution subject to the laws of this State seeks to convert or amend

its charter in order to change its chartering authority, adopt the powers granted by this Title to another type of institution, change to a different form of ownership, or adopt a new corporate name for the institution.

2. Fees. No application made pursuant to section 342, subsections 1, 2 or 5 or sections 343, 344, 345 or 346, shall be deemed complete by the superintendent unless accompanied by an application fee of \$1,000 payable to the Treasurer of State to be credited and used as provided in section 214.

§ 342. Conversion to new charter: Federal to State;
State to Federal

1. Federal savings and loan to State thrift institution. Any federally-chartered savings and loan association may convert to a savings bank or savings and loan association organized under the laws of this State in the following manner:

A. At an annual meeting or a special meeting called for that purpose, 51% or more of the members or shareholders present and voting must approve of such conversion. Notice of such meeting shall be mailed to each member or shareholder not less than 20 nor more than 30 days prior to such meeting at his last known address as shown on the books of the institution.

B. At the meeting required in paragraph A, the members or shareholders shall vote upon directors who shall be the directors of the state-chartered institution after conversion becomes effective, and also vote upon corporators if the state-chartered institution is to be a mutual savings bank.

C. Within 10 days after such meeting, a copy of the minutes of such meeting, verified by affidavit of the clerk or secretary, together with such additional information as the superintendent may require, shall be submitted to the superintendent for his approval or disapproval in writing of the proposed conversion pursuant to the procedures and requirements of section 252. The verified copies of the minutes of the meeting when so filed shall be presumptive evidence of the holding and action of such meeting.

D. Copies of the minutes of such meeting of members or shareholders, verified by affidavit of the clerk or secretary, and copies of the superintendent's written approval shall be mailed to the Federal Home Loan Bank Board within 10 days after such approval.

E. Following compliance with all applicable requirements of Federal law, if any, the directors elected pursuant to paragraph B shall execute 3 copies of the articles of incorporation upon which the superintendent shall endorse his approval and such articles shall be filed in accordance with the provisions of sections 313 or 323. Each director shall sign and acknowledge the articles, as a subscriber thereto; and

F. So far as applicable, the provisions of this Title shall apply to the resulting institution.

2. National bank to trust company. A national bank authorized to do business in this State may convert to a trust company organized under the laws of this State in the following manner:

A. Such national bank must comply with the conditions and limitations imposed by the laws of the United States governing such conversion;

B. Such converting national bank may apply for a State charter by filing with the superintendent an application signed by its president and by a majority of its board of directors setting forth the corporate action taken in compliance with the laws of the United States in paragraph A, and affixing thereto the articles of incorporation, approved by the stockholders, governing the bank as a trust company;

C. The superintendent shall approve or disapprove such conversion to a State-chartered trust company pursuant to the procedures and requirements of section 252.

D. The rights of dissenting stockholders of a converting national bank shall be governed by federal law.

3. Thrift institution to Federal savings and loan. A savings bank or savings and loan association organized under the laws of this State may convert to a Federal institution pursuant to section 5 of the Home Owners' Loan Act of 1933, as amended, in the following manner:

A. At an annual meeting, or a special meeting called for that purpose, 51% or more of the votes of members, corporators or shareholders present and voting must approve such conversion. Notice of such meeting shall be mailed to each member, corporator or shareholder not less than 20 nor more than 30 days prior to such meeting at his last known address as shown on the books of the institution.

B. Within 10 days after such meeting, a copy of the minutes of such meeting, verified by affidavit of the clerk or secretary, shall be filed with the superintendent, and when so filed shall be presumptive evidence of the holding and action of such meeting.

C. Within 3 months after the date of such meeting, the institution shall take such action in the manner prescribed and authorized by the laws of the United States as shall make it a Federal savings and loan association.

D. Upon the grant to an institution of a charter by the Federal Home Loan Bank Board, the institution receiving such charter shall cease to be an institution organized pursuant to this Title and shall no longer be subject to supervision and regulation by the superintendent, except as authorized under Federal law or regulations or as otherwise provided herein.

