

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985

Chapters 1-384

PUBLISHED BY THE REVISOR OF STATUTES IN ACCORDANCE WITH
MAINE REVISED STATUTES ANNOTATED, TITLE 3, SECTION 163-A,
SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND TWELFTH LEGISLATURE

1985

	<u>1985-86</u>	<u>1986-87</u>
Public Utilities Commission		
Capital Expenditures	\$250,000	\$250,000

Effective September 19, 1985.

CHAPTER 327

H.P. 945 - L.D. 1354

AN ACT Concerning the Payment of Interest on Mortgage Escrow Accounts.

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

9-B MRSA §429, sub-§6, as repealed and replaced by PL 1983, c. 679, §2, is amended to read:

6. Application. The requirements of this section shall ~~not~~ apply to any funds in an escrow account established by a mortgage or other loan document executed on or before September 30, 1984 on October 1, 1985, and to any funds deposited in an escrow account after that date.

Effective September 19, 1985.

CHAPTER 328

H.P. 1056 - L.D. 1536

AN ACT to Permit the Incorporation of Subsidiary Trust Companies.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, operation of multiple trust departments in the State by several banks belonging to the same bank holding company system creates inefficiencies and duplication of labor, giving rise to increased costs borne by the banks' customers and increased administrative and regulatory burdens on the Bureau of Banking; and

Whereas, the costs of operating and regulating bank trust departments, borne by consumers and taxpayers, could be reduced if trust departments operated by banks that are parts of the same bank holding company system could be consolidated; and

Whereas, the Maine Banking Code, the Maine Revised Statutes, Title 9-B, does not currently permit this consolidation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 9-B MRSA §131, sub-§39-A is enacted to read:

39-A. Subsidiary. "Subsidiary" means a corporation, partnership, business trust, association or similar organization, all of which are referred to in this subsection as "another company," owned or controlled by a financial institution or financial institution holding company. A financial institution or financial institution holding company shall be deemed to control "another company" if the criteria set forth in section 1011, subsection 4, are met.

Sec. 2. 9-B MRSA §215, as enacted by PL 1975, c. 500, §1, is amended to read:

§215. Rules

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

Sec. 3. 9-B MRSA §231, sub-§1, ¶A, as enacted by PL 1975, c. 500, §1 is amended to read:

A. If, in the opinion of the superintendent, a financial institution or its subsidiary or financial institution holding company or its subsidiary subject to the provisions of this Title is engaging in or has engaged in, or he has reasonable cause to believe that ~~said~~ the insti-

tution 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.

Sec. 4. 9-B MRSA §231, sub-§1, ¶C, as enacted by PL 1975, c. 500, §1, is amended to read:

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

Sec. 5. 9-B MRSA c. 68 is enacted to read:

CHAPTER 68

SUBSIDIARY TRUST COMPANIES

§681. Definitions

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

1. Affiliated bank. "Affiliated bank" of a subsidiary trust company means any financial institution authorized to do business in this State and a subsidiary of the owning financial institution holding company which owns the subsidiary trust company.

2. Other terms. "Other terms" means the definitions found elsewhere in this Title, including with-

out limitation, those found in sections 131 and 1011, which shall apply to this chapter.

3. Owing financial institution holding company. "Owing financial institution holding company," when used with respect to a subsidiary trust company, means a financial institution holding company or Maine financial institution holding company which owns all of the outstanding voting stock of the subsidiary trust company and which owns or controls one or more affiliated banks.

4. Subsidiary trust company. "Subsidiary trust company" means a trust company organized pursuant to chapter 31 which is subject to this chapter and the articles of incorporation which contain the statement required by section 683, subsection 5. The term "trust company," when not preceded by the word "subsidiary," means a trust company as defined in and governed by this Title without reference to this chapter.

5. Trust office. "Trust office," when used with respect to a subsidiary trust company, means an office of the subsidiary trust company maintained for the purpose of conducting its business, whether the principal office or a branch office.

