

75th CONGRESS
3D Session

S. 3575

IN THE SENATE OF THE UNITED STATES

January 5 (calendar day, March 2), 1938

Mr. Glass and Mr. McAdoo introduced the following bill;
which was read twice and referred to the
Committee on Banking and Currency

A BILL

To provide for the regulation of bank holding companies and
affiliates, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 That this Act may be cited as the "Bank Holding Company
4 Act of 1938".

5 SEC. 2. (1) "Insured bank" means any operating
6 bank, banking association, trust company, savings bank, or
7 other banking institution, the deposits of which are insured
8 in accordance with the provisions of section 12B of the
9 Federal Reserve Act, as amended.

10 (2) "Person" means any individual, partnership, asso-
11 ciation of persons, or company.

1 (3) "Company" means any corporation, incorporated
2 bank, banking association, insured bank, joint-stock com-
3 pany, business trust, or trustees of any voting trust.

4 (4) "Director" means any director or trustee of any
5 company, or any individual who performs similar functions
6 in respect of any company.

7 (5) "Securities" include notes, ~~drafts, acceptances,~~
8 bonds, debentures, capital notes, voting trust certificates,
9 capital stock, treasury stock, warrants, and rights to sub-
10 scribe to or certificates of deposit for any of the foregoing.

11 (6) "Capital stock" includes common and preferred
12 stock, capital notes, and debentures.

13 (7) "Control" means the legal or equitable ownership
14 ~~or holding~~ of more than ²⁰~~10~~ per centum of the total number
15 or par value of the outstanding shares of capital stock or ~~total~~
15A the holding of more than 20 per centum of the total
16 number of voting rights for electing directors, or the ~~domina-~~
~~control~~
17 ~~tion, directly or indirectly,~~ in any manner of the election of
18 a majority of the directors of an insured bank or any other
19 company, and wherever used in this Act the word "control"
20 in any grammatical form shall have this meaning.

21 (8) "Holding company" of any insured bank means any
22 company which controls the insured bank or controls any
23 other company which in turn controls the insured bank, and
24 every company in any series or succession of companies in
25 any system of controlling and controlled companies, in which

1 any company or combination of companies control the in-
2 sured bank.

3 (9) "Affiliate" of any insured bank means any com-
4 pany which with respect to the insured bank is a holding
5 company, every company in any series or succession of com-
6 panies constituting any system of controlling and controlled
7 companies, in which any company is controlled by the in-
8 sured bank or by such holding company or by any company
9 or combination of companies in such system, and any com-
10 pany having one or more shareholders who have legal or
11 equitable ownership of more than 50 per centum of the
12 number or par value of the outstanding shares of capital stock
13 or voting rights for electing directors of both the company
14 and the insured bank: Provided, That notwithstanding the
15 foregoing, any company engaged solely in the business of
16 (a) operating a safe-deposit vault; or (b) holding or op-
17 erating the building and premises occupied by any insured
18 bank, /shall not be an affiliate of the insured bank.
(RIDER A)

19 (10) "Effective date" means the date of enactment of
20 this Act.

21 SEC. 3. It shall be unlawful for any insured bank,
22 directly or indirectly or by any device whatever (1) to
23 make any loan or extension of credit to any of its affiliates
24 or to invest any of its funds or any funds ~~administered by~~
24a the investment of which is controlled by
25 it, in any securities issued or guaranteed by any of its

RIDER A

and any company organized for the purpose of engaging in, or any company primarily engaged in, international or foreign or similar financial operations as described in sections 25 and 25(a) of the Federal Reserve Act, and any company primarily engaged in the business of dealing in bills of exchange or acceptances eligible for purchase or rediscount by Federal Reserve Banks, or bonds, notes, certificates of indebtedness, and Treasury bills of the United States, obligations fully guaranteed both as to principal and interest by the United States debentures issued by Federal Intermediate Credit banks, bonds issued by Federal Land banks, and general obligations of Territories, de-
~~pendencies and insular possessions of the United States.~~

1 affiliates; or (2) to purchase any securities from any of
2 its affiliates; or (3) to make any loan or extension of
3 credit to any person secured by any collateral consisting
4 of any securities issued or guaranteed by any of its affiliates.