E. A copy of the charter issued to such Federal savings and loan association by the Federal Home Loan Bank Board, or a certificate showing the organization of such institution as a Federal association, certified by the secretary or assistant secretary of the Federal Home Loan Bank, shall be filed immediately with the superintendent and with the Secretary of State. The superintendent shall notify the Secretary of State that such conversion has been effected.

4. Trust company to national bank.

A. Nothing contained in the laws of this State shall restrict the right of a trust company to convert to a national bank. The action to be taken by a

converting trust company and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of such action by the laws of the United States and not by the laws of this State, except that a vote of the holders of $\frac{2}{3}$ of each class of voting stock of a trust company shall be required for the conversion, and that, on conversion to a national bank, the rights of dissenting stockholders shall be those specified in section 352, subsection 5;

B. Upon completion of the conversion, the trust company shall certify, in writing, that such conversion has been completed under applicable Federal law. At such time as the superintendent receives such writing, the franchise of the converting trust company shall terminate automatically, which fact shall be certified by the superintendent to the Secretary of State.

5. Other conversions. The superintendent is authorized to promulgate regulations permitting the conversion of savings banks from state to federal charter, and from federal to state charter at such time as Federally-chartered savings banks are authorized to do so pursuant to the laws of the United States.

§ 343. Change in type of institutional charter

With the superintendent's approval, and in accordance with the provisions of this section and regulations promulgated hereunder, a financial institution may convert its charter to do business as one type of financial institution to another, in the following manner:

1. Adoption of a plan. The institution's board of directors shall adopt by a $\frac{2}{3}$ vote of all members, a conversion plan which shall include:

- A. The name of the institution and its location;
- B. The type of the institution which the resulting institution is to be;
- C. A method and schedule for terminating any non-conforming activities which would result from such conversion;
- D. A statement of the competitive impact resulting from such conversion, including the loss of particular financial services, including home mortgage financing, in the market area resulting from such conversion;
- E. A statement that the conversion is subject to approval of the superintendent and the institution's stockholders, corporators or members; and
- F. Such additional information as the superintendent may require, pursuant to regulations or otherwise.

2. Superintendent's approval. Following approval by the board of directors, the conversion plan, together with a certified copy of the authorizing resolution adopted by the board of directors, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 252. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished by the superintendent to the institution, which shall be given an opportunity to amend the plan to obviate such reasons for disapproval.

3. Vote of stockholders, incorporators or members. The conversion plan, as approved by the superintendent, shall be submitted to the stockholders, incorporators, or members for their approval at an annual meeting, or at a special meeting, called for that purpose, pursuant to the requirements of sections 352, subsection 3 or 353, subsection 3. Approval shall require a $\frac{2}{3}$ vote of those entitled to vote thereon.

4. Executed plan; certificate; and effective date.

A. Upon approval by the stockholders, incorporators or members of the institution, the president or vice president and the clerk or secretary shall submit the executed conversion plan to the superintendent, together with all necessary amendments to the institution's articles of incorporation and bylaws, each certified by such officers;

B. The superintendent shall file one copy of the items set forth in paragraph A with the Secretary of State for record, and issue to the resulting institution a certificate specifying the name of the converting institution and the name of the resulting institution. Such certificate shall be conclusive evidence of the conversion, and of the correctness of all proceedings relating thereto, in all courts and places. The certificate may be filed in any office for the recording of deeds to evidence the new name in which property of the converting institution is to be held.

C. Unless a later date is specified in the conversion plan, the action shall become effective upon the issuance of the certificate in paragraph B, and the former charter of the converting institution shall terminate automatically.

5. Effect of disapproval. If the superintendent disapproves the plan, and any modifications thereof, the plan shall not be resubmitted for at least one year following the date of such disapproval.

§ 344. Conversion: mutual to stock ownership

With the superintendent's approval, and in accordance with the provisions of this section and regulations promulgated hereunder, a mutual financial institution may convert to a stock financial institution of the same type charter; provided that such conversion is conducted in a manner equitable to all parties thereto, in the following manner:

1. Adoption of a plan. The institution's board of directors shall adopt, by a $\frac{2}{3}$ vote of all members of the board, a conversion plan, the provisions of which shall comply with the requirements set forth in regulations promulgated by the superintendent and which shall insure that the interests of depositors and account holders in the net worth of the institution are equitably provided for and that such conversion will not have an adverse impact on the stability of any other financial institution.