§682. Organization of subsidiary trust companies

A subsidiary trust company shall be organized pursuant to chapter 31 and shall be managed and governed as a trust company pursuant to this Title and the applicable provisions of Title 13-A. The equity capital of subsidiary trust companies shall at all times be maintained consistent with sound banking practices. The superintendent shall determine the required equity capital of the subsidiary trust company pursuant to chapter 31 and may, in light of that determination, require that the owning financial institution holding company execute and file with the superintendent an undertaking, which may be limited as to duration or amount, or both, to guarantee the obligations of the subsidiary trust company in respect of its fiduciary relationships. All of the outstanding voting stock of a subsidiary trust company shall be owned by the owning financial institution holding company.

§683. Business of subsidiary trust companies; limitation on powers

1. Powers limited. A subsidiary trust company shall have all of the powers of and be entitled to engage in the business of a trust company not subject to this chapter, including, without limitation, pow-

ers with respect to fiduciary and trust functions and transactions; provided that a subsidiary trust company shall not have the power to solicit, receive or accept money or its equivalent on deposit as a regular business within the meaning of section 131, subsection 5 and provided further that a subsidiary trust company shall not have the power to lend money except in transactions reasonably related to and deriving from its service as fiduciary or its conduct of trust business. A subsidiary trust company shall also be authorized to deposit cash, whether constituting principal or income, in any affiliated bank or other financial institution authorized to do business in this State, in a time account or demand account, if the account is held either in the name of the trust to which the cash belongs or in the name of the subsidiary trust company and composed entirely of cash belonging to trust accounts, the respective contributions of which are reflected in the books and records of the subsidiary trust company.

2. Provisions applicable. Without limiting the generality of subsection 1, a subsidiary trust company shall have the powers and be subject to the limitations, applicable to trust companies set forth in section 443, subsections 2, 3 and 4; section 623, other than paragraphs E and F; sections 625, 641, 662, 663, 664 and 665. The enumeration of the foregoing provisions of this Title shall not be held to make other sections of this Title inapplicable if those sections would otherwise be applicable to subsidiary trust companies pursuant to subsection 1.

3. Provisions inapplicable. Without limiting the generality of subsection 1, the following provisions of this Title shall not apply to subsidiary trust companies: Chapter 42; chapter 43, section 443, other than subsections 2, 3 and 4; sections 612, 613, 621, 622, chapter 63 and section 666. The enumeration of the foregoing provisions of this Title shall not be held to make other sections of this Title applicable if those sections would otherwise be inapplicable to subsidiary trust companies pursuant to subsection 1.

4. Name. No subsidiary trust company may use as a part of the name or title under which its business is conducted or in designating its business the word or words "bank," "banker," "banking" or the plural of any such word or words or any abbreviation of the words. Every subsidiary trust company shall include as a part of its name the words "trust company."

5. Articles of incorporation. The articles of incorporation of a subsidiary trust company shall contain the following statement: "This corporation is subject to the Maine Revised Statutes, Title 9-B,

chapter 68 and Acts supplementing or amending that chapter, and shall not have the power to solicit, receive or accept money or its equivalent on deposit or to lend money except for lending reasonably related to and deriving from its service as fiduciary or its conduct of trust business." The foregoing provision of the articles of incorporation of a subsidiary trust company shall not be amended.

6. Subsidiary trust company. A subsidiary trust company shall, if it may do so practically, notify its customers, other than persons becoming customers pursuant to section 686, in writing at the inception of its relationship with them that it is affiliated with but not a part of any of its affiliated banks. A subsidiary trust company shall also seek the written acknowledgement of each customer receiving the notification that the customer has received the notification.

7. Rules. The superintendent shall have the power to prescribe rules governing the activities of subsidiary trust companies.

§684. Trust offices

1. Offices and branches permitted. Notwithstanding section 332, subsection 2 and section 336, subsection 1, a subsidiary trust company may open and occupy a trust office, including its principal office or a branch office, at any one or more locations in this State at which the owning financial institution holding company or any affiliated bank has an office, whether a principal office or a branch office, without the prior approval of the superintendent.

2. Superintendent approval. Any other trust office, whether a principal office or a branch office, of a subsidiary trust company shall be established only with the prior approval of the superintendent as provided in chapter 33 and no trust office of a subsidiary trust company may be closed, relocated or terminated, except with the prior approval of the superintendent as provided in chapter 33.

