

7446

I N   S E N A T E

April 12, 2010

---

Introduced by Sen. FOLEY -- (at request of the Banking Department) --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Banks

AN ACT to amend the banking law, in relation to bank holding companies,  
to simplify and streamline the application of the bank holding company  
provisions and to repeal certain provisions of such law relating ther-  
eto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 141 of the banking law, as added by chapter 146 of  
2     the laws of 1961, subdivision 1 as amended by chapter 1 of the laws of  
3     1984, subdivision 2 as amended by chapter 119 of the laws of 1973,  
4     subdivisions 3, 5 and 6 as amended by chapter 950 of the laws of 1969  
5     and subdivision 8 as added by chapter 417 of the laws of 1982, is  
6     amended to read as follows:  
7     S 141. Definitions. 1. "Banking institution," when used in this arti-  
8     cle, means a bank, a trust company [or a national banking association,  
9     the principal office of which institution is located in this state.  
10    Unless otherwise provided by any provision of this article, or unless  
11    the context requires otherwise, the term "banking institution" shall  
12    also mean], a stock-form savings bank or a stock-form savings and loan  
13    association[, the principal office of which institution is located in  
14    this state].  
15    2. "Company," when used in this article, means any corporation, part-  
16    nership, trust, unincorporated association, joint stock association or  
17    similar organization organized under the laws of the state of New York,  
18    or if not so organized, doing business in the state of New York, or any  
19    individual residing or doing business in the state of New York, or any  
20    combination of individuals which combination is residing or is doing  
21    business in the state of New York, any combination of the foregoing  
22    which combination is residing or is doing business in the state of New  
23    York, or any such individual and any of the foregoing acting in concert,  
24    but shall not include (a) any corporation the majority of the stock of  
25    which is owned by the United States or by any state UNLESS THE SUPER-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD15516-02-0

1 INTENDENT DETERMINES THAT IT WOULD BE IN THE PUBLIC INTEREST TO DEEM  
2 SUCH A CORPORATION TO CONSTITUTE A COMPANY, or (b) any corporation or  
3 community chest, fund, or foundation, organized and operated exclusively  
4 for religious, charitable, or educational purposes, no part of the net  
5 earnings of which inures to the benefit of any private stockholder or  
6 individual, and no substantial part of the activities of which is the  
7 carrying on of propaganda, or otherwise attempting to influence legis-  
8 lation UNLESS THE SUPERINTENDENT DETERMINES THAT IT WOULD BE IN THE  
9 PUBLIC INTEREST TO DEEM SUCH A CORPORATION, COMMUNITY CHEST, FUND, OR  
10 FOUNDATION TO CONSTITUTE A COMPANY, or (c) any corporation or partner-  
11 ship owning or controlling stock acquired in connection with an under-  
12 writing of securities and which is held only for such period of time as  
13 will permit the sale thereof upon a reasonable basis.

14 3. "Bank holding company," when used in this article, means any compa-  
15 ny which (a) directly or indirectly, or through a subsidiary or subsid-  
16 iaries, owns, controls, or holds with power to vote (i) [more than] ten  
17 per centum OR MORE of the voting stock of a company which is or becomes  
18 a bank holding company by virtue of this article, or (ii) ten per centum  
19 or more of the voting stock of [each of two or more] A banking [insti-  
20 tutions] INSTITUTION, [or (iii) if such company is a banking institu-  
21 tion, more than ten per centum of the voting stock of any one banking  
22 institution,] or (b) controls in any manner the election of a majority  
23 of the directors of (i) [each of two or more] A banking [institutions]  
24 INSTITUTION, OR (ii) a company which is or becomes a bank holding compa-  
25 ny by virtue of this article, [or (iii) if such company is a banking  
26 institution, another banking institution,] or (c) is a company, [if such  
27 company is not a banking institution,] for the benefit of whose stock-  
28 holders or members ten per centum or more of the voting stock of [each  
29 of two or more] A banking [institutions] INSTITUTION or of a company  
30 which is or becomes a bank holding company by virtue of this article is  
31 held, directly or indirectly, by a trustee or trustees, or (d) [is a  
32 company for the benefit of whose stockholders or members, if such compa-  
33 ny is a banking institution, ten per centum or more of the voting stock  
34 of any other banking institution, or ten per centum or more of the  
35 voting stock of any company which is or becomes a bank holding company  
36 by virtue of this article, is hereafter acquired and held by a trustee  
37 or trustees, or (e)] through a combination of (i) ownership, control or  
38 holding, directly or indirectly, of voting stock and (ii) voting stock  
39 [hereinafter acquired] and held, directly or indirectly, by a trustee or  
40 trustees for the benefit of the members or stockholders of such company,  
41 if such voting stock is voting stock of one or more banking institutions  
42 or of one of more companies which are or become bank holding companies  
43 by virtue of this article, as the case may be, is a company which would  
44 be a bank holding company if the aggregate of such voting stock were  
45 either entirely owned, controlled or held, directly or indirectly, by  
46 such company or entirely held, directly or indirectly, by a trustee or  
47 trustees for the benefit of the members or stockholders of such company.  
48 Notwithstanding the foregoing, no company shall be a bank holding compa-  
49 ny by virtue of its ownership or control of EITHER stock ACQUIRED in a  
50 fiduciary capacity, except where such stock is held for the benefit of  
51 the stockholders or members of such company[, nor shall any]; OR VOTING  
52 RIGHTS OF STOCK ACQUIRED IN THE COURT OF A PROXY SOLICITATION BY A  
53 company formed and operated for the sole purpose of participating in [a]  
54 proxy [solicitation be a bank holding company] SOLICITATIONS by virtue  
55 of its control of voting rights of stock in any banking institution or

1 bank holding company acquired in the course of such [solicitation]  
2 SOLICITATIONS.

3 4. [The term "successor" shall include any company which acquired,  
4 directly or indirectly, from a bank holding company, stock of any bank-  
5 ing institution, when and if the relationship between such company and  
6 the bank holding company is such that the transaction effects no  
7 substantial change in the control of the banking institution or benefi-  
8 cial ownership of the stock thereof. The banking board may, by regu-  
9 lation adopted by a three-fifths vote of all the members thereof,  
10 further define the term "successor" to the extent necessary to effectuate,  
11 or to prevent evasion of, the purposes of this article.

12 5.] "Subsidiary," when used in this article, means (a) any company ten  
13 per centum or more of whose voting stock is directly or indirectly, or  
14 through a subsidiary or subsidiaries, owned, controlled, or held with  
15 power to vote, by a bank holding company; or (b) any company the  
16 election of a majority of whose directors is controlled in any manner by  
17 a bank holding company; or (c) any company ten per centum or more of  
18 whose voting stock is directly or indirectly owned, controlled, or held  
19 with power to vote, by a trustee or trustees for the benefit of the  
20 stockholders or members of a bank holding company; or (d) any company at  
21 least ten per centum of the voting stock of which is directly or indi-  
22 rectly, or through a subsidiary or subsidiaries, owned, controlled or  
23 held with power to vote by a combination of a bank holding company and  
24 by a trustee or trustees for the benefit of the stockholders or members  
25 of such bank holding company. For purposes of this subdivision [five],  
26 voting stock shall not be deemed to include voting stock owned by the  
27 United States or by any company wholly owned by the United States. Any  
28 company having any of the relationships with a bank holding company  
29 described in clauses (a), (b), (c) or (d) of this subdivision [five]  
30 shall be deemed to be a subsidiary of such bank holding company.

31 [6. ] 5. "Doing business," when used in this article, shall include  
32 the maintenance by a foreign company of [its principal] A place of busi-  
33 ness in this state, or the conduct by a foreign company of operations in  
34 this state, or the acquisition, owning or holding by a foreign company  
35 of any stock or assets of any banking institution or any company which  
36 directly or indirectly owns, controls or holds with power to vote ten  
37 per centum or more of the voting stock of a banking institution.