2. Superintendent's approval.

A. Following approval by the board of directors, the conversion plan, together with a certified copy of the authorizing resolution adopted by the board of directors, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 252, and the requirements set forth in regulations promulgated under this section.

B. Public hearings on the conversion plan may be conducted by the superintendent in the community where the institution has its principal office. Such hearings shall be for the purpose of determining whether the plan provides fair and equitable treatment to the depositors and to the institution. Hearings pursuant to this paragraph may be combined with any hearing on the application that may be scheduled pursuant to section 252.

C. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished to the institution, which shall be given the opportunity to obviate such reasons for disapproval.

3. Account holder approval. The conversion plan, as approved by the superintendent, shall be submitted to the members or eligible account holders of the institution for their approval at an annual meeting or at a special meeting called for that purpose, pursuant to the requirements of section 353, subsection 3, with such information in the notice as the superintendent may prescribe. Approval shall require a $\frac{2}{3}$ vote of all those entitled to vote thereon, and voting at such meeting may be in person, by mail or by proxy. The voting rights of account holders in a mutual savings bank or trust company shall be same as granted to members of a mutual savings and loan association.

4. Executed plan, certificate and effective date. Upon approval of the plan of conversion by the members or eligible account holders, the institution shall comply with section 343, subsection 4 for the conversion to become effective; provided that the superintendent shall determine as a condition precedent to issuing a certificate that all applicable requirements of Federal law, if any, have been complied with by the converting institution.

5. Effect of disapproval. If the superintendent disapproves the plan and any modifications thereof, the plan shall not be resubmitted for at least one year following the date of such disapproval.

6. Superintendent's authority. In implementing this section, the superintendent is hereby authorized to issue any and all rules, regulations and orders necessary to insure that conversion to a stock institution shall be conducted in a fair and equitable manner, so as to insure the safety and soundness of the institution and the protection of the institution's net worth including, but not limited to, restrictions on the transfer or disposition of shares in the resulting institution, or mergers or consolidations by the resulting institution.

§ 345. Conversion: stock to mutual ownership

With the superintendent's approval, and in accordance with the provisions of this section and regulations promulgated hereunder, a stock financial institution may convert to a mutual financial institution of the same type charter; provided that such conversion is conducted in a manner fair and equitable to its depositors and stockholders, in the following manner:

1. Procedure. The method of adopting and approving a plan for a conversion under this section shall be as set forth in section 343, except that a conversion plan authorized pursuant to this section shall make adequate provision for the surplus account of the resulting institution.

2. Dissenting stockholders. The rights of any stockholders not voting for the plan of conversion shall be as set forth in section 352, subsection 5.

§ 346. Change of institutional name

1. Authorization; prohibitions. Any financial institution may change its corporate name to another name; provided that such name is not in violation of the restrictions contained in sections 572, 673 and 711 and provided further that the name selected is not the same or deceptively similar to the name of any other financial institution authorized to do business in this State.

2. Requirements. A change in the name of a financial institution shall require that the following requirements be complied with:

A. An affirmative vote of its stockholders, incorporators or members to amend the name set forth in the institution's articles of incorporation;

B. Duplicate certificates containing the former name and new name, and a copy of the vote to change names signed by the president and clerk or secretary, shall be submitted to the superintendent within 10 days of the vote for his approval or disapproval in accordance with section 252; and

C. The superintendent shall notify forthwith the institution of his decision; and, if he approves the name change, he shall file a certificate with the Secretary of State indicating his approval.

3. Effective date. The name change shall become effective from the time of filing with the Secretary of State, or upon a date subsequent thereto if such date is fixed in the certificate, and shall become the corporate title of the institution thereafter.