5 Notwithstanding the foregoing, any insured bank, which
6 prior to the effective date, shall have made any loans, exten-
7 sions of credit, or investments which by virtue of this section
8 would constitute prohibited loans, extensions of credit, or
9 investments if made after the effective date, shall have three
10 years after the effective date within which to collect, sell,
11 or otherwise dispose thereof. During said three-year period
12 any such loans or extensions of credit may be renewed or
13 extended, but no renewal or extension shall be given beyond
14 said period. Within two years after the effective date,
15 where necessary to save itself from loss, any such insured
16 bank may accept securities issued or guaranteed by its
17 affiliates, as payments to apply on or as collateral security
18 for loans or extensions of credit made prior to the effective
19 date to any person other than one of its affiliates, and in
20 such event the insured bank shall collect, sell, or otherwise
21 dispose of such securities within three years after the
22 effective date.

23 SEC. 4. It shall be unlawful for any company to acquire
24 any capital stock, or voting rights for electing directors,
25 of any insured bank or of any holding company of any

1 insured bank, if such company is or upon such acquisition
2 would become a holding company of any insured bank. (Rider B)

3 SEC. 5. No insured bank shall establish or operate or
4 be permitted to establish or operate any new or additional
5 branches while such insured bank is controlled by any hold-
6 ing company.

7 SEC. 6. Every company shall before the expiration of
8 sixty days after the effective date cause to be filed with the
9 cashier or secretary of every insured bank as to which it is
10 an affiliate, an affidavit to be signed by one of its executive
11 officers having knowledge of the facts, which shall set forth
12 as of the effective date (1) the total number and par value
13 of the outstanding shares of capital stock and total number
14 of voting rights for electing directors of such insured bank,
15 which such company owns or holds, the names of the per-
16 sons in whose names such shares or rights are issued and a
17 full description of any instruments evidencing such shares
18 or rights; (2) the amount of any indebtedness of such com-
19 pany to the insured bank, direct and indirect, the maturity
20 dates, and the person in whose name such indebtedness
21 stands, if other than the company; and (3) an itemized
22 statement of its assets and liabilities as of the last day of the
23 preceding month and of its earnings for the current fiscal
24 year to the last day of the preceding month, if the company
25 be directly or indirectly indebted to the bank. Within

Rider B

Provided, That notwithstanding the foregoing, any company may acquire additional capital stock, or voting rights for electing directors, of an insured bank or of a holding company of an insured bank, if such company on the effective date owns more than 50 per centum of the total number or par value of the outstanding shares of capital stock, or holds more than 50 per centum of the total number of voting rights for electing directors, of such insured bank or holding company, or if such acquisition will not increase the proportion owned by such company of the total number or par value of the outstanding shares of capital stock, or the proportion held by such company of the total number of voting rights for electing directors, of such insured bank or holding company, above the proportion thereof owned or held by such company on the effective date.

1 twenty days after the close of each calendar month there-
2 after, if there has been any change in any of the matters
3 covered in such affidavit, except item 3 thereof, during such
4 month, the company shall file a like report, so long as it
5 shall continue to stand in the relation of an affiliate to such
6 insured bank. Every company shall file within thirty days
7 after the last day of June and December of each year with
8 the cashier or secretary of every insured bank as to which
9 it is an affiliate a like sworn itemized statement of its assets
10 and liabilities as of the last day of June and December of
11 each year and of its earnings for the current fiscal year to
12 the last day of June and December of each year. Every
13 insured bank shall retain such affidavits and statements on
14 file as a part of its records for at least three years.

15 **SEC. 7.** Every insured bank, holding company, and
16 affiliate shall file with the Federal Deposit Insurance Cor-
17 poration such annual, semiannual, quarterly, and other
18 periodic and special reports, the answers to such specific
19 questions and the minutes of such directors', stockholders',
20 committees', and other meetings, as the Corporation by
21 order may prescribe as necessary or appropriate for the
22 proper consideration of the condition of any insured bank
23 or for the proper supervision of the Federal deposit insur-
24 ance system, and the Corporation may make such investiga-
25 tions of any insured bank, holding company or affiliate, and

1 the books and records thereof, as shall be necessary or
2 proper to disclose the condition of any insured bank or the
3 effect of the relations between any holding company or
4 affiliate and any insured bank, upon the Federal deposit
5 insurance system or any insured bank. And such investi-
6 gations shall be made at the expense of the Corporation;
7 and it shall be unlawful for any insured bank, holding com-
8 pany, or affiliate knowingly to make any false statement
9 or report to the Corporation or to refuse authorized repre-
10 sentatives of the Corporation access to any information re-
11 quired in connection with any such investigations.