38 [7.] 6. "Banking subsidiary," when used in this article, means a  
39 subsidiary that is a banking institution, and a "non-banking subsidiary"  
40 means a subsidiary that is not a banking institution.

41 [8. "Out-of-state bank holding company", when used in this article,  
42 means a bank holding company as defined in Title twelve United States  
43 Code Section 1841 which conducted its principal banking business in a  
44 state other than this state or in the District of Columbia on July  
45 first, nineteen hundred sixty-six or the date on which such company  
46 became a bank holding company, whichever was the last to occur. The  
47 jurisdiction in which an out-of-state bank holding company conducts its  
48 principal banking business is that state or the District of Columbia in  
49 which the total deposits of such company and its banking subsidiaries  
50 are largest.]

51 S 2. Section 142 of the banking law, as added by chapter 146 of the  
52 laws of 1961, subdivision 1 as amended by section 18 of part 0 of chap-  
53 ter 59 of the laws of 2006, subdivision 2 as amended by chapter 702 of  
54 the laws of 2006 and paragraph (b) of subdivision 3 as amended by chap-  
55 ter 256 of the laws of 1986, is amended to read as follows:

1 S 142. Limitations on, and regulation of, bank holding companies. 1.  
2 [It shall be unlawful except with the prior approval of the banking  
3 board by a three-fifths vote of all the members thereof (a) for any  
4 action to be taken that causes any company to become a bank holding  
5 company; (b) for any action to be taken that causes a banking institu-  
6 tion to become, or to be merged or consolidated with, a subsidiary of a  
7 bank holding company; (c) for any bank holding company, or for any trust-  
8 tee or trustees acting for the benefit of the stockholders or members of  
9 any bank holding company, to acquire direct or indirect ownership or  
10 control of any voting stock of any banking institution if, after such  
11 acquisition, such company or such trustee or trustees or both will  
12 directly or indirectly own, control or hold more than five per centum of  
13 the voting stock of such banking institution; (d) for any bank holding  
14 company or subsidiary thereof to acquire all or substantially all of the  
15 assets of a banking institution; or (e) for any bank holding company to  
16 merge or consolidate with another bank holding company. For the purposes  
17 of this section, the term "bank holding company" shall be deemed to  
18 include any successor thereof. Any company desiring to take any action  
19 requiring approval under this subdivision shall submit an application  
20 therefor, in writing, to the superintendent and pay to the superinten-  
21 dent an investigation fee as prescribed pursuant to section eighteen-a  
22 of this chapter to the superintendent. If such action includes the  
23 acquisition of all the capital stock of one or more corporations organ-  
24 ized under or subject to the provisions of article three, six or ten of  
25 this chapter, there shall be submitted in duplicate together with such  
26 application a written plan of acquisition of such stock in a form satis-  
27 factory to the superintendent and containing the information required by  
28 subdivision one of section one hundred forty-three-a of this article and  
29 a certificate which complies with the provisions of subdivision two of  
30 said section one hundred forty-three-a. Upon receipt of such applica-  
31 tion, the superintendent shall post notice of the receipt thereof upon  
32 the bulletin board of the banking department. The superintendent shall  
33 submit such application together with his or her recommendations in  
34 regard thereto and all papers, correspondence and other information in  
35 his or her possession and relating thereto, to the banking board which  
36 shall by order grant or deny the application and shall state the reasons  
37 for such grant or denial. An order granting such application may be made  
38 only by three-fifths vote of all the members thereof. An order shall be  
39 issued within one hundred twenty days after the date of the submission  
40 of the application to the superintendent and a copy thereof shall be  
41 posted upon the bulletin board of the banking department. In determining  
42 whether or not to approve any such application, the banking board shall  
43 take into consideration (i) the declaration of policy contained in  
44 section ten of this chapter, (ii) whether the effect of such action  
45 shall be either to result in the formation of a bank holding company or  
46 to expand the size or extent of the resulting or acquiring bank holding  
47 company beyond limits consistent with adequate or sound banking and the  
48 preservation thereof, or result in a concentration of assets beyond  
49 limits consistent with effective competition, (iii) whether such forma-  
50 tion, merger, consolidation or acquisition may result in such a lessen-  
51 ing of competition as to be injurious to the interest of the public or  
52 tend toward monopoly, and (iv) primarily, the public interest and the  
53 needs and convenience thereof.

54 2. The limitations in subdivision one of this section and the  
55 provisions of section one hundred forty-three-b of this article shall  
56 not apply to (a) stock acquired by a banking institution in good faith

1 in a fiduciary capacity, except where such stock is held for the benefit  
2 of the stockholders of such banking institutions, or (b) stock acquired  
3 by a banking institution in settlement or reduction of a loan, or  
4 advance of credit, or in exchange for an investment previously made in  
5 good faith and in the ordinary course of business, where such acquisi-  
6 tion of stock is necessary in order to minimize or avoid loss in  
7 connection with any such loan, advance of credit, or investment previ-  
8 ously made in good faith and in the ordinary course of business, but any  
9 stock so acquired after the effective date of this act shall be disposed  
10 of within a period of two years from the date upon which it was acquired  
11 unless the superintendent shall authorize such banking institution, in  
12 writing, to hold such stock for a longer period, or (c) additional stock  
13 acquired by a bank holding company or a subsidiary thereof in a banking  
14 institution in which such bank holding company or subsidiary owned or  
15 controlled ten per centum of the voting stock prior to such acquisition,  
16 or (d) stock dividends, stock splits or additional stock acquired by a  
17 bank holding company, or by any subsidiary thereof, in the exercise of  
18 its pre-emptive right as a stockholder, (e) any merger or consolidation  
19 between banking institutions that are subsidiaries of the same bank  
20 holding company, or any acquisition by a banking institution of all or  
21 substantially all of the assets of another banking institution that is a  
22 subsidiary of the same bank holding company, or, (f) for a period of six  
23 months from the date of qualification thereof and for such additional  
24 period of time as the superintendent may prescribe in writing, the  
25 acquisition of control of a banking institution or bank holding company  
26 by a legal representative. For purposes of this subdivision, "legal  
27 representative" shall have the same meaning as prescribed in subdivision  
28 five of section one hundred forty-three-b of this article.

29 3. (a)] It shall be unlawful for any person knowingly to borrow,  
30 directly or indirectly, any money or property for the purpose of enabl-  
31 ing such person to pay for or to hold shares of stock of a bank holding  
32 company from any subsidiary of such bank holding company, unless such  
33 borrowing is made upon security having an ascertained market value of at  
34 least fifteen per centum more than the amount thereof. Any person know-  
35 ingly violating the provisions of this [paragraph (a) of this] subdivi-  
36 sion [three] shall, for each offense, forfeit to the people of the state  
37 twice the amount of such borrowing.

38 [(b)] 2. Except in conformity with such rules and regulations as may  
39 be promulgated by the superintendent, it shall be unlawful for any exec-  
40 utive officer or director of a bank holding company to borrow any sum of  
41 money from any subsidiary of such bank holding company. Every executive  
42 officer or director of such bank holding company violating the  
43 provisions of this [paragraph] SUBDIVISION shall, for each offense,  
44 forfeit to the people of the state twice the amount of such borrowing or  
45 borrowings.

