

the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 8, 1982.

Passed the House March 6, 1982.

Approved by the Governor April 1, 1982.

Filed in Office of Secretary of State April 1, 1982.

CHAPTER 196

[Substitute House Bill No. 936]

BANKING CORPORATIONS—REORGANIZATION INTO BANK HOLDING COMPANY

AN ACT Relating to banks and trust companies; amending section 30.04.060, chapter 33, Laws of 1955 and RCW 30.04.060; amending section 30.04.230, chapter 33, Laws of 1955 as last amended by section 2, chapter 89, Laws of 1981 and RCW 30.04.230; amending section 30.12.010, chapter 33, Laws of 1955 as last amended by section 3, chapter 89, Laws of 1981 and RCW 30.12.010; amending section 30.49.040, chapter 33, Laws of 1955 and RCW 30.49.040; adding new sections to chapter 30.04 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. A state banking corporation may, with the approval of the supervisor of banking and the affirmative vote of the shareholders of such corporation owning at least two-thirds of its capital stock outstanding, reorganize to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company, as defined in the federal bank holding company act of 1956, as amended.

NEW SECTION. Sec. 2. A reorganization authorized under section 1 of this act shall be carried out in the following manner:

(1) A plan of reorganization specifying the manner in which the reorganization shall be carried out must be approved by a majority of the entire board of directors of the banking corporation. The plan shall specify the name of the acquiring corporation, the amount of cash, securities of the bank holding company, other consideration, or any combination thereof to be paid to the shareholders of the reorganizing corporation in exchange for their shares of the stock of the corporation. The plan shall also specify the exchange date or the manner in which such exchange date shall be determined, the manner in which the exchange shall be carried out, and such other matters, not inconsistent with this chapter, as shall be determined by the board of directors of the corporation.

(2) The plan of reorganization shall be submitted to the shareholders of the reorganizing corporation at a meeting to be held on the call of the directors. Notice of the meeting of stockholders at which the plan shall be considered shall be given by publication in a newspaper of general circulation in the place where the principal office of each banking corporation is

located at least once each week for four successive weeks, and by certified mail at least twenty days before the date of the meeting, to each stockholder of record of the banking corporation. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan.

NEW SECTION. Sec. 3. If the shareholders approve the reorganization by a two-thirds vote of the capital stock outstanding, and if it is thereafter approved by the supervisor and consummated, any shareholder of the banking corporation who has voted shares against such reorganization at such meeting or has given notice in writing at or prior to such meeting to the banking corporation that he or she dissents from the plan of reorganization and has not voted in favor of the reorganization, shall be entitled to receive the value of the shares determined as provided in section 4 of this act. Such dissenter's rights must be exercised by making written demand which shall be delivered to the corporation at any time within thirty days after the date of shareholder approval, accompanied by the surrender of the appropriate stock certificates.

NEW SECTION. Sec. 4. The value of the shares of a dissenting shareholder who has properly perfected dissenter's rights shall be ascertained as of the day prior to the date of the shareholder action approving such reorganization by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the acquiring bank holding company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the effective date of the reorganization, the supervisor of banking shall cause an appraisal to be made which shall be final and binding upon all parties.

NEW SECTION. Sec. 5. The reorganization and exchange authorized by sections 1 through 5 of this act shall become effective as follows:

(1) If the board of directors and shareholders of the state banking corporation and the board of directors of the acquiring corporation approve the plan of reorganization, then both corporations shall apply for the approval of the supervisor of banking, providing such information as the supervisor by regulation may prescribe.

(2) If the supervisor approves the reorganization, the supervisor shall issue a certificate of reorganization to the state banking corporation.

(3) Upon the issuance of a certificate of reorganization by the supervisor, or on such later date as shall be provided for in the plan of reorganization, the shares of the state banking corporation shall be deemed to be exchanged in accordance with the plan of reorganization, subject to the rights of dissenters under sections 3 and 4 of this act.

Sec. 6. Section 30.04.060, chapter 33, Laws of 1955 and RCW 30.04-.060 are each amended to read as follows:

The supervisor, the deputy supervisor, or a bank examiner, without previous notice, shall visit each bank and each trust company at least once in each year, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. Said supervisor may make such other full or partial examinations as ~~((he deems))~~ deemed necessary and may examine any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington and obtain reports of condition for any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington. The supervisor may, in his or her discretion, accept in lieu of the examinations required in this section the examinations required under the terms of the federal reserve act for banks which are, or may become, members of a federal reserve bank or the deposits of which are insured by the Federal Deposit Insurance Corporation. Any wilful false swearing in any examination shall be perjury.

Sec. 7. Section 30.04.230, chapter 33, Laws of 1955 as last amended by section 2, chapter 89, Laws of 1981 and RCW 30.04.230 are each amended to read as follows:

A corporation or association organized under the laws of this state(;) or licensed to transact business in the state, other than a bank or trust company, may acquire any or all shares of stock of any bank, trust company, or national banking association.

Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title, or to permit a bank holding company the operations of which are principally conducted outside this state to acquire more than five percent of the shares of stock or the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

Sec. 8. Section 30.12.010, chapter 33, Laws of 1955 as last amended by section 3, chapter 89, Laws of 1981 and RCW 30.12.010 are each amended to read as follows:

Every bank and trust company shall be managed by not less than five directors, excepting that a bank having a capital of fifty thousand dollars or less may have only three directors. Directors shall be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the bank's or trust company's bylaws but not later than May 15th of each year. If for any cause no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that

purpose in the manner prescribed by the corporation's bylaws. The directors shall meet at least once each month and whenever required by the supervisor. A majority of the board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy. Every director must own in his own right shares of the capital stock of the bank or trust company of which he is a director the aggregate par value of which shall not be less than four hundred dollars, unless the capital of the bank or trust company shall not exceed fifty thousand dollars, in which case he must own in his own right shares of such capital stock the aggregate par value of which shall not be less than two hundred dollars, or an equivalent interest, as determined by the supervisor of banking, in any company which has control over such bank or trust company within the meaning of section 2 of the federal bank holding company act of 1956, as now or hereafter amended. Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

Immediately upon election, each director shall take, subscribe, swear to, and file with the supervisor an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any provision of law applicable to such corporation and that he is the beneficial owner in good faith of the number of shares of stock required by this section, and that the same is fully paid, is not hypothecated or in any way pledged as security for any loan or debt. Vacancies in the board of directors shall be filled by the board.

Sec. 9. Section 30.49.040, chapter 33, Laws of 1955 and RCW 30.49-.040 are each amended to read as follows:

This section is applicable where there is to be a resulting state bank, except in the case of reorganization and exchange as authorized by this title.

(1) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(a) The name of each merging state or national bank and location of each office;

(b) With respect to the resulting state bank, (i) the name and location of the principal and other offices; (ii) the name and residence of each director to serve until the next annual meeting of the stockholders; (iii) the name and residence of each officer; (iv) the amount of capital, the number of shares and the par value of each share; and (v) the amendments to its charters and bylaws;

(c) Provisions governing the ((manner of converting the)) exchange of shares of the merging state or national banks ((into shares of the resulting

state bank)) for such consideration as has been agreed to in the merger agreement;

(d) A statement that the agreement is subject to approval by the supervisor of banking and the stockholders of each merging state or national bank;

(e) Provisions governing the manner of disposing of the shares of the resulting state bank if such shares are to be issued in the transaction and are not taken by dissenting shareholders of merging state or national banks;

(f) Such other provisions as the supervisor of banking requires to ~~((enable him to))~~ discharge his or her duties with respect to the merger;

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the supervisor of banking for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank;

(3) Within sixty days after receipt by the supervisor of banking of the papers specified in ~~((subdivision))~~ subsection (2) of this section, the supervisor of banking shall approve or disapprove of the merger agreement, and if no action is taken, the agreement shall be deemed approved. The supervisor of banking shall approve the agreement if it appears that:

(a) The resulting state bank meets the requirements of state law as to the formation of a new state bank;

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;

(c) The agreement is fair;

(d) The merger is not contrary to the public interest.

If the supervisor of banking disapproves an agreement, he or she shall state his or her objections and give an opportunity to the merging state or national banks to amend the merger agreement to obviate such objections.

NEW SECTION. Sec. 10. Sections 1 through 5 of this act shall be added to chapter 30.04 RCW.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the House February 12, 1982.

Passed the Senate March 9, 1982.

Approved by the Governor April 3, 1982.

Filed in Office of Secretary of State April 3, 1982.

CHAPTER 197

[Senate Bill No. 4522]

TREATY INDIAN FISHERIES—PARTICIPATION BY NONTREATY INDIANS PROHIBITED

AN ACT Relating to food fish and shellfish; adding a new section to chapter 75.12 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 75.12 RCW a new section to read as follows:

(1) Except as provided in subsection (2) of this section, it is unlawful for a person who is not a treaty Indian fisherman to participate in the taking of food fish or shellfish in a treaty Indian fishery, or to be on board a vessel, or associated equipment, operating in a treaty Indian fishery.

(2) (a) The spouse, forebears, siblings, children, and grandchildren of a treaty Indian fisherman may assist the fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(b) Other treaty Indian fishermen with off-reservation treaty fishing rights in the same usual and accustomed places, whether or not the fishermen are members of the same tribe or another tribe, may assist a treaty Indian fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(c) Biologists approved by the department may be on board a vessel operating in a treaty Indian fishery.

(3) For the purposes of this section:

(a) "Treaty Indian fisherman" means a person who may exercise treaty Indian fishing rights as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and post-trial orders of those courts;

(b) "Treaty Indian fishery" means a fishery open to only treaty Indian fishermen by tribal or federal regulation;

(c) "To participate" and its derivatives mean an effort to operate a vessel or fishing equipment, provide immediate supervision in the operation of a vessel or fishing equipment, or otherwise assist in the fishing operation, or to claim possession of a share of the catch.