12 SEC. 8. After the effective date, the Board of Governors
13 of the Federal Reserve System shall not, without the consent
14 of the Board of Directors of the Federal Deposit Insurance
15 Corporation, grant or extend the operative effect of any
16 voting permit to any holding company affiliate under the
17 provisions of section 2 of the Banking Act of 1933, as
18 amended (U. S. C., title 12, sec. 61).

19 SEC. 9. Whenever it shall appear to the Board of Direc-
20 tors of the Federal Deposit Insurance Corporation that any
21 person is engaged or about to engage in any acts or practices
22 which constitute or will constitute a violation of the provi-
23 sions of this Act, the Board in its discretion may bring an
24 action in the proper district court of the United States or the
25 Supreme Court of the District of Columbia, to enjoin such

1 acts or practices and to enforce compliance with this Act,
2 and upon a proper showing a temporary or permanent injunc-
3 tion, decree, or restraining order shall be granted, without
4 bond. The Corporation may transmit such evidence as may
5 be available concerning such acts or practices to any United
6 States attorney or to the Attorney General, who, in his dis-
7 cretion, may institute appropriate criminal proceedings under
8 this Act. The proper district for the commencement of any
9 injunction proceeding pursuant to this section shall be any
10 district wherein any act or transaction constituting the viola-
11 tion occurred or in which the defendant is an inhabitant or
12 transacts business, and process in such cases may be served
13 in any district in which the defendant is an inhabitant or
14 transacts business or wherever the defendant may be found.
15 Judgments and decrees so rendered shall be subject to review
16 as provided in sections 225 and 347 of title 28 of the United
17 States Code, and section 7, as amended, of the Act entitled
18 "An Act to establish a court of appeals for the District of
19 Columbia", approved February 9, 1893 (D. C. Code, title
20 18, sec. 26). No costs shall be assessed for or against the
21 Corporation in any proceeding under this Act brought by it
22 in any court.

23 SEC. 10. It shall be unlawful for any insured bank to
24 pay to any holding company, directly or indirectly, any
25 dividend on any shares of its capital stock so long as such

1 holding company shall continue to hold any shares of the
2 capital stock or voting rights for electing directors of such
3 insured bank, or of any company which is a holding company
4 with respect of such insured bank, acquired in violation of
5 any provision of this act.

6 SEC. 11. Whenever the Board of Directors of the Fed-
7 eral Deposit Insurance Corporation shall determine, after
8 reasonable notice to the company affected an opportunity for
9 a hearing, that any insured bank or any company which with
10 respect to any insured bank is a holding company has violated
11 any provision of this Act, and that such action is necessary
12 for the protection of the public or the safety and integrity of
13 the Federal deposit insurance system, it may make a finding
14 of the facts of such violation. Upon making such finding,
15 the Board of Directors of the Federal Deposit Insurance Cor-
16 poration may cause the same to be published in the Federal
17 Register and thereafter the insured bank shall be ineligible
18 to receive deposits of public funds of the United States or of
19 any public officer, agent, or instrumentality of the United
20 States. Upon making such finding, the Board of Directors
21 of the Federal Deposit Insurance Corporation may proceed
22 to terminate the insured status of the insured bank, in like
23 manner as provided in subsection (i) of section 12B of the
24 Federal Reserve Act, as amended. Upon notification in
25 writing by the Board of Directors of the Federal Deposit In-

1 surance Corporation to the Board of Governors of the Fed-
2 eral Reserve System of any such finding of such violation on
3 the part of any holding company and request for such revoca-
4 tion, the Board of Governors of the Federal Reserve System
5 forthwith shall proceed to revoke any voting permit thereto-
6 fore granted to such holding company as a holding company
7 affiliate under the provisions of section 2 of the Banking Act
8 of 1933, as amended (U. S. C., title 12, sec. 61). The
9 Board of Directors of the Federal Deposit Insurance Cor-
10 poration shall have the right, upon such terms and conditions
11 as may be consistent with the public interest, the safety and
12 integrity of the Federal deposit insurance system and the
13 purposes of this Act, to review, suspend, modify, or revoke
14 any order or finding made pursuant to this section.