46 S 3. Subdivision 2 of section 142-a of the banking law is REPEALED and  
47 subdivisions 3 and 4, as added by chapter 380 of the laws of 1971 and as  
48 renumbered by chapter 9 of the laws of 1996, are amended to read as  
49 follows:

50 [3.] 2. As used in this section, the term "control" means the  
51 possession, directly or indirectly, of the power to direct or cause the  
52 direction of the management and policies of a banking institution,  
53 whether through the ownership of voting stock of such banking institu-  
54 tion, the ownership of voting stock of any company which possesses such  
55 power or otherwise. Control shall be presumed to exist if any company,  
56 directly or indirectly, owns, controls or holds with the power to vote

1 ten per centum or more of the voting stock of any banking institution or  
2 of any company which owns, controls or holds with power to vote ten  
3 [percentum] PERCENT or more of the voting stock of such banking institu-  
4 tion, but no person shall be deemed to control a banking institution  
5 solely by reason of his being an officer or director of such banking  
6 institution or company. AS USED IN THIS SECTION, THE TERMS "BANK HOLD-  
7 ING COMPANY" AND "BANKING INSTITUTION" SHALL HAVE THE MEANINGS AS  
8 DEFINED IN SECTION ONE HUNDRED FORTY-ONE OF THIS ARTICLE, EXCEPT THAT  
9 THE DEFINITION OF "BANK HOLDING COMPANY" IS MODIFIED TO CHANGE THE  
10 PHRASE "A BANKING INSTITUTION" WHEREVER IT APPEARS THEREIN TO "ONE OR  
11 MORE BANKING INSTITUTIONS" AND THE DEFINITION OF "BANKING INSTITUTION"  
12 IS MODIFIED TO ADD A NATIONAL BANKING ASSOCIATION, THE PRINCIPAL OFFICE  
13 OF WHICH IS LOCATED IN THIS STATE.

14 [4.] 3. As used in this section, the term "village" shall mean either  
15 an incorporated or unincorporated village.

16 S 4. Subdivision 2 of section 143 of the banking law is renumbered  
17 subdivision 1 and subdivision 3, as added by chapter 255 of the laws of  
18 1973 and paragraph (a) of subdivision 3 as amended by chapter 702 of the  
19 laws of 2006, is amended to read as follows:

20 [3.] 2. (a) No executive officer of a bank holding company may be an  
21 executive officer or director of another bank holding company or of a  
22 bank or trust company, savings bank, OR savings and loan association, OR  
23 OF A national bank [located in this state, federal savings and loan  
24 association located in this state], FEDERAL SAVINGS BANK OR FEDERAL  
25 SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH IS LOCATED IN THIS  
26 STATE, or OF A foreign banking corporation maintaining a branch in this  
27 state, unless permission therefor has been granted by the banking board  
28 pursuant to the provisions of paragraph (b) of this subdivision, except  
29 that an executive officer of a bank holding company may be (i) an execu-  
30 tive officer and (ii) a director of one or more banking institutions or  
31 bank holding companies which are subsidiaries of such bank holding  
32 company[; provided, however, that an executive officer of a bank holding  
33 company, who on the effective date of this act is an executive officer  
34 or director of another bank holding company or of a bank or trust compa-  
35 ny, or of a savings bank, savings and loan association, national bank  
36 located in this state, federal savings and loan association located in  
37 this state or foreign banking corporation maintaining a branch in this  
38 state, may continue to hold such other office, without permission from  
39 the banking board, until the expiration of the term of such office or  
40 the close of business on the last day of December, nineteen hundred  
41 seventy-four, whichever occurs sooner].

42 (b) The banking board shall have the power to determine by regulation  
43 who shall be considered, under the provisions of this subdivision, to be  
44 an executive officer, and by a general or specific regulation, upon a  
45 three-fifths vote of all its members, to grant permission to an execu-  
46 tive officer of a bank holding company to be at the same time an execu-  
47 tive officer, director or trustee or both an executive officer and a  
48 director or a trustee of another bank holding company or of a bank or  
49 trust company, savings bank, savings and loan association, national bank  
50 located in this state, federal savings and loan association located in  
51 this state or foreign banking corporation maintaining a branch in this  
52 state. Such permission may be granted only if in the judgment of the  
53 banking board such service by the executive officer will be consistent  
54 with the policy of the state of New York as declared in section ten of  
55 this chapter. The banking board shall have the power to revoke such  
56 permission by a like vote whenever it finds, after a reasonable notice

1 and an opportunity to be heard, that the public interest requires such  
2 revocation.

3 (c) For the purposes of this subdivision, the terms "subsidiary",  
4 "banking institution" and "bank holding company" shall each be given the  
5 same meaning as is contained in their respective definition in section  
6 one hundred forty-one of this [chapter] ARTICLE, except that the defi-  
7 nition of ["bank holding company" is modified by deleting the phrase  
8 "each of two or more" and substituting the word "institution" for  
9 "institutions", and the definition of] the term "banking institution" is  
10 modified to include NATIONAL BANK, FEDERAL SAVINGS BANK OR FEDERAL  
11 SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH INSTITUTION IS  
12 LOCATED IN THIS STATE, AND a foreign banking corporation maintaining a  
13 branch in this state.

14 (d) All other restrictions and limitations imposed by this chapter on  
15 executive officers and directors of bank holding companies shall contin-  
16 ue in effect.

17 S 5. Subdivisions 1, 3 and 4 of section 143-a of the banking law,  
18 subdivision 1 as amended by chapter 1 of the laws of 1984, the opening  
19 paragraph of subdivision 1 and subdivision 3 as amended by chapter 702  
20 of the laws of 2006, the closing paragraph of subdivision 1 as amended  
21 by section 19 of part 0 of chapter 59 of the laws of 2006 and subdivi-  
22 sion 4 as amended by chapter 52 of the laws of 1968, are amended to read  
23 as follows:

24 1. A company having capital stock OR MEMBERSHIP INTERESTS may acquire  
25 all the capital stock OR MEMBERSHIP INTERESTS of one or more corpo-  
26 rations organized under or subject to the provisions of article three,  
27 six, or ten of this chapter, provided THAT (a) [that] such corporation  
28 or corporations are directly or indirectly controlled prior to such  
29 acquisition by the persons or entities that directly or indirectly  
30 control such company and (b) [that] such persons or entities will  
31 continue to control such company thereafter. Such company and such  
32 corporation or corporations shall submit in duplicate to the superinten-  
33 dent a written plan of acquisition of such stock. Such plan shall be in  
34 form satisfactory to the superintendent, shall specify each corporation  
35 the stock of which is to be acquired by the company and shall prescribe  
36 the terms and conditions of the acquisition and the mode of carrying it  
37 into effect, including the manner of exchanging the shares of each of  
38 the corporations for shares or other securities of the company. Any such  
39 plan may provide for the payment of cash in lieu of the issuance of  
40 fractional shares of the company.

41 At the time of submission to the superintendent of the written plan of  
42 acquisition of stock, an investigation fee as prescribed pursuant to  
43 section eighteen-a of this chapter shall be paid to the superintendent[;  
44 provided, however, that if the plan of acquisition has been submitted in  
45 connection with an application submitted by the company pursuant to  
46 section one hundred forty-two of this article, no investigation fee  
47 shall be payable pursuant to this section].

48 3. If no action to be taken pursuant to the plan of acquisition  
49 requires the prior approval of the banking board pursuant to section  
50 [one hundred forty-two or] one hundred forty-three-b of this article,  
51 the superintendent shall approve or disapprove of a proposed plan of  
52 acquisition within one hundred twenty days after the submission of such  
53 plan of acquisition [to him], and in determining whether or not to  
54 approve any such plan the superintendent shall take into consideration  
55 the declaration of policy contained in section ten of this chapter. If  
56 any action to be taken pursuant to the plan of acquisition requires such

1 prior approval of the banking board, the superintendent shall submit  
2 such plan of acquisition together with his OR HER recommendations in  
3 regard thereto and all papers, correspondence and other information in  
4 his OR HER possession and relating thereto, to the banking board for its  
5 approval or disapproval as part of the application submitted to it  
6 pursuant to [said] SUCH section [one hundred forty-two or] one hundred  
7 forty-three-b. If the superintendent or the banking board, AS REQUIRED,  
8 shall approve such plan of acquisition, the superintendent shall file  
9 the plan, together with such certificates and the original of the  
10 approval of the superintendent or a certified copy of the approving  
11 resolution of the banking board, in the office of the superintendent.  
12 Upon such filing in the office of the superintendent, the plan, and the  
13 acquisitions provided for therein, shall become effective, unless a  
14 later date is specified in the plan, in which event the plan and such  
15 acquisitions shall become effective upon such later date.