§685. Interstate banking

1. Minimum equity capital. The requirements of section 1013, subsection 3, paragraph B, as to fixed minimum amounts of equity capital shall not apply to a subsidiary trust company, but nothing in this chapter may diminish the authority of the superintendent as to the required equity capital of a subsidiary trust company pursuant to that section or the requirements of paid-in capital for a subsidiary trust company under chapter 31.

2. Net new funds. Section 1013, subsection 4 and section 1015, subsection 2, shall not apply to the establishment, acquisition or maintenance of control of a subsidiary trust company.

§686. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies

1. Petition. At any time or times after the issuance to it by the superintendent of the certificate authorizing the subsidiary trust company to begin transacting its business pursuant to section 313, subsection 5, paragraph B, a subsidiary trust company may apply by petition to the Superior Court or Probate Court in and for the county in which its principal office is located requesting that it be substituted for each of its affiliated banks specified in the petition in every existing fiduciary capacity designated in the petition and in the case of the first petition, in every fiduciary capacity which may take effect after the date on which that petition is filed.

A. Each such specified affiliated bank shall join in the petition. Notice of the filing of the petition shall be given prior to the filing to the superintendent.

B. The petition shall indicate the county wherein the principal office of each affiliated bank joining in the petition is located and shall designate each fiduciary relationship existing at the date of the petition with respect to which the subsidiary trust company requests substitution. The petition shall additionally set forth, with regard to each existing fiduciary relationship designated in the petition, the name and address last known to the petitioner of each person entitled to receive notice of hearing on the petition, to wit:

(1) In the case where an affiliated bank specified in the petition is acting with one or more cofiduciaries in respect to the fiduciary relationship, each such cofiduciary;

(2) In the case where the instrument creating the fiduciary relationship so provides, each person who, alone or together with others, may revoke, terminate or amend the instrument or remove the corporate fiduciary;

(3) In the case of any trust not described in subparagraph (2), each beneficiary entitled or permitted, on the date the petition is filed, to receive income from the trust

pursuant to the terms of the trust, and each person who would be presumptively entitled to any portion of the principal of the trust if all income interests in the trust terminated on the date the petition was filed;

(4) In the case of the estate of any decedent, each person who would have a claim to succession to any property of the decedent under the testacy status upon which the fiduciary has been authorized to proceed;

(5) In the case of any conservatorship, to each person whose assets are the subject of the conservatorship and to each guardian of the person, if any such guardian has been appointed and is a person other than an affiliated bank;

(6) In the case of any person described in subparagraphs (1) to (5) that is a charitable institution or a charitable trust located within the State, the Attorney General; and

(7) In all cases, the superintendent.

C. In the case of any person entitled to receive notice pursuant to paragraph B, who is a minor or who is known by the petitioner or any affiliated bank to be subject to any other disability, including confinement in a penal institution, and for whom no guardian, other than an affiliated bank, has been appointed, and in the case of any person of whose estate an affiliated bank is conservator and for whom no guardian, other than an affiliated bank, has been appointed, and in the case of any person whose identity or whereabouts is unknown, the court may, in its discretion, appoint one or more guardians ad litem to represent the interests of that person. Title 18-A, section 1-403 shall govern in determining the propriety of any such appointments.

2. Notice. When any petition described in subsection 1, has been filed, the court in which the petition has been filed shall enter an order fixing a date and time for hearing on the petition, which date shall not be less than 35 days after the filing of the petition and approving the form of notice to be given by the petitioner as provided in this section. At least 25 days prior to the hearing date the petitioner shall cause a copy of the notice to be mailed by first class mail to each person identified in the petition as being entitled to receive notice under this section, at the person's address last known to

the petitioner as set forth in the petition. In addition, the petitioner shall cause a copy of the notice to be published at least once a week for 3 successive weeks preceding the hearing date, the first publication to be at least 25 days prior to the hearing date, the publication to be in a newspaper of general circulation in each county in which the principal office of an affiliated bank specified in the petition is located.

3. Contents of notice. The notice to be mailed and published with respect to each petition shall state the time and place of the hearing, the name of the subsidiary trust company which has filed the petition, the name of each affiliated bank which has joined in the petition, that the petition requests that the subsidiary trust company be substituted for each of its affiliated banks specified in the petition in every existing fiduciary capacity designated in the petition and, if appropriate, in every fiduciary capacity which may take effect after the petition has been filed and that any person to whom the notice is addressed may file an objection as provided in and in accordance with subsection 4. All costs incurred in connection with the printing, mailing and publishing of the notice shall be borne by the petitioner.