15 SEC. 12. Any person or party aggrieved by an order
16 issued by the Board of Directors of the Federal Deposit
17 Insurance Corporation under this Act may obtain a review
18 of such order in the circuit court of appeals of the United
19 States within any circuit wherein such person resides or has
20 his principal place of business, or in the United States Court
21 of Appeals for the District of Columbia, by filing in such
22 court, within sixty days after the entry of such order, a
23 written petition praying that the order of said Board be
24 modified or set aside in whole or in part. A copy of such
25 petition shall be forthwith served upon any member of said

1 Board, or upon any officer thereof designated by the said
2 Board for that purpose, and thereupon the said Board shall
3 certify and file in the court a transcript of the record upon
4 which the order complained of was entered. Upon the
5 filing of such transcript such court shall have exclusive
6 jurisdiction to affirm, modify, or set aside such order, in
7 whole or in part. No objection to the order of said Board
8 shall be considered by the court unless such objection shall
9 have been urged before said Board or unless there were
10 reasonable grounds for failure so to do. The findings of
11 the said Board as to the facts, if supported by substantial
12 evidence, shall be conclusive. If application is made to the
13 court for leave to adduce additional evidence, and it is shown
14 to the satisfaction of the court that such additional evidence
15 is material and that there were reasonable grounds for failure
16 to adduce such evidence in the proceedings before said Board,
17 the court may order such additional evidence to be taken
18 before the said Board and to be adduced upon the hearing
19 in such manner and upon such terms and conditions as to
20 the court may seem proper. Said Board may modify its
21 findings as to the facts by reason of the additional evidence
22 so taken, and it shall file with the court such modified or
23 new findings, which, if supported by substantial evidence,
24 shall be conclusive, together with its recommendation, if any,
25 for the modification or setting aside of the original order.

1 The judgment and decree of the court, affirming, modifying,
2 or setting aside, in whole or in part, any such order of said
3 Board shall be final, subject to review by the Supreme Court
4 of the United States upon certiorari or certification as pro-
5 vided in sections 346 and 347 of title 28 of the United States
6 Code. The commencement of proceedings under this section
7 shall not, unless specifically ordered by the court, operate
8 as a stay of said Board's order.

~~9 SEC. 13. It shall be unlawful for the individual directors,
10 officers, or agents of any company to authorize, order, or do
11 any act constituting in whole or in part a violation of the
12 provisions of this Act by such company.~~

13 SEC. 14. Any person who knowingly violates any pro-
14 vision of this Act shall be guilty of a misdemeanor; any
15 company which knowingly violates any provision of this
16 Act, upon conviction thereof, shall be punished by fine of
17 not exceeding \$5,000 for each violation, and any natural
18 person who knowingly violates any provision of this Act,
19 upon conviction thereof, shall be punished for each violation
20 by fine of not exceeding \$5,000 or by imprisonment for not
21 exceeding one year, or by both, in the discretion of the
22 court.

13

23 SEC. 15. No provision in this Act shall apply to, or be
24 deemed to include, the United States, a State, or any politi-
25 cal subdivision of a State, or any corporation which is

1 wholly owned, directly or indirectly, by any one or more of
2 the foregoing, or any corporation which is managed by a
3 person or persons appointed pursuant to law by the Presi-
4 dent of the United States or the Governor of a State or the
5 chief executive of any political subdivision of a State, or any
6 officer, agent, or employee of any of the foregoing acting
7 as such in the course of his official duty or to any company
8 which is determined by the Board of Directors of the Fed-
9 eral Deposit Insurance Corporation, on application for
10 exemption or of its own motion, to be only incidentally a
11 holding company and to be primarily engaged in business
12 other than holding the stock of or managing or controlling
13 banks, banking associations, savings banks, or trust com-
14 panies, or to be only incidentally or temporarily an affiliate
15 of any insured bank, (RIDER C)

14
16 SEC. 16. If any provision of this Act or the application
17 of such provision to any person or circumstances shall be
18 held invalid, the remainder of the Act and the application
19 of such provision to persons or circumstances other than those
20 as to which it is declared invalid shall not be affected
21 thereby.

Rider C

or to be a company the affiliate relationship of which exists by reason of the ownership or control, of voting shares or voting rights for electing directors, by the company as executor, administrator, trustee, receiver, agent, depositary or in any other bona fide fiduciary capacity, but not held for the benefit of one or more shareholders of the affiliate who have legal or equitable ownership of more than 50 per centum of the number or par value of the outstanding shares of capital stock or voting rights for electing directors of the affiliate.

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