16 4. Any stockholder of any such corporation, entitled to vote on such  
17 plan of acquisition, who does not assent thereto shall, subject to and  
18 by complying with section six thousand twenty-two of this chapter, have  
19 the right to receive payment of the fair value of [his] SUCH STOCKHOLD-  
20 ER'S shares and the other rights and benefits provided by such section.

21 S 6. Subdivisions 1 and 4 of section 143-b of the banking law, subdi-  
22 vision 1 as amended by chapter 793 of the laws of 1980 and subdivision 4  
23 as added by chapter 950 of the laws of 1969, are amended to read as  
24 follows:

25 1. It shall be unlawful except with the prior approval of the banking  
26 board by a three-fifths vote of all the members thereof for any company  
27 to acquire control of any banking institution, directly or indirectly,  
28 provided, however, that the provisions of this section shall not apply  
29 to a [bank holding company, a] company which has submitted to the super-  
30 intendent a plan of acquisition pursuant to section one hundred forty-  
31 three-a [or stock described in subdivision two of section one hundred  
32 forty-two] OF THIS ARTICLE FOR AN ACQUISITION NOT INVOLVING A CHANGE OF  
33 CONTROL OF THE BANKING INSTITUTION. As used in this section, the term  
34 "control" means the possession, directly or indirectly, of the power to  
35 direct or cause the direction of the management and policies of a bank-  
36 ing institution, whether through the ownership of voting stock of such  
37 banking institution, the ownership of voting stock of any company which  
38 possesses such power or otherwise. Control shall be presumed to exist if  
39 any company, directly or indirectly, owns, controls or holds with the  
40 power to vote ten per centum or more of the voting stock of any banking  
41 institution or of any company which owns, controls or holds with power  
42 to vote ten per centum or more of the voting stock of such banking  
43 institution, but no person shall be deemed to control a banking institu-  
44 tion solely by reason of his OR HER being an officer or director of such  
45 banking institution or company. The superintendent may in his OR HER  
46 discretion, upon the application of a banking institution or any company  
47 which, directly or indirectly, owns, controls or holds with power to  
48 vote or seeks to own, control or hold with power to vote any voting  
49 stock of such banking institution, determine whether or not the owner-  
50 ship, control or holding of such voting stock would constitute control  
51 of such banking institution for purposes of this section.

52 4. [This section shall not apply to the exercise of control in a  
53 national banking association if the acquisition of such control or its  
54 exercise is subject to approval or disapproval pursuant to federal law.]  
55 A COMPANY DOES NOT CONTROL A BANKING INSTITUTION BY VIRTUE OF ITS OWNER-  
56 SHIP OR CONTROL OF: (A) STOCK ACQUIRED BY A COMPANY IN GOOD FAITH IN A



1 FIDUCIARY CAPACITY, EXCEPT WHERE SUCH STOCK IS HELD FOR THE BENEFIT OF  
2 STOCKHOLDERS OR MEMBERS OF SUCH COMPANY; (B) VOTING RIGHTS OF STOCK  
3 ACQUIRED IN THE COURSE OF A PROXY SOLICITATION BY A COMPANY FORMED FOR  
4 THE SOLE PURPOSE OF PARTICIPATING IN PROXY SOLICITATIONS BY VIRTUE OF  
5 ITS CONTROL OF VOTING RIGHTS OF STOCK ACQUIRED IN THE COURSE OF SUCH  
6 SOLICITATION; (C) STOCK ACQUIRED BY A COMPANY IN CONNECTION WITH ITS  
7 UNDERWRITING OF SECURITIES IF SUCH SHARES ARE HELD ONLY FOR SUCH PERIOD  
8 OF TIME AS WILL PERMIT THE SALE THEREOF ON A REASONABLE BASIS; (D) STOCK  
9 ACQUIRED BY A COMPANY IN SETTLEMENT OR REDUCTION OF A LOAN, OR ADVANCE  
10 OF CREDIT, OR IN EXCHANGE FOR AN INVESTMENT PREVIOUSLY MADE IN GOOD  
11 FAITH AND IN THE ORDINARY COURSE OF BUSINESS, PROVIDED THAT ANY STOCK SO  
12 ACQUIRED SHALL BE DISPOSED OF WITHIN A PERIOD OF TWO YEARS FROM THE DATE  
13 UPON WHICH IT WAS ACQUIRED UNLESS THE SUPERINTENDENT SHALL, IN WRITING,  
14 AUTHORIZE SUCH BANKING INSTITUTION TO HOLD SUCH STOCK FOR A LONGER PERI-  
15 OD; OR (E) STOCK DIVIDENDS, STOCK SPLITS, OR ADDITIONAL STOCK ACQUIRED  
16 BY A BANK HOLDING COMPANY, OR BY ANY SUBSIDIARY THEREOF, IN EXERCISE OF  
17 ITS PREEMPTIVE RIGHT AS A STOCKHOLDER.

18 S 7. Section 144 of the banking law is REPEALED.

19 S 8. Subdivision 6 of section 39 of the banking law, as amended by  
20 section 1 of part FF of chapter 59 of the laws of 2004, is amended to  
21 read as follows:

22 6. As used in this section, "bank holding company" shall have the same  
23 meaning as that term is defined in section one hundred forty-one of this  
24 chapter[, except that such definition is modified by deleting the phrase  
25 "each of two or more" and substituting the word "institution" for  
26 "institutions"].

27 S 9. Paragraph (b) of subdivision 8 of section 100-c of the banking  
28 law, as added by chapter 239 of the laws of 1986, is amended to read as  
29 follows:

30 (b) For the purpose of this subdivision, (i) the term "bank holding  
31 company" shall be given the same meaning as is contained in the defi-  
32 nition of such term in section one hundred forty-one of this chapter,  
33 [except that such definition is modified by substituting the words "a  
34 banking institution" for the phrase "each of two or more banking insti-  
35 tutions" wherever such phrase appears,] and (ii) the term "trust compa-  
36 ny" shall be given the same meaning as is contained in the definition of  
37 such term in subdivision seven of this section, except that such term  
38 shall be deemed to include, in addition to the entities listed in such  
39 subdivision, any banking, trust or financial company, corporation or  
40 association, organized under the laws of the United States, whether or  
41 not having its principal office outside this state, or of any state of  
42 the United States, which is duly authorized to exercise fiduciary  
43 powers.

44 S 10. Paragraph (a) of subdivision 1 of section 105 of the banking  
45 law, as amended by chapter 380 of the laws of 1971 and as designated by  
46 chapter 9 of the laws of 1996, is amended to read as follows:

47 (a) No bank or trust company or officer, director, agent or employee  
48 thereof, shall transact any part of its usual business of banking at any  
49 place other than its principal office, except that a bank or trust  
50 company may open and occupy one or more branch offices at any location  
51 in the state, provided: (i) that the requirements of section twenty-nine  
52 of this chapter are met and (ii) that, except for the city or village in  
53 which its principal office is located, in no event shall a branch be  
54 opened and occupied pursuant to this subdivision in a city or village  
55 with a population of fifty thousand or less in which is already located  
56 the principal office of another bank, trust company or national banking

1 association, other than a bank holding company, if such bank holding  
2 company is a banking institution, or a banking subsidiary of a bank  
3 holding company (as such terms "bank holding company", "banking institu-  
4 tion" and "banking subsidiary" are defined in [article three-A] SECTION  
5 ONE HUNDRED FORTY-ONE of this chapter) EXCEPT THAT THE DEFINITION OF  
6 "BANK HOLDING COMPANY" IS MODIFIED TO CHANGE THE PHRASE "A BANKING  
7 INSTITUTION" WHEREVER IT APPEARS THEREIN TO "ONE OR MORE BANKING INSTI-  
8 TUTIONS" AND THE DEFINITION OF "BANKING INSTITUTION" IS MODIFIED TO ADD  
9 A NATIONAL BANKING ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH INSTITU-  
10 TION IS LOCATED IN THIS STATE, except, in the case of a conversion  
11 pursuant to the provisions of this article, branch offices occupied  
12 immediately prior thereto or except for the purpose of acquiring by  
13 merger, sale or otherwise the business and property of a bank, trust  
14 company or national banking association, whether in liquidation or doing  
15 business in the usual course.