4. Objections. Any person entitled to receive notice under this section may, as to the fiduciary relationship by which he is affected, object to the substitution of the subsidiary trust company as fiduciary. Any such person wishing to object must file a written objection to the substitution, setting forth the reasons for the substitution, with the court in which the petition has been filed and serve a copy upon the attorney for the petitioner, at least 3 days before the date of hearing and must appear at the hearing in person or by an attorney.

5. Order. On the date fixed for the hearing on the petition, upon making a determination that notice has been properly given as required by this section, the court shall enter an order substituting the subsidiary trust company for each of its specified affiliated banks in every designated existing fiduciary capacity and, in the case of the first petition by the petitioner, in every fiduciary capacity which may take effect after the filing of the petition, excepting fiduciary capacities in any existing relationship with respect to which an objection has been filed pursuant to and in accordance with subsection 4, provided that in the case of a fiduciary relationship where more than one person would be entitled under this article to object to substitution of the subsidiary trust company, the properly made objection by less than all of the persons shall be considered by

the court which shall, in its sole discretion, determine whether the substitution shall be ordered. In the case of a fiduciary relationship in respect of which an objection has been properly made by any person who is entitled pursuant to this article to object to the substitution, the court may, in its discretion, determine that the resignation of the affiliated bank will be accepted in respect of the fiduciary relationship, if the court shall determine that the resignation will be accepted, it shall enter an order substituting a different financial institution or subsidiary trust company, which shall have given its written consent to such a substitution prior to the entry of the order. In construing the language of any instrument which is the subject of a proceeding pursuant to this section, nothing contained in this section may be considered to abrogate or affect the terms of the instrument creating the fiduciary relationship. Upon entry of the court's order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity.

6. Substitution. In respect of each fiduciary capacity, existing and future, as to which substitution has been ordered pursuant to this section, each designation of an affiliated bank as fiduciary in any capacity contained in any contract, will, order of any court or other document or instrument shall be deemed a designation of the subsidiary trust company substituted for the affiliated bank pursuant to this section.

A. Any grant in any such contract, will, order or other document or instrument of any rights, powers, duties or authorities, whether or not discretionary, shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

B. Following the entry of an order pursuant to this section, the petitioning subsidiary trust company shall, with respect to each fiduciary relationship affected by the order which is an estate of a deceased person, guardianship or conservatorship, notify in writing the register of probate for the county in which the affected affiliated bank was appointed to the affected fiduciary relationship of the substitution of the subsidiary trust company for the affected affiliated bank in this fiduciary capacity. Each such notification shall contain the name of the affected estate, guardianship or conservatorship, the date on which the order was entered and the name of the court which entered it and shall recite that the order was entered pursuant to this section.

7. Assets. Upon substitution pursuant to this section, each affiliated bank shall deliver to the subsidiary trust company all assets held by the affiliated bank as fiduciary, except assets held in capacities with respect to which there has been no substitution pursuant to this section, and upon substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance. Notwithstanding any provision in this Title to the contrary, after a substitution of existing fiduciary capacities pursuant to this section, an affiliated bank shall remain jointly liable with the subsidiary trust company which has been substituted for it in respect of each of the existing fiduciary relationships as to which the substitution has been ordered, but the affiliated bank shall be entitled to a right of indemnification against the subsidiary trust company for all amounts paid by the affiliated bank as a result of the joint liability.

§687. Applicable laws and regulations

To the extent not inconsistent with this chapter, a subsidiary trust company shall be subject to the laws of this State generally applicable to trust companies. Nothing in this chapter may be deemed to affect in any way the powers of the superintendent to adopt, alter or amend rules with respect to trust companies, provided that no such rule may be applicable to a subsidiary trust company to the extent that it is inconsistent with or purports to limit the powers or rights of a subsidiary trust company expressly granted by this chapter.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 13, 1985.

CHAPTER 329

H.P. 1074 - L.D. 1563

AN ACT to Allow the Use of Botanical
Pesticides in the Production of Foods
Labeled or Advertised as Organic.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and