

Public Law 89-485

AN ACT

To amend the Bank Holding Company Act of 1956.

July 1, 1966
[H. R. 7371]Bank Holding Company
Act of 1956, amendments.
70 Stat. 133.“Bank holding
company.”

Post. p. 237.

“Company.”

“Bank”.

39 Stat. 755; 41 Stat.
378; Post. p. 241.
12 USC 601-631.
“District bank.”

“Subsidiary.”

Repeal.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)) is amended to read as follows:

“(a) ‘Bank holding company’ means any company (1) that directly or indirectly owns, controls, or holds with power to vote 25 per centum or more of the voting shares of each of two or more banks or of a company that is or becomes a bank holding company by virtue of this Act, or (2) that controls in any manner the election of a majority of the directors of each of two or more banks; and, for the purposes of this Act, any successor to any such company shall be deemed to be a bank holding company from the date as of which such predecessor company became a bank holding company. Notwithstanding the foregoing, (A) no bank and no company owning or controlling voting shares of a bank shall be a bank holding company by virtue of such bank’s ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section, (B) no company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis, and (C) no company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.”

SEC. 2. Subsection (b) of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)) is amended to read as follows:

“(b) ‘Company’ means any corporation, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include (1) any corporation the majority of the shares of which are owned by the United States or by any State, or (2) any partnership.”

SEC. 3. Subsection (c) of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)) is amended to read as follows:

(c) ‘Bank’ means any institution that accepts deposits that the depositor has a legal right to withdraw on demand, but shall not include any organization operating under section 25 or section 25(a) of the Federal Reserve Act, or any organization that does not do business within the United States. ‘District bank’ means any bank organized or operating under the Code of Law of the District of Columbia.”

SEC. 4. Subsection (d) of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)) is amended to read as follows:

“(d) ‘Subsidiary’, with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; or (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company.”

SEC. 5. Subsection (g) of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)) is repealed.

by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. Whenever shares of stock cannot be voted by reason of being held by the bank as sole trustee such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares.”

(d) Paragraph (c) of section 5211 of the Revised Statutes (12 U.S.C. 161) is amended by striking out the second sentence thereof.

(e) The last sentence of the sixteenth paragraph of section 4 of the Federal Reserve Act, as amended (12 U.S.C. 304), is amended by striking out all of the language therein which follows the colon and by inserting in lieu thereof the following: “*Provided*, That whenever any member banks within the same Federal Reserve district are subsidiaries of the same bank holding company within the meaning of the Bank Holding Company Act of 1956, participation in any such nomination or election by such member banks, including such bank holding company if it is also a member bank, shall be confined to one of such banks, which may be designated for the purpose by such holding company.”

40 Stat. 968; 48 Stat. 163.

(f) The nineteenth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 334) is amended by striking out the last sentence of such paragraph.

48 Stat. 165.

(g) The twenty-second paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 337) is repealed.

Repeal.

(h) The third paragraph of section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended by striking out that part of the first sentence that reads “For the purpose of this section, the term ‘affiliate’ shall include holding company affiliates as well as other affiliates, and”; and by changing the word “the” following such language to read “The”.

49 Stat. 717.

(i) Paragraph (4) of section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-3) is repealed.

Repeal.
54 Stat. 798.

(j) Paragraph (11) of section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2) is amended by striking out the words “or any holding company affiliate, as defined in the Banking Act of 1933” and substituting therefor the words “or any bank holding company as defined in the Bank Holding Company Act of 1956”.

Approved July 1, 1966.

BANK HOLDING COMPANY ACT AMENDMENTS OF 1966

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MAY 19, 1966 – Ordered to be printed
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Mr. ROBERTSON, from the Committee on Banking and Currency,
submitted the following

R E P O R T

[To accompany H. R. 7371]

The Committee on Banking and Currency, to which was referred the bill (H.R. 7371) to amend the Bank Holding Company Act of 1956, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purpose of H.R. 7371, as amended by the committee, is to eliminate two major open-end exemptions from the Bank Holding Company Act of 1956 – the exemption for long-term trusts and religious, charitable, and educational institutions and the exemption for registered investment companies and their affiliates – and to bring up to date the regulatory and administrative provisions of the Bank Holding Company Act and related acts.

HISTORY OF THE LEGISLATION

In accordance with section 5(d) of the act, the Federal Reserve Board which administers it reported to the Congress in 1958 and annually thereafter recommending amendments to the act on the basis of the Board's experience under it. S. 2353, introduced by the chairman of the committee, by request, on August 3, 1965, contained the recommendations made by the Federal Reserve Board in 1965. S. 2353 would have eliminated the exemption for long-term trusts and religious, charitable and educational institutions and the exemption for registered investment companies and their affiliates. It would have also made the act applicable to one-bank holding companies, and it would have eliminated a number of other exemptions of little significance. In addition, S. 2353 contained the Federal Reserve Board's recommendations for changes in the regulatory and administrative

Section 12(b) would authorize any member bank, upon such conditions and subject to such regulations as the Board may prescribe, to invest directly in any foreign bank that does no business in this country (except incidental to its foreign activities), and to make loans to such a bank without regard to section 23A but within limits prescribed by the Board.

Section 12(c) would apply section 23A to insured nonmember banks.

SECTION 13: REPEAL OF 1933 LAWS

21. *Repeal of provisions requiring "holding company affiliates" to obtain voting permits and maintain special reserves.* – There are a number of provisions of existing law, enacted in the Banking Act of 1933, that relate to holding company affiliates, a term defined by that act primarily as a company owning more than 50 percent of the stock of any member bank. This definition is to be distinguished from that of a bank holding company under the Bank Holding Company Act which in general covers any company owning 25 percent or more of the stock of each of two or more banks, whether or not they are members of the Federal Reserve System.