4. Continuing entity. The adoption of a new name shall not affect the validity of any acts, transactions or documents wherein the former name was used. All deeds, mortgages, contracts, judgments, proceedings and records made, received, entered into, carried on, or done by an institution before adoption of the change of name, but wherein the institution is called by the name so subsequently adopted, shall be as valid as if the institution was called therein by the name set forth in its original articles of incorporation.

§ 347. Effect of conversion or amendment; nonconforming activities

The financial institution resulting from any action taken pursuant to the authority granted in this chapter shall be subject to the provisions of sections 356, 357 and 358 and shall comply with the requirements thereof and regulations promulgated thereunder.

CHAPTER 35

MERGERS, CONSOLIDATIONS AND ACQUISITIONS

§ 351. Applicability of chapter; fees

1. Applicability. The provisions of this chapter shall govern mergers and consolidations undertaken by savings banks, trust companies, savings and loan associations and industrial banks subject to the laws of this State, and

shall set forth the procedures for, and limitations on, the acquisition of all or substantially all of the assets of such institutions by another institution.

2. Fees. No application made pursuant to sections 352, 353, 354 and 355, shall be deemed complete by the superintendent unless accompanied by an application fee of \$1,500, payable to the Treasurer of State, to be credited and used as provided in section 214.

§ 352. Mergers and consolidations: stock institutions

Any 2 or more stock financial institutions authorized to do business in this State may merge or consolidate into one stock financial institution organized under the laws of this State in accordance with the procedures, and subject to the conditions and limitations, set forth in this section.

1. Adoption of a plan. The board of directors of each participating institution shall adopt, by a majority vote, a plan of merger or consolidation on such terms as shall be mutually agreed upon. The plan shall include:

- A. The names of the participating institutions and their locations;
- B. The type of institution which the resulting institution is to be;
- C. With respect to the resulting institution: the name and location of its principal office, branch offices and facilities; the name, address and occupation of each director who is to serve until the next annual meeting of the stockholders; the name and address of each officer; the amount of capital, the number of shares and the par value of each share; whether preferred stock is to be issued and the amount, terms and preferences relating thereto; and the amendments required to its articles of incorporation and bylaws;
- D. Provisions governing the manner of converting the shares of the participating institutions into shares of the resulting institution;
- E. A statement that the agreement is subject to approval of the superintendent and of the stockholders of each participating institution;
- F. Provisions governing the manner of disposing of shares of the resulting institution not taken by dissenting stockholders of the participating institutions; and
- G. The anticipated effective date of such merger or consolidation; and such other provisions and details as may be necessary to perfect the merger or consolidation, or as may be required by the superintendent.

2. Superintendent's approval. Following approval by the board of directors of each participating institution, the plan of merger or consolidation, together with certified copies of the authorizing resolutions adopted by the board of directors of each participating institution, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 252. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished by the superintendent to the participating institutions, which shall be given an opportunity to amend the plan to obviate such reasons for disapproval.

3. Vote of stockholders. The plan of merger or consolidation, as approved by the superintendent, shall be submitted to the stockholders of the participating institutions for their approval at an annual meeting, or at a special meeting called for that purpose, in the following manner:

A. Notice of such meeting shall be published at least once a week for 3 successive weeks in a newspaper or newspapers of general circulation in the county or counties where each participating institution's principal office is located, or in such other newspapers as the superintendent may designate; and the notice shall be mailed to each stockholder of record at his address on the books of each participating institution at least 15 days prior to the date of said meeting. Notice required hereunder shall state that dissenting stockholders will be entitled to payment only for the value of those shares which are voted against approval of the plan. Published notice may be waived if written waivers are received from the holders of $\frac{2}{3}$ of the outstanding voting shares of each class stock of each participating institution.

B. A $\frac{2}{3}$ vote of the outstanding voting shares of each class of each participating institution shall be necessary to approve the plan of merger or consolidation at the meeting called for such purpose, which vote shall constitute the adoption of the articles of incorporation and bylaws of the resulting institution, including amendments, contained in the merger or consolidation agreement.

