

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1022

S.P. 313

In Senate, February 13, 1997

**An Act to Promote Investments in Maine through the Establishment of  
Merchant Banking Organizations.**

(EMERGENCY)

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by President LAWRENCE of York.  
Cosponsored by Representative KONTOS of Windham and  
Senators: ABROMSON of Cumberland, HARRIMAN of Cumberland, LaFOUNTAIN of  
York, Representatives: BRUNO of Raymond, DONNELLY of Presque Isle, MAYO of Bath,  
SAXL of Bangor, VIGUE of Winslow.

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

4  
6           **Whereas,** many businesses, particularly start-up and smaller  
companies, encounter difficulties in obtaining capital from  
traditional financial sources, whether in the form of traditional  
8 bank loans, subordinated debt or equity; and

10           **Whereas,** authorizing the establishment of merchant banks as  
nondepository financial institutions with enhanced flexibility to  
12 make loans to and investments in businesses will promote economic  
growth, employment opportunities and an expanded tax base; and

14           **Whereas,** existing sources of such capital in Maine are  
16 inadequate; and

18           **Whereas,** authorization of the establishment of merchant  
banking organizations will promote investments in Maine and be  
20 sources of capital for businesses and others; and

22           **Whereas,** as illustrated by the recent C. F. Hathaway plant  
closure and sale, opportunities that require access to and  
24 infusions of capital to preserve jobs and expand economic  
opportunities frequently arise suddenly; and

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

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

34           **Sec. 1. 9-A MRSA §1-108, sub-§4, ¶A,** as enacted by PL 1973, c.  
36 762, §1, is amended to read:

38           A. Limitations on powers of supervised financial  
organizations, subsection ~~38~~ 38-A of section 1-301, with  
40 respect to the amount of a loan to a single borrower, the  
ratio of a loan to the value of collateral, the duration of  
42 a loan secured by an interest in land, or other similar  
restrictions designed to protect deposits; or

44           **Sec. 2. 9-A MRSA §1-301, sub-§38,** as amended by PL 1979, c.  
46 660, §5, is repealed.

48           **Sec. 3. 9-A MRSA §1-301, sub-§38-A** is enacted to read:

50           38-A. "Supervised financial organization" means:

2           A. A financial institution as defined in Title 9-B, section  
3           131; or

4  
5           B. A person, other than an insurance company or other  
6           organization primarily engaged in an insurance business,  
7           that is:

8                   (1) Organized, chartered or holding an authorization  
9                   certificate under the laws of a state or of the United  
10                   States that authorize the person both to make loans and  
11                   to receive deposits, including a savings, share,  
12                   certificate or deposit account; and

13                   (2) Subject to supervision by an official or agency of  
14                   a state or of the United States.

15           **Sec. 4. 9-A MRSA §1-301, sub-§39, as enacted by PL 1973, c.**  
16           **762, §1, is amended to read:**

17                   **39. "Supervised lender" means a person authorized to make**  
18                   **or take assignments of supervised loans, either under a license**  
19                   **issued by the Administrator (section 2-301), or as a supervised**  
20                   **financial organization (section 1-301, subsection 38 38-A).**

21           **Sec. 5. 9-A MRSA §10-102, sub-§1, ¶B, as amended by PL 1993, c.**  
22           **495, §1, is further amended to read:**

23                   B. "Credit services organization" does not include:

24                           (1) A supervised financial organization as defined in  
25                           section 1-301, subsection 38 38-A;

26                           (2) A supervised lender as defined in section 1-301,  
27                           subsection 39;

28                           (3) A person licensed by the Real Estate Commission to  
29                           the extent that the person is engaged in activities  
30                           regulated by that commission;

31                           (4) A person currently admitted to the practice of law  
32                           in this State;

33                           (5) Any nonprofit organization exempt from taxation  
34                           under the United States Internal Revenue Code, Section  
35                           501(c)(3) to the extent that the organization's  
36                           activities are consistent with those set forth in its  
37                           application for tax exemption to the Internal Revenue  
38                           Service; or

39

2 (6) A consumer reporting agency, as defined in the  
Fair Credit Reporting Act, Title 10, chapter 210.

4 **Sec. 6. 9-B MRSA c.107** is enacted to read:

6 **CHAPTER 107**

8 **MERCHANT BANKING**

10 **§1101. Organization and structure of merchant banks**

12 **1. Organization.** A merchant bank is a nondepository trust  
company organized pursuant to chapter 31 and managed and governed  
14 as a trust company pursuant to this Title.