16 S 11. Paragraph (c) of subdivision 2 of section 240 of the banking  
17 law, as amended by chapter 380 of the laws of 1971 and as relettered by  
18 chapter 9 of the laws of 1996, is amended to read as follows:

19 (c) Except for the city or village in which its principal office is  
20 located, no branch office may be opened and occupied pursuant to para-  
21 graph (a) of this subdivision in any city or village with a population  
22 of fifty thousand or less and in which is ALREADY located the principal  
23 office of a bank, trust company or national banking association, other  
24 than a bank holding company, if such bank holding company is a banking  
25 institution, or a banking subsidiary of a bank holding company, as such  
26 terms "bank holding company", "banking institution" and "banking subsid-  
27 iary" are defined in [article three-A] SECTION ONE HUNDRED FORTY-ONE of  
28 this chapter EXCEPT THAT THE DEFINITION OF "BANK HOLDING COMPANY" IS  
29 MODIFIED TO CHANGE THE PHRASE "A BANKING INSTITUTION" WHEREVER IT  
30 APPEARS THEREIN TO "ONE OR MORE BANKING INSTITUTIONS" AND THE DEFINITION  
31 OF "BANKING INSTITUTION" IS MODIFIED TO ADD A NATIONAL BANKING ASSOCI-  
32 ATION, THE PRINCIPAL OFFICE OF WHICH INSTITUTION IS LOCATED IN THIS  
33 STATE.

34 S 12. Paragraph (b) of subdivision 2 of section 396 of the banking  
35 law, as amended by chapter 349 of the laws of 1986, is amended to read  
36 as follows:

37 (b) Except for the city or village in which its principal office is  
38 located, no branch office may hereafter be opened and occupied pursuant  
39 to paragraph (a) of this subdivision in any city or village with a popu-  
40 lation of less than thirty thousand and in which is ALREADY located the  
41 principal office of a bank, trust company or national banking associ-  
42 ation, other than a bank holding company, if such bank holding company  
43 is a banking institution, or a banking subsidiary of a bank holding  
44 company, as such terms "bank holding company", "banking institution" and  
45 "banking subsidiary" are defined in [article three-A] SECTION ONE  
46 HUNDRED FORTY-ONE of this chapter EXCEPT THAT THE DEFINITION OF "BANK  
47 HOLDING COMPANY" IS MODIFIED TO CHANGE THE PHRASE "A BANKING INSTITU-  
48 TION" WHEREVER IT APPEARS THEREIN TO "ONE OR MORE BANKING INSTITUTIONS"  
49 AND THE DEFINITION OF "BANKING INSTITUTION" IS MODIFIED TO ADD A  
50 NATIONAL BANKING ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH INSTITUTION  
51 IS LOCATED IN THIS STATE.

52 S 13. Paragraphs (a), (b) and (c) of subdivision 3 of section 130 of  
53 the banking law, as added by chapter 255 of the laws of 1973, are  
54 amended to read as follows:

55 (a) No executive officer of a bank or trust company may be an execu-  
56 tive officer, director or trustee of another bank or trust company,

1 savings bank, savings and loan association, national bank [in this  
2 state, federal savings and loan association], FEDERAL SAVINGS BANK OR  
3 FEDERAL SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH INSTITUTION  
4 IS located in this state, bank holding company or foreign banking corpo-  
5 ration maintaining a branch in this state, unless permission therefor  
6 has been granted by the banking board pursuant to the provisions of  
7 [subparagraph] PARAGRAPH (b) of this subdivision, except that [(1)] an  
8 executive officer of a bank or trust company which is a subsidiary of a  
9 bank holding company may be (i) an executive officer and (ii) a director  
10 of the bank holding company and of one or more banking institutions  
11 which are subsidiaries of such bank holding company[; and (2) an execu-  
12 tive officer of a bank or trust company owned by savings banks pursuant  
13 to subdivision eighteen of section two hundred thirty-five, or by  
14 savings and loan associations or federal savings and loan associations  
15 located in this state pursuant to section three hundred seventy-nine-a,  
16 may be (i) an executive officer and (ii) a director or trustee of one of  
17 the stockholders of such a bank or trust company of which he is an exec-  
18 utive officer; provided, however, that except as stated in the foregoing  
19 exceptions, an executive officer of a bank or trust company, who on the  
20 effective date of this act is an executive officer, director or trustee  
21 of another bank or trust company, savings bank, savings and loan associ-  
22 ation, national bank located in this state, federal savings and loan  
23 association located in this state, bank holding company or foreign bank-  
24 ing corporation maintaining a branch in this state, may continue to hold  
25 such other office, without permission from the banking board, until the  
26 expiration of the term of such office or the close of business on the  
27 last day of December, nineteen hundred seventy-four, whichever occurs  
28 sooner].

29 (b) The banking board shall have the power to determine by regulation  
30 who shall be considered, under the provisions of this subdivision, to be  
31 an executive officer, and by a general or specific regulation, upon a  
32 three-fifths vote of all its members, to grant permission to an execu-  
33 tive officer of a bank or trust company to be an executive officer,  
34 director or trustee or both an executive officer and director or a trus-  
35 tee of another bank or trust company, savings bank, OR savings and loan  
36 association, national bank, FEDERAL SAVINGS BANK OR FEDERAL SAVINGS  
37 ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH IS located in this state,  
38 [federal savings and loan association located in this state,] bank hold-  
39 ing company, or foreign banking corporation maintaining a branch in this  
40 state. Such permission may be granted only if in the judgment of the  
41 banking board such service by the executive officer will be consistent  
42 with the policy of the state of New York as declared in section ten of  
43 this chapter. The banking board shall have the power to revoke such  
44 permission by a like vote whenever it finds, after reasonable notice and  
45 an opportunity to be heard, that the public interest requires such revo-  
46 cation.

47 (c) For the purposes of this subdivision, the terms "subsidiary",  
48 "banking institution" and "bank holding company" shall each be given the  
49 same meaning as is contained in their respective definition in section  
50 one hundred forty-one of this chapter, except that the definition of  
51 ["bank holding company" is modified by deleting the phrase "each of two  
52 or more" and substituting the word "institution" for "institutions", and  
53 the definition of] the term "banking institution" is modified to include  
54 A NATIONAL BANK, FEDERAL SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION,  
55 THE PRINCIPAL OFFICE OF WHICH INSTITUTION IS IN THIS STATE, AND a  
56 foreign banking corporation maintaining a branch in this state.

1 S 14. Subdivision 5 of section 136 of the banking law, as amended by  
2 section 16 of part 0 of chapter 59 of the laws of 2006, is amended to  
3 read as follows:

4 5. With the written plan of conversion submitted under subdivision two  
5 [hereof] OF THIS SECTION, there shall be paid to the superintendent an  
6 investigation fee as prescribed pursuant to section eighteen-a of this  
7 chapter[; provided, however, that no investigation fee shall be payable  
8 under this subdivision with respect to a merger to which subdivision two  
9 of section one hundred thirty-six-b of this article is applicable], and  
10 with the written plan of merger submitted under subdivision three [here-  
11 of] OF THIS SECTION there shall be paid to the superintendent an inves-  
12 tigation fee as prescribed pursuant to section eighteen-a of this chap-  
13 ter.