4. Executed plan; certificate; and effective date.

A. Upon approval by the stockholders of the participating institutions, the president or vice president and the clerk or secretary of each institution shall submit the executed plan of merger or consolidation to the superintendent, together with the resolutions of the stockholders approving it, each certified by such officers.

B. Upon receipt of the items in paragraph A and evidence that the participating institutions have complied with all applicable federal law and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of the resulting institution and shall file a copy of the certificate and the certified votes with the Secretary of State for record. Such certificate shall be conclusive evidence of the merger or consolidation and of the correctness of all proceedings relating thereto in all courts and places. The certificate may be filed in any office for the recording of deeds to evidence the new name in which property of the participating institutions is to be held.

C. Unless a later date is specified in the certificate, the merger or consolidation shall be effective upon issuance of the certificate in paragraph B, and the franchises of all but the resulting institution shall terminate automatically.

5. Rights of dissenting stockholders.

A. The owners of shares of a financial institution which were voted against a merger or consolidation shall be entitled to receive their value in cash if and when the merger or consolidation becomes effective, upon

written demand made to the resulting institution at any time within 30 days after the effective date of the merger or consolidation, accompanied by surrender of the stock certificates.

B. The value of such shares shall be determined, as of the date of the stockholders' meeting approving the merger or consolidation, by 3 appraisers, one to be selected by the owners of $\frac{2}{3}$ of the shares involved, one by the board of directors of the resulting institution and the 3rd by the 2 so chosen. The valuation agreed upon by any 2 appraisers shall govern. If the appraisal is not completed within 90 days after the merger or consolidation becomes effective, the superintendent shall cause an appraisal to be made. The expenses of appraisal shall be paid by the resulting institution.

C. The resulting institution may fix an amount which it considers to be not more than the fair market value of the shares of the participating institution at the time of the stockholders' meeting approving the merger or consolidation, which amount it will pay to dissenting stockholders of that institution entitled to payment in cash. Acceptance of such offer by a dissenting stockholder shall terminate the rights granted to the accepting stockholder in paragraphs A and B.

D. The amount due under the appraisal or the accepted offer shall constitute a debt of the resulting institution.

6. Federally-chartered institution as a participant. If one of the parties to a merger or consolidation is a Federally-chartered stock institution, the participants shall comply with all requirements imposed by Federal law for such merger or consolidation in addition to the requirements contained in this Title, and shall provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in subsection 4, paragraph B relating to such merger or consolidation. The rights of dissenting stockholders in such federally-chartered institutions shall be governed by federal law.

7. Merger of trust company with national bank.

A. Nothing contained in the law of this State shall restrict the right of a trust company to merge or consolidate into a resulting national bank. The action to be taken by the trust company and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this State, except that a vote of the holders of $\frac{2}{3}$ of each class of voting stock of a trust company shall be required for such merger or consolidation and that on merger or consolidation into a national bank, the rights of dissenting stockholders shall be those specified in Federal law for national banks.

B. Upon the completion of the merger or consolidation, the franchise of the participating trust company shall terminate automatically.

§ 353. Mergers and consolidations: mutual institutions

Any 2 or more mutual financial institutions authorized to do business in this State may merge or consolidate into one mutual financial institution organized under the laws of this State in accordance with the procedures, and subject to the conditions and limitations, set forth in this section.

1. Adoption of a plan. The board of directors of each participating institution shall adopt, by a majority vote, a plan of merger or consolidation on such terms as shall be mutually agreed upon. The plan shall include:

- A. The names of the participating institutions and their locations;
- B. The type of institution which the resulting institution is to be;
- C. With respect to the resulting institution the name and location of its principal office, branch offices and facilities; the name, address and occupation of each director who is to serve until the next annual meeting of the corporators or members; and the name and address of each officer;
- D. The mode for carrying the plan into effect, and the proposed effective date;
- E. The manner of converting deposits, accounts, or shares of such institutions into deposits, accounts or shares of the resulting institution;
- F. A statement that the agreement is subject to the approval of the superintendent and of the corporators or members of each participating institution; and
- G. Such other provisions and details as may be necessary to perfect the merger or consolidation, or as may be required by the superintendent.

