

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1994

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Legislative Document

No. 1763

H.P. 1308

House of Representatives, January 24, 1994

**An Act to Provide Enhanced Enforcement Powers in the Maine Banking  
Laws.**

(EMERGENCY)

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule  
24.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CARLETON of Wells.

Cosponsored by Representatives: LIBBY of Kennebunk, LIPMAN of Augusta.

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

Whereas, there may exist situations within state-chartered  
financial institutions that may warrant the removal of an officer  
or director; and

Whereas, the laws governing banking in this State, enacted  
in 1975, contain provisions for removal of an officer or director  
from that position with a financial institution in accordance  
with specific procedures; and

Whereas, comparable federal law has undergone substantial  
change over the past few years; and

Whereas, it is essential to align the state statutes with  
federal statutes authorizing removal of officers and permit state  
regulators to act in concert with federal regulators in  
developing a timely resolution to problematic situations; and

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

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

Sec. 1. 9-B MRSA §232, sub-§1, as enacted by PL 1975, c. 500,  
§1, is repealed and the following enacted in its place:

1. Grounds for removal. The superintendent may serve  
written notice of intent to remove an officer or director from  
office or to prohibit further participation by the officer or  
director in any manner in the conduct of the affairs of the  
financial institution if:

A. In the opinion of the superintendent, that officer or  
director has directly or indirectly:

(1) Violated a law, rule, regulation or cease and  
desist order that has become final;

(2) Engaged in or participated in any unsafe or  
unsound practice; or

(3) Committed or engaged in any act, omission or  
practice that constitutes a breach of the fiduciary  
duty of the officer or director;

2 B. By reason of the violation, practice or breach of  
3 fiduciary duty described in paragraph A:

4 (1) The financial institution has suffered or will  
5 probably suffer financial loss or other damage;

6 (2) The interests of the financial institution's  
7 depositors have been or could be prejudiced; or

10 (3) The officer or director has received financial  
11 gain or other benefit by reason of the violation,  
12 practice or breach of fiduciary duty;

14 C. The violation, practice or breach of fiduciary duty  
15 involves personal dishonesty on the part of the officer or  
16 director or demonstrates willful or continuing disregard by  
17 the officer or director for the safety or soundness of the  
18 financial institution; and

20 D. In the opinion of the superintendent, that officer or  
21 director has evidenced personal dishonesty and unfitness to  
22 continue as an officer or director of the financial  
23 institution by conduct with respect to another business  
24 entity that resulted, or is likely to result, in substantial  
25 financial loss or other damage.

26 **Emergency clause.** In view of the emergency cited in the  
27 preamble, this Act takes effect when approved.

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32 **STATEMENT OF FACT**

33 This bill repeals the current law that establishes the  
34 grounds for removal of an officer or director of a financial  
35 institution and replaces it with language that essentially  
36 parallels federal law.

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41  
42 This document has not yet been reviewed to determine the  
43 need for cross-reference, stylistic and other technical  
44 amendments to conform existing law to current drafting standards.