14 S 15. Subdivision 2 of section 136-a of the banking law, as amended  
15 by chapter 509 of the laws of 1977 and the closing paragraph as amended  
16 by section 17 of part 0 of chapter 59 of the laws of 2006, is amended to  
17 read as follows:

18 2. In the case of each such acquisition, a written plan providing for  
19 the acquisition by the bank or trust company of the assets of the  
20 national banking association shall be submitted, in duplicate, by the  
21 bank or trust company to the superintendent. Such plan shall be in form  
22 satisfactory to the superintendent, shall specify the selling and the  
23 acquiring corporation, and shall prescribe the terms and conditions of  
24 the acquisition and the mode of carrying it into effect.

25 At the time of submission for action by the superintendent of the  
26 written plan of acquisition of assets, an investigation fee as  
27 prescribed pursuant to section eighteen-a of this chapter shall be paid  
28 to the superintendent[; provided, however, that no investigation fee  
29 shall be payable under this subdivision with respect to an acquisition  
30 to which subdivision two of section one hundred thirty-six-b of this  
31 article is applicable].

32 S 16. Section 136-b of the banking law, as amended by chapter 55 of  
33 the laws of 1965, is amended to read as follows:

34 S 136-b. Approval of superintendent. [1.] The superintendent shall  
35 approve or disapprove of a proposed merger as authorized by section one  
36 hundred thirty-six of this [chapter] ARTICLE or a proposed acquisition  
37 of all or a substantial part of the assets of a national banking associ-  
38 ation as authorized by section one hundred thirty-six-a of this [chap-  
39 ter] ARTICLE, as the case may be, within one hundred twenty days after  
40 the submission of the proposed plan thereof to him OR HER. In determin-  
41 ing whether to so approve, the superintendent shall take into consider-  
42 ation (i) the declaration of policy contained in section ten of this  
43 chapter, (ii) whether the effect of such merger or acquisition shall be  
44 either to expand the size or extent of the resulting or acquiring insti-  
45 tution beyond limits consistent with adequate and sound banking and the  
46 preservation thereof or result in a concentration of assets beyond  
47 limits consistent with effective competition, (iii) whether such merger  
48 or acquisition may result in such a lessening of competition as to be  
49 injurious to the interests of the public or tend toward monopoly and  
50 (iv) primarily, the public interest and the needs and convenience there-  
51 of. If the superintendent shall approve such proposed merger or acquisi-  
52 tion, he OR SHE shall file the plan, together with such certificates and  
53 the original of the approval of the superintendent, in the office of the  
54 superintendent, and, in the case of merger, a duplicate of the plan,  
55 together with a duplicate of each of such certificates and a duplicate  
56 of the superintendent's approval, shall be filed in the office of the

1 clerk of the county in which the principal office of the receiving  
2 corporation is located. Upon such filing in the office of the super-  
3 intendent, the merger or acquisition shall become effective, unless a  
4 later date is specified in the plan, in which event the merger or acqui-  
5 sition shall become effective upon such later date.

6 [2. Notwithstanding the provisions of subdivision one of this section,  
7 the approval of the superintendent shall not be required with respect to  
8 such merger or acquisition, if any of the corporations which are to  
9 merge, or if the selling or acquiring corporation, is a banking subsid-  
10 iary of a bank holding company, and the banking board pursuant to  
11 section one hundred forty-two of this chapter has granted its approval  
12 for such bank holding company, or any trustee or trustees who hold  
13 voting stock of such banking subsidiary for the benefit of the stock-  
14 holders or members of such bank holding company, to vote the stock of  
15 such banking subsidiary in favor of the proposed merger or acquisition.  
16 The superintendent shall file the plan of merger or acquisition and the  
17 certificate submitted to him pursuant to section one hundred thirty-six  
18 or section one hundred thirty-six-a of this chapter, together with a  
19 certified copy of the resolution of the banking board granting such  
20 approval, in the office of the superintendent, and, in the case of a  
21 merger, a duplicate of the plan and of each of such certificates,  
22 together with a certified copy of such resolution, shall be filed in the  
23 office of the clerk of the county in which the receiving corporation is  
24 located. Upon such filing in the office of the superintendent, the merg-  
25 er or acquisition shall become effective, unless a later date is speci-  
26 fied in the plan, in which event the merger or acquisition shall become  
27 effective upon such later date. For purposes of this subdivision, the  
28 terms "bank holding company" and "banking subsidiary" shall have the  
29 meanings stated in section one hundred forty-one of this chapter.]

30 S 17. Section 209 of the banking law, as added by chapter 255 of the  
31 laws of 1973, is amended to read as follows:

32 S 209. Restrictions on executive officers of foreign banking corpo-  
33 rations and national banks. 1. No executive officer of a foreign banking  
34 corporation maintaining a branch in this state may be an executive offi-  
35 cer, director or trustee of a bank or trust company, savings bank,  
36 savings and loan association, national bank, FEDERAL SAVINGS BANK OR  
37 FEDERAL SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH INSTITUTION  
38 IS located in this state, [federal savings and loan association located  
39 in this state,] bank holding company or another foreign banking corpo-  
40 ration maintaining a branch in this state, unless permission therefor  
41 has been granted by the banking board pursuant to the provisions of  
42 subdivision three of this section, except that an executive officer of a  
43 foreign banking corporation maintaining a branch in this state which is  
44 a subsidiary of a bank holding company may be (i) an executive officer  
45 and (ii) a director of the bank holding company of which such foreign  
46 banking corporation is a subsidiary, and of one or more of the banking  
47 institutions which are subsidiaries of such bank holding company[; and  
48 provided, however, that, except as stated in the foregoing exceptions,  
49 an executive officer of a foreign banking corporation maintaining a  
50 branch in this state, who on the effective date of this act is an execu-  
51 tive officer, director or trustee of a bank or trust company, savings  
52 bank, savings and loan association, national bank located in this state,  
53 federal savings and loan association located in this state, bank holding  
54 company or another foreign banking corporation maintaining a branch in  
55 this state, may continue to hold such other office, without permission  
56 from the banking board, until the expiration of the term of such office

1 or the close of business on the last day of December, nineteen hundred  
2 seventy-four, whichever occurs sooner].

3 2. No executive officer of a national bank, FEDERAL SAVINGS BANK OR  
4 FEDERAL SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH INSTITUTION  
5 IS located in this state, may be an executive officer, director or trust-  
6 tee of a bank or trust company, savings bank, savings and loan associ-  
7 ation, bank holding company or foreign banking corporation maintaining a  
8 branch in this state, unless permission therefor has been granted by the  
9 banking board pursuant to the provisions of subdivision three of this  
10 section, except that (1) an executive officer of a national bank located  
11 in this state, which is a subsidiary of a bank holding company may be  
12 (i) an executive officer and (ii) a director of the bank holding company  
13 and of one or more banking institutions which are subsidiaries of such  
14 bank holding company[; provided, however, that, except as stated in the  
15 foregoing exceptions, an executive officer of a national bank located in  
16 this state, who on the effective date of this act is an executive offi-  
17 cer, director or trustee of a bank or trust company, savings bank,  
18 savings and loan association, bank holding company or foreign banking  
19 corporation maintaining a branch in this state, may continue to hold  
20 such other office, without permission from the banking board, until the  
21 expiration of the term of such office or the close of business on the  
22 last day of December, nineteen hundred seventy-four, whichever occurs  
23 sooner].

24 3. The banking board shall have the power to determine by regulation  
25 who shall be considered, under the provisions of this subdivision, to be  
26 an executive officer, and by a general or specific regulation, upon a  
27 three-fifths vote of all its members, to grant permission to an execu-  
28 tive officer of a foreign banking corporation maintaining a branch in  
29 this state and to an executive officer of a national bank located in  
30 this state, to be at the same time an executive officer, trustee or  
31 director or both an executive officer and a trustee or director of a  
32 bank or trust company, savings bank, savings and loan association,  
33 national bank, FEDERAL SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION, THE  
34 PRINCIPAL OFFICE OF WHICH IS located in this state, [federal savings and  
35 loan association located in this state,] bank holding company, and  
36 foreign banking corporation maintaining a branch in this state. Such  
37 permission may be granted only if in the judgment of the banking board  
38 such service by the executive officer will be consistent with the policy  
39 of the state of New York as declared in section ten of this chapter. The  
40 banking board shall have the power to revoke such permission by a like  
41 vote whenever it finds, after reasonable notice and an opportunity to be  
42 heard, that the public interest requires such revocation.