2. Superintendent's approval. Following approval by the board of directors of each participating institution, the plan of merger or consolidation, together with certified copies of the authorizing resolutions adopted by the board of directors of each participating institution, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 252. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished by the superintendent to the participating institutions, which shall be given an opportunity to amend the plan to obviate such reasons for disapproval.

3. Vote of corporators or members. The plan of merger or consolidation, as approved by the superintendent, shall be submitted to the corporators or members of the participating institutions for their approval at an annual meeting, or at a special meeting called for that purpose, in the following manner:

A. Notice of such meeting shall be published at least once a week for 3 successive weeks in a newspaper or newspapers of general circulation in the county or counties where each participating institution's principal office is located, or in such other newspapers as the superintendent may designate, the last of which notices shall be published at least 15 days prior to the meeting. Copies of said notice shall be mailed to each corporator or member at his last known address, and shall also be posted in a conspicuous place in all offices of the participating institutions, at least 15 days prior to the meeting.

B. A $\frac{2}{3}$ vote of the corporators or members of each participating institution shall be necessary to approve the plan of merger or consolidation presented by its board of directors. Any corporator or member not present at

such meeting in person shall be regarded as having affirmatively voted for the merger or consolidation, and shall be counted among the required $\frac{2}{3}$ vote; provided that notice of this fact shall have been contained in the published and mailed notices; and provided further that such notice was mailed to the corporator or member as required in paragraph A.

C. The vote of the corporators or members shall constitute the adoption of the articles of incorporation and bylaws of the resulting institution, including amendments, contained in the merger or consolidation agreement.

4. Executed plan; certificate; and effective date.

A. Upon approval by the corporators or members of the participating institutions, the president or vice president and the clerk or secretary of each institution shall submit the executed plan or merger or consolidation to the superintendent, together with the resolutions of the corporators or members approving it, each certified by such officers.

B. Upon receipt of the items in paragraph A and evidence that the participating institutions have complied with all applicable federal law and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of each participating institution and the name of the resulting institution; and shall file a copy of the certificate and certified votes with the Secretary of State for record. Such certificate shall be conclusive evidence of the merger or consolidation, and of the correctness of all proceedings relating thereto in all courts and places. The certificate may be filed in any office for the recording of deeds to evidence the new name in which property of the participating institutions is to be held.

C. Unless a later date is specified in the certificate, the merger or consolidation shall be effective upon issuance of the certificate in paragraph B, and the franchises of all but the resulting institution shall terminate automatically.

5. Federally-chartered institution as a participant. If one of the parties to a merger or consolidation is a federally-chartered mutual institution, the participants shall comply with all requirements imposed by federal law for such merger or consolidation and provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in subsection 4, paragraph B relating to such merger or consolidation.

§ 354. Mergers and consolidations: stock and mutual institutions

1. Resulting mutual institution. A stock financial institution may be merged into or consolidated with a mutual financial institution organized under the laws of this State, in accordance with the procedures and subject to the conditions and limitations set forth below:

A. The acquiring mutual institution shall comply with the requirements of section 353, subsections 1 through 3, except that the plan of merger or consolidation shall state the amount which such institution will pay for the shares of stock in the stock institution to be acquired and such additional information as the superintendent may deem appropriate.

B. After approval of such plan by both the superintendent and the corporators or members of the acquiring institution, the board of directors of

such institution shall cause to be published, as it deems necessary, a tender offer to the shareholders of the stock institution to be acquired. Such tender offer shall contain the following information:

- (1) The price to be paid for the shares;
- (2) A statement that the acquiring institution seeks to acquire a minimum of 90 percent of the outstanding shares of each class of stock of the institution to be acquired;
- (3) The period during which the offer shall remain open;
- (4) A statement that in the event 90% of such shares are not tendered to the acquiring institution, all shares previously tendered shall be returned to the parties who tendered such shares;
- (5) A provision that if the price offered for any shares is increased, all parties who previously tendered shares of the same class shall receive such increase;
- (6) A provision requiring the escrow of such shares until the acquiring institution's purchase is consummated or the tender offer is terminated;
- (7) A provision for withdrawal of tendered shares until 60 days prior to the close of the offer; and
- (8) Such other provisions as the superintendent may deem necessary to insure the fairness of the transaction.