The effectiveness of these 1933 provisions is open to question and it is doubtful whether, in view of enactment of the Bank Holding Company Act, they are now sufficiently useful to justify their retention. Their elimination would remove the confusion that results from the existence of two sets of laws that relate to the same general subject but are based on different definitions of what constitutes a holding company.

A. Among the principal provisions involved are those contained in section 5144 of the Revised Statutes and in the 22d paragraph of section 9 of the Federal Reserve Act. In general, these provisions require a holding company affiliate of any national bank or State member bank to obtain a voting permit from the Board before it may vote its stock in such a bank; and, as a condition to obtaining such a permit, a holding company affiliate must agree to submit to examination, to maintain a prescribed reserve, and to declare dividends only out of net earnings. The value of these provisions has been limited by the fact that they apply only if such a company finds it necessary to vote stock owned by it in a member bank. Since the Bank Holding Company Act makes it necessary for any bank holding company to obtain the Board's prior approval before acquiring the stock of any bank (whether member or nonmember) and since, in granting that approval, the Board must consider the financial condition and management of the holding company, the voting permit procedure prescribed by section 5144 of the Revised Statutes serves no substantial purpose.

B. Accordingly, section 13(c) would repeal the voting permit requirement. Other provisions of the section would make conforming amendments to existing statutes, including repeal of section 301 of the Banking Act of 1935, which amended the 1933 to authorize the Board to exempt certain companies from the requirement; repeal of section 601 of the Internal Revenue Code, relating to tax treatment of funds, set aside in compliance with the reserve requirement repealed by the bill; and substitution of references to "bank holding company" for "holding company affiliate" in section 4 of the Federal Reserve Act (relating to election of directors of Reserve banks) and section 202

of the Investment Advisers Act. Section 3(c)(4) of the Investment Company Act of 1940, which exempts "holding company affiliates" that were granted a voting permit before 1940 from that act would also be repealed. Although in terms it also exempts any such affiliate with a later voting permit concerning which certain determinations are made, no such determination has ever been made. In effect, any registered bank holding company to which the exemption now applies would also be exempt under other provisions of section 3(c) of the 1940 act, either because the company is a bank or because it is primarily engaged in banking.

C. Section 9 of the Federal Reserve Act and section 5211 of the Revised Statutes, which require State member banks and national banks to submit reports concerning their affiliates, would continue in effect. In many instances companies that control only one bank have been exempted from these provisions because of determinations under section 301, which would be repealed, as mentioned above. However, the Board and the Comptroller have authority to waive reports of affiliates when considered unnecessary.

D. Also continued in effect would be other provisions of section 9 of the Federal Reserve Act and section 21 of that act, providing for examination of affiliates of State member banks and national banks. Section 13(a) of the bill would make it clear that these apply to holding companies affiliates, including a company that owns a majority of the stock of one bank. Again, however, such examinations could be waived.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

BANK HOLDING COMPANY ACT OF 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bank Holding Company Act of 1956".

DEFINITIONS

SEC. 2 (a) "Bank holding company" means any company (1) [which] *that* directly or indirectly owns, controls, or holds with power to vote [,] 25 per centum or more of the voting shares of each of two or more banks or of a company [which] *that* is or becomes a bank holding company by virtue of this Act, or (2) [which] *that* controls in any manner the election of a majority of the directors of each of two or more banks [or (3) for the benefit of whose shareholders or members 25 per centum or more of the voting shares of each of two or more banks or a bank holding company is held by trustee]; and, for the purposes of this Act, any successor to any such company shall be deemed to be a bank holding company from the date as of which such predecessor company became a bank holding company. Notwithstanding the foregoing, (A) no bank *and no company owning or controlling voting shares of a bank* shall be a bank holding company by virtue of [its] *such*

by companies which are subject to regulation under the Interstate Commerce Act.

(10) Any company with a registration in effect as a holding company under the Public Utility Holding Company Act of 1935.

(11) Any person substantially all of whose business consists of owning or holding oil, gas, or other mineral royalties or leases, or fractional interests therein, or certificates of interest or participation in or investment contracts relative to such royalties, leases, or fractional interests.

(12) Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(13) Any employees' stock bonus, pension, or profit-sharing trust which meets the conditions of section 165 of the Internal Revenue Code, as amended.

(14) Any voting trust the assets of which consist exclusively of securities of a single issuer which is not an investment company.

(15) Any security holders' protective committee or similar issuer having outstanding and issuing no securities other than certificates of deposit and short-term paper.

INVESTMENT ADVISERS ACT

Section 202, paragraph (a) (15 U.S.C. 80b-2)

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (a) a bank or any *bank* holding company [affiliate], as defined in the Bank[ing] *Holding Company* Act of [1933] 1956, which is not an investment company; * * *

INTERNAL REVENUE CODE OF 1954

[Section 601 (26 U.S.C. 601)]

[In the case of a holding company affiliate (as defined in section 2 of the Banking Act of 1933; 12 U.S.C. 221a(c)), there shall be allowed as a deduction, for purposes of section 535(b)(8) (relating to the computation of accumulated taxable income) and section 545 (b) (6) (relating to the computation of undistributed personal holding company income), the amount of the earnings and profits which the Board of Governors of the Federal Reserve System certifies to the Secretary or to his delegate has been devoted by such affiliate during the taxable year to the acquisition of readily marketable assets other than bank stock in compliance with section 5144 of the Revised Statutes (12 U.S.C. 61). The amount of the deduction under this section for any taxable year shall not exceed the taxable income for such year computed without regard to the special deductions for corporations provided in part VIII (except section 248) of sub-