43 4. For the purposes of this subdivision, the terms "subsidiary",  
44 "banking institution" and "bank holding company" shall each be given the  
45 same meaning as is contained in their respective definition in section  
46 one hundred forty-one of this chapter, except that the definition of  
47 ["bank holding company" is modified by deleting the phrase "each of two  
48 or more" and substituting the word "institution" for "institutions", and  
49 the definition of] the term "banking institution" is modified to include  
50 A NATIONAL BANK, FEDERAL SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION,  
51 THE PRINCIPAL OFFICE OF WHICH INSTITUTION IS LOCATED IN THIS STATE, AND  
52 a foreign banking corporation maintaining a branch in this state.

53 5. All other restrictions and limitations imposed by this chapter on  
54 executive officers and directors of foreign banking corporations main-  
55 taining a branch in this state and on national banks, FEDERAL SAVINGS

BANKS AND FEDERAL SAVINGS ASSOCIATIONS, THE PRINCIPAL OFFICE OF WHICH INSTITUTION IS located in this state, shall continue in effect.

S 18. Section 225-b of the banking law, as amended by chapter 9 of the laws of 1996, is amended to read as follows:

S 225-b. Applicability of certain sections to out-of-state banks. Except as otherwise provided in this section, nothing in article five or article five-B of this chapter shall apply to an out-of-state bank authorized to open, occupy and maintain a branch pursuant to the provisions of this article. Any reference in this chapter (other than in article five or article five-B) to a foreign bank, foreign corporation or foreign banking corporation shall be deemed to be a reference to an out-of-state bank authorized to open, occupy and maintain a branch pursuant to the provisions of this article. Notwithstanding the foregoing, (a) the provisions of sections two hundred two-h (Repayment of deposits standing in the names of minors, trustees, joint depositors or custodians; interpleader in certain actions), two hundred three (Change of location, name or business) and two hundred four (Reports of foreign banking corporations; penalties) of this chapter shall apply with equal force and effect to out-of-state banks authorized to open, occupy or maintain branches pursuant to the provisions of this article; and (b) the provisions of section three hundred ninety-nine-a, subdivision three of section one hundred thirty, subdivision [three] TWO of section one hundred forty-three, subdivision five of section two hundred forty-seven and subdivision five of section three hundred ninety-nine of this chapter with respect to restrictions on executive officers or directors of foreign banking corporations and the provisions of sections twenty, twenty-six, thirty, thirty-one and six hundred thirty-four, subdivision two of section thirteen, subdivisions eleven and twelve of section six hundred five, subdivision four of section six hundred six and paragraph (a) of subdivision one of section fourteen of this chapter, shall not apply to out-of-state banks authorized to open, occupy or maintain branches pursuant to the provisions of this article.

S 19. Paragraphs (a), (b) and (c) of subdivision 5 of section 247 of the banking law, as added by chapter 255 of the laws of 1973, are amended to read as follows:

(a) No executive officer of a savings bank may be an executive officer, director or trustee of another savings bank, or of a bank or trust company, savings and loan association, national bank, FEDERAL SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH INSTITUTION IS located in this state, [federal savings and loan association located in this state,] bank holding company or foreign banking corporation maintaining a branch in this state, unless permission therefor has been granted by the banking board pursuant to the provisions of [subparagraph] PARAGRAPH (b) of this subdivision[, except that an executive officer of a savings bank may be (1) an executive officer and (2) a director of a trust company owned by savings banks, pursuant to subdivision eighteen of section two hundred thirty-five of this chapter, if one of the stockholders of such trust company is the savings bank of which he is an executive officer; provided, however, that, except as stated in the foregoing exceptions, an executive officer of a savings bank who on the effective date of this act is an executive officer, director or trustee of another savings bank, bank or trust company, savings and loan association, national bank located in this state, federal savings and loan association located in this state, bank holding company or foreign banking corporation maintaining a branch in this state, may continue to hold such other office without permission from the banking board, until

1 the expiration of the term of such office or the close of business on  
2 the last day of December, nineteen hundred seventy-four, whichever  
3 occurs sooner].

4 (b) The banking board shall have the power to determine by regulation  
5 who shall be considered, under the provisions of this subdivision, to be  
6 an executive officer, and by a general or specific regulation, upon a  
7 three-fifths vote of all its members, to grant permission to an execu-  
8 tive officer of a savings bank to be an executive officer, director or  
9 trustee or both an executive officer and director or trustee of another  
10 savings bank or a bank or trust company, savings and loan association,  
11 national bank, FEDERAL SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION, THE  
12 PRINCIPAL OFFICE OF WHICH INSTITUTION IS located in this state, [federal  
13 savings and loan association located in this state,] bank holding compa-  
14 ny or foreign banking corporation maintaining a branch in this state.  
15 Such permission may be granted only if in the judgment of the banking  
16 board such service by the executive officer will be consistent with the  
17 policy of the state of New York as declared in section ten of this chap-  
18 ter. The banking board shall have the power to revoke such permission by  
19 a like vote whenever it finds, after reasonable notice and an opportu-  
20 nity to be heard, that the public interest requires such revocation.

21 (c) For the purposes of this subdivision, the term "bank holding  
22 company" shall be given the same meaning as is contained in section one  
23 hundred forty-one of this chapter, [except that the definition is modi-  
24 fied by deleting the phrase "each of two or more" and substituting the  
25 word "institution" for "institutions",] and the definition of the term,  
26 "banking institution" is modified to include a NATIONAL BANK, FEDERAL  
27 SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF  
28 WHICH INSTITUTION IS LOCATED IN THIS STATE, AND A foreign banking corpo-  
29 ration maintaining a branch in this state.

30 S 20. Paragraphs (a), (b) and (c) of subdivision 5 of section 399 of  
31 the banking law, as added by chapter 255 of the laws of 1973, are  
32 amended to read as follows:

33 (a) No executive officer of a savings and loan association may be an  
34 executive officer, director or trustee of another savings and loan asso-  
35 ciation, bank or trust company, savings bank, national bank, FEDERAL  
36 SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF  
37 WHICH INSTITUTION IS located in this state, [federal savings and loan  
38 association located in this state,] bank holding company or foreign  
39 banking corporation maintaining a branch in this state unless permission  
40 therefor has been granted by the banking board pursuant to paragraph (b)  
41 of this subdivision[, except that an executive officer of a savings and  
42 loan association may be (1) an executive officer and (2) a director of a  
43 trust company owned by savings and loan association or federal savings  
44 and loan associations located in this state, pursuant to section three  
45 hundred seventy-nine-a of this chapter, if one of the stockholders of  
46 such trust company is a savings and loan association of which he is an  
47 executive officer; provided, however, that, except as stated in the  
48 foregoing exceptions, an executive officer of a savings and loan associ-  
49 ation, who on the effective date of this act is an executive officer,  
50 director or trustee of another savings and loan association, bank or  
51 trust company, savings bank, national bank located in this state, feder-  
52 al savings and loan association located in this state, bank holding  
53 company or foreign banking corporation maintaining a branch in this  
54 state, may continue to hold such other office, without permission from  
55 the banking board, until the expiration of the term of such office or



1 the close of business on the last day of December, nineteen hundred  
2 seventy-four, whichever occurs sooner].