C. If the institution receives 90% or more of the stock of each class in the institution to be acquired as a result of its tender offer, it shall upon the close of the offer merge the institution so acquired into itself, pursuant to Title 13-A, section 904.

D. Upon completion of the merger in paragraph C, the acquiring institution shall comply with the requirements set forth in section 353, subsections 4 and 5, and all other requirements of this chapter applicable to such mergers and consolidations.

2. Resulting stock institution. Except as the superintendent may authorize pursuant to section 367, subsection 7, a mutual institution shall not merge into a stock institution organized under the laws of this State without prior compliance with section 344 and all regulations promulgated thereunder.

§ 355. Acquisition of assets; assumption of liabilities

A financial institution organized under the laws of this State may acquire all or substantially all of the assets of, or assume the liabilities of, any other financial institution authorized to do business in this State, in accordance with the procedures and subject to the conditions and limitations set forth below:

1. Adoption of a plan. The board of directors of the acquiring or assuming institution and the board of directors of the transferring institution shall adopt, by majority vote, a plan for such acquisition, assumption or sale on such terms as shall be mutually agreed upon. The plan shall include:

A. The names and types of the institutions involved;

B. A statement setting forth the material terms of the proposed acquisition, assumption or sale, including the plan for disposition of all assets and liabilities not subject to the plan;

C. A statement of the plan governing liquidation of the transferring institution pursuant to section 364 upon execution of the plan, with said liquidation being a required provision of the plan;

D. A statement that the entire transaction is subject to written approval of the superintendent, and approval of the transferring institution's stockholders, corporators, or members;

E. If a stock institution is the transferring institution and the proposed sale is not to be for cash, a clear and concise statement that stockholders of said institution voting against the proposed sale are entitled to rights set forth in section 352, subsection 5.

F. The proposed effective date of such acquisition, assumption or sale and such other information and provisions as may be necessary to execute the transaction, or as may be required by the superintendent.

2. Superintendent's approval. Following approval by the respective board of directors of each participating institution, the plan, together with certified copies of the authorizing resolutions adopted by the board of directors of each participating institution, shall be forwarded to the superintendent for his approval or disapproval pursuant to section 252. If the superintendent disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished by the superintendent to the participating institutions, which shall be given an opportunity to amend the plan to obviate such reasons for disapproval.

3. Vote of stockholders, corporators or members. The plan of acquisition, assumption or sale shall be presented to the stockholders, corporators, or members of the transferring institution for their approval. If the transferring institution is a stock institution, such approval shall be obtained in accordance with section 352, subsection 3; and, if the transferring institution is a mutual institution, approval shall be obtained in accordance with section 353, subsection 3.

4. Executed plan; certificate; and effective date.

A. If the plan is approved by the stockholders, corporators or members of the transferring institution, the president or vice president and the clerk or secretary of such institution shall submit the executed plan to the superintendent, together with a copy of the resolution of the stockholders, corporators, or members approving it, each certified by such officers.

B. Upon receipt of the items set forth in paragraph A and evidence that the participating institutions have complied with all applicable federal law and regulations, the superintendent shall certify, in writing, to the participants that the plan has been approved and is in compliance with the provisions of this Title.

C. Notwithstanding approval of the stockholders, incorporators or members, or certification by the superintendent, the transferring institution's board of directors may, in its discretion, abandon such a transaction without further action or approval by stockholders, incorporators, or members, subject to the rights of third parties under any contracts relating thereto.

5. Federally-chartered institution as a participant. If one of the participants in a transaction under this section is a Federally-chartered institution, all participants shall comply with such requirements as may be imposed by federal law for such an acquisition, assumption or sale and provide evidence of such compliance to the superintendent as a condition precedent to the issuance of a certificate in subsection 4, paragraph B relating to such acquisition, assumption or sale; provided that if the purchasing or assuming institution is a federally-chartered institution, no approval of the superintendent shall be required.