3 (b) The banking board shall have the power to determine by regulation  
4 who shall be considered, under the provisions of this subdivision, to be  
5 an executive officer, and by a general or specific regulation, upon a  
6 three-fifths vote of all its members, to grant permission to an execu-  
7 tive officer of a savings and loan association to be an executive offi-  
8 cer, director or trustee or both an executive officer and a director or  
9 a trustee of another savings and loan association, bank or trust compa-  
10 ny, savings bank, national bank, FEDERAL SAVINGS BANK OR FEDERAL SAVINGS  
11 ASSOCIATION, THE PRINCIPAL OFFICE OF WHICH IS located in this state,  
12 [federal savings and loan association located in this state,] bank hold-  
13 ing company or foreign banking corporation maintaining a branch in this  
14 state. Such permission may be granted only if in the judgment of the  
15 banking board such service by the executive officer will be consistent  
16 with the policy of the state of New York as declared in section ten of  
17 this chapter. The banking board shall have the power to revoke such  
18 permission by a like vote whenever it finds, after reasonable notice and  
19 an opportunity to be heard, that the public interest requires such revo-  
20 cation.

21 (c) For the purposes of this subdivision, the term "bank holding  
22 company" shall be given the same meaning as is contained in section one  
23 hundred forty-one of this chapter, [except that the definition is modi-  
24 fied by deleting the phrase "each of two or more" and substituting the  
25 word "institution" for "institutions",] and the definition of the term  
26 "banking institution" is modified to include a NATIONAL BANK, FEDERAL  
27 SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF  
28 WHICH INSTITUTION IS LOCATED IN THIS STATE, AND A foreign banking corpo-  
29 ration maintaining a branch in this state.

30 S 21. The section heading and subdivisions 1, 2 and 3 of section 399-a  
31 of the banking law, as added by chapter 255 of the laws of 1973, are  
32 amended to read as follows:

33 Restrictions on holding of certain offices by executive officers of  
34 federal savings [and loan] BANKS AND FEDERAL SAVINGS associations. 1. No  
35 executive officer of a federal savings [and loan] BANK OR FEDERAL  
36 SAVINGS association THE PRINCIPAL OFFICE OF WHICH INSTITUTION IS located  
37 in this state may be an executive officer, director or trustee of a  
38 savings and loan association, bank or trust company, savings bank, bank  
39 holding company or foreign banking corporation maintaining a branch in  
40 this state, unless permission therefor has been granted by the banking  
41 board pursuant to subdivision two of this section, [except that an execu-  
42 tive officer of a federal savings and loan association located in this  
43 state may be (1) an executive officer and (2) a director of a trust  
44 company owned by savings and loan associations or federal savings and  
45 loan associations located in this state, pursuant to section three  
46 hundred seventy-nine-a of this chapter, if one of the stockholders of  
47 such trust company is the federal savings and loan association of which  
48 he is an executive officer;] provided, however, that[, except as stated  
49 in the foregoing exceptions,] an executive officer of a federal savings  
50 and loan association located in this state, who on the effective date of  
51 this [act] SECTION is an executive officer, director or trustee of a  
52 savings and loan association, bank or trust company, savings bank, bank  
53 holding company or foreign banking corporation maintaining a branch in  
54 this state, may continue to hold such other office without permission  
55 from the banking board, until the expiration of the term of such office

1 or the close of business on the last day of December, nineteen hundred  
2 seventy-four, whichever occurs sooner.

3 2. The banking board shall have the power to determine by regulation  
4 who shall be considered, under the provisions of this subdivision, to be  
5 an executive officer, and by a general or specific regulation, upon a  
6 three-fifths vote of all its members, to grant permission to an execu-  
7 tive officer of a federal savings [and loan] BANK OR FEDERAL SAVINGS  
8 association located in this state, to be at the same time an executive  
9 officer, director or trustee, or both an executive officer and a direc-  
10 tor or trustee of a savings and loan association, bank or trust company,  
11 savings bank, bank holding company, and foreign banking corporation  
12 maintaining a branch in this state. Such permission may be granted only  
13 if in the judgment of the banking board such service by the executive  
14 officer will be consistent with the policy of the state of New York as  
15 declared in section ten of this chapter. The banking board shall have  
16 the power to revoke such permission by a like vote whenever it finds,  
17 after reasonable notice and an opportunity to be heard, that the public  
18 interest requires such revocation.

19 3. For the purposes of this subdivision, the term "bank holding compa-  
20 ny" shall be given the same meaning as is contained in section one  
21 hundred forty-one of this chapter, [except that the definition is modi-  
22 fied by deleting the phrase "each of two or more" and substituting the  
23 word "institution" for "institutions",] and the definition of the term  
24 "banking institution" is modified to include a NATIONAL BANK, FEDERAL  
25 SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION, THE PRINCIPAL OFFICE OF  
26 WHICH INSTITUTION IS LOCATED IN THIS STATE, AND A foreign banking corpo-  
27 ration maintaining a branch in this state.

28 S 22. The closing paragraph of subdivision 1 of section 601 of the  
29 banking law, as amended by section 58 of part O of chapter 59 of the  
30 laws of 2006, is amended to read as follows:

31 At the time of submission for action by the superintendent of the  
32 written plan of merger, an investigation fee as prescribed pursuant to  
33 section eighteen-a of this chapter shall be paid to the superintendent[;  
34 provided, however, that no investigation fee shall be payable under this  
35 subdivision with respect to a merger to which subdivision two of section  
36 six hundred one-b of this article is applicable].

37 S 23. Subdivision 2 of section 601-b of the banking law is REPEALED.

38 S 24. Section 222 of the banking law is amended by adding a new subdi-  
39 vision 10 to read as follows:

40 10. THE TERM "BANKING INSTITUTION" MEANS ANY BANK, TRUST COMPANY,  
41 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, OR BRANCH OF A FOREIGN BANK-  
42 ING CORPORATION THE DEPOSITS OF WHICH ARE INSURED BY THE FEDERAL DEPOSIT  
43 INSURANCE CORPORATION, WHICH IS INCORPORATED, CHARTERED, ORGANIZED OR  
44 LICENSED UNDER THE LAWS OF THIS STATE OR ANY OTHER STATE OF THE UNITED  
45 STATES.

46 S 25. Section 223-a of the banking law, as added by chapter 9 of the  
47 laws of 1996, is amended to read as follows:

48 S 223-a. Limitations on acquisition of a newly chartered New York  
49 bank. An acquisition transaction in which the resulting or consolidated  
50 corporation is an out-of-state bank is hereby prohibited if the effect  
51 thereof is to terminate the separate existence of a [New York bank]  
52 BANKING INSTITUTION that has been chartered less than five years, unless  
53 the superintendent finds that the [New York bank] BANKING INSTITUTION to  
54 be acquired was not chartered directly or indirectly by the out-of-state  
55 bank, its officers, directors or principal stockholders, or any other  
56 person in a position to exercise control over such out-of-state bank;

provided, however, that the prohibitions contained in this section shall not apply if the superintendent finds that the [New York bank] BANKING INSTITUTION does not have the capacity to continue to conduct its business independently in a manner consistent with the public interest and the interests of depositors, creditors, and stockholders; and provided further that the prohibitions contained in this section shall not apply to an out-of-state bank which, prior to the acquisition transaction otherwise prohibited by this section, lawfully maintained one or more branches in this state.

S 26. Subdivision (a) of section 4002 of the banking law, as amended by chapter 302 of the laws of 2003, is amended to read as follows:

(a) Notwithstanding any other provisions of law, every incorporator of a corporation shall, in addition to any other requirements which may be imposed by the superintendent, submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. Every applicant filing an application to acquire control [of any bank holding company under section one hundred forty-two of this chapter or] of any banking institution under sections one hundred forty-three-a and one hundred forty-three-b of this chapter shall, in addition to any other requirements which may be imposed by the superintendent, submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. The superintendent shall submit the fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees. The superintendent shall request that the division submit such fingerprints to the federal bureau of investigation, together with the processing fees prescribed by such bureau, for the purpose of conducting a criminal history search and returning a report thereon.

S 27. Any registration of a bank holding company pursuant to section 144 of the banking law as in effect as of the date prior to the effective date of this act shall expire on the effective date of this act.

S 28. This act shall take effect immediately.