6. Stock institution acquiring mutual institution. Except as the Superior Court may authorize pursuant to section 367, subsection 7, a mutual institution shall not sell all or substantially all of its assets to a stock institution without prior compliance with section 344 and all regulations promulgated thereunder.

7. Other sections. Sections 357 and 358 shall apply to acquisitions, assumptions and sales made pursuant to this section.

§ 356. Book value of assets

Upon the effective date of a merger, consolidation or conversion pursuant to this Title, no asset shall be carried on the books of the resulting institution at a valuation higher than that at which it was carried on the books of a participating or converting institution at the time of its last examination by a State or Federal examiner before the effective date of such merger, consolidation or conversion, without written approval from the superintendent.

§ 357. Effect of merger, consolidation, conversion or acquisition

From and after the effective date of a merger, consolidation, conversion or acquisition, the resulting institution may conduct business in accordance with the terms of the plan as approved; provided that:

1. Continuing entity. Even though the charter of any participating or converting institution has been terminated, the resulting institution shall be deemed to be a continuation of the entity of the participating or converting institution such that all property of the participating or converting institution, including rights, titles and interests in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer and without further act or deed be vested in and continue to be that property of the resulting institution; and such institution shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the participating or converting institution and such resulting institution as of the time of the taking effect of such merger, consolidation, conversion or acquisition shall continue to have and succeed to all the rights, obligations and relations of the participating or converting institution.

2. Effect on judicial proceedings. All pending actions and other judicial proceedings to which the participating or converting institution is a party shall not be deemed to have been abated or to have been discontinued by reason of such merger, consolidation, conversion or acquisition, but may be prosecuted to final judgment, order or decree in the same manner as if such action had not been taken; and such institution resulting from such merger, consolidation, conversion or acquisition may continue such action in its new name, and any judgment, order or decree may be rendered for or against it which might have been rendered for or against the participating or converting institution theretofore involved in such judicial proceedings.

3. Creditor's rights. The resulting institution in a merger, consolidation, conversion or acquisition shall be liable for all obligations of the participating or converting institution which existed prior to such action, and the action taken shall not prejudice the right of a creditor of the participating or converting institution to have his debts paid out of the assets thereof, nor shall such creditor be deprived of, or prejudiced in, any action against the officers, directors, incorporators or members of a participating or converting institution for any neglect or misconduct.

4. Exception. In the event of an acquisition of assets pursuant to section 355, the provisions of subsections 1 through 3 of this section shall apply only to the assets acquired and the liabilities assumed by the resulting institution; provided that sufficient assets to satisfy all liabilities not assumed by the resulting institution are retained by the transferring institution.

§ 358. Nonconforming activities: cessation

If, as a result of a merger, consolidation, conversion or acquisition pursuant to this Title, the resulting institution is to be of a different type or of a different character than any one or all of the participating or converting institutions, such resulting institution shall be subject to the following conditions and limitations:

1. Plan for termination. The plan of merger, consolidation, conversion or acquisition shall set forth the method and schedule for terminating those activities not permitted by the laws of this State for the resulting institution, but which were authorized for any of the participating or converting institutions.

2. Effective date. The plan of merger, consolidation, conversion or acquisition shall state that from the effective date of such action, the resulting institution shall not engage in any nonconforming activities, except to the extent necessary to fulfill obligations existing prior to merger, consolidation, conversion or acquisition, pursuant to subsection 4.

3. Compliance with limitations. If, as a result of such merger, consolidation, conversion or acquisition, the resulting institution exceeds any lending, investment or other limitations imposed by this Title, it shall conform to such limitations within such period of time as shall be established by the superintendent.

4. Divestiture. The superintendent may, as a condition to such merger, consolidation, conversion or acquisition, require a nonconforming activity to be divested in accordance with such additional requirements as he may deem appropriate under the circumstances.

**[DUE TO ITS SIZE, THIS LAW HAS BEEN DIVIDED INTO TWO
ELECTRONIC FILES. FOR THE REMAINDER OF THE
CHAPTER, SEE THE SECOND FILE.]**