16 **2. Structure.** A merchant bank may be organized under the  
laws of the State as a corporation, limited liability company,  
18 limited partnership or limited liability partnership. The  
superintendent has the authority to approve other forms of  
20 entities. The business and affairs of a merchant bank must be  
managed by a board of directors, management committee or other  
22 similar governing body, composed of at least 3 natural persons.  
If a merchant bank is not organized as a corporation, unless the  
24 context indicates otherwise, the following terms have the  
following meanings in this Title:

26 A. "Board of directors" or "directors" means the  
28 policy-making governing body of a merchant bank.

30 B. "Bylaws" means the operating agreement, partnership  
agreement or other similar organizational documents of a  
32 merchant bank.

34 C. "Clerk" means the registered agent or other similar  
officer of a merchant bank.

36 D. "Corporation" means the form of entity in which a  
38 merchant bank is organized.

40 E. "Incorporators" means the organizers of a merchant bank.

42 F. "Stock" or "capital stock" means limited liability  
company membership interests, partnership interests or  
44 similar equity interests.

46 G. "Stock financial institution" includes a merchant bank.

48 **3. Initial capital.** The minimum amount of initial paid-in  
capital of a merchant bank is \$20,000,000, at least \$10,000,000  
50 of which must consist of common stock or other similar equity

capital. The balance of the initial required capital may consist of common stock or other similar equity capital, preferred stock or similar instruments, subordinated notes or debentures or, if approved by the superintendent, capital notes or debentures.

**4. Maintenance of capital.** A merchant bank shall maintain a capitalization level equal to 150% of the tier-1 risk-based capital and 150% of total risk-based capital established by the Board of Governors of the Federal Reserve System for a "well-capitalized" bank.

**5. Bonds.** Every merchant bank shall procure a bond, in such amount as the merchant bank may determine or as the superintendent may require, as security for the fidelity and faithful performance of duties by its officers, employees and agents, executed by one or more surety companies authorized to transact business in this State. The expense of this bond must be assumed by the institution.

#### **§1102. Business of merchant banks; powers; limitations**

**1. Business of merchant banks.** Except as provided in this chapter, a merchant bank has all the powers of and is entitled to engage in the business of a trust company, including, without limitation, powers with respect to investments, loans and fiduciary and trust functions and transactions. A merchant bank may not solicit, receive or accept money or its equivalent on deposit as a regular business within the meaning of section 131, subsection 5. A merchant bank may deposit cash, whether constituting principal or income, in any financial institution if the account is held either in the name of the trust to which the cash belongs or in the name of the merchant bank and composed entirely of cash belonging to trust accounts, the respective contributions of which are reflected in the books and records of the merchant bank. A merchant bank may issue drafts drawn on itself in the form of cashier's or treasurer's checks.

A. Without limiting the general investment powers authorized by section 651, a merchant bank may make loans to and investments in any person, including investments in any "security" as defined in Title 32, section 10501, subsection 18. The board of directors, management committee or other similar governing body of a merchant bank shall establish a written policy under which the merchant bank's investment activities are conducted. At a minimum, this policy must address the following:

(1) Investment quality parameters;

(2) Investment mix and diversification;

- 2                   (3) Investment maturities; and
- 4                   (4) Delegation of authority to officers and committees  
6                   responsible for making loans and investments and  
                    administering the investment portfolio.

8                   B. This policy must be reviewed and ratified by the board  
10                   of directors, management committee or other similar  
                    governing body of the merchant bank at least annually.

12                   C. The terms of any loans by a merchant bank to, or  
14                   investments by a merchant bank in, any of the following must  
                    be disclosed to the board of directors, management committee  
                    or other similar governing body of the merchant bank:

16                                 (1) Any person that owns 25% or more of the merchant  
18                                 bank's common stock or other similar equity capital;

20                                 (2) Any member of the board of directors, management  
22                                 committee or other similar governing body of a merchant  
                                    bank;

24                                 (3) Any policy-making officer of a merchant bank; or

26                                 (4) Any person 25% of the voting shares or other  
28                                 similar voting equity of which is owned by any of the  
                                    foregoing.

30                   2. Provisions inapplicable. The following provisions of  
32                   this Title do not apply to merchant banks: sections 141, 142,  
34                   143, 223, 314, 315, 316, 317, 439-A, 445, 446, 465-A, 621, 622,  
36                   623, subsection 2, paragraphs E and F, and chapters 33 and 42.  
                    The following provisions of this Title do not apply to a person  
                    or company that controls a merchant bank and is not otherwise a  
                    Maine financial institution holding company: section 1014, 1015,  
                    subsection 1, paragraphs D and E, 1017 and 1019-A.

38                                 3. Organizational documents. The articles of  
40                   incorporation, articles of organization or other organizational  
42                   documents of a merchant bank must contain the following  
44                   statement: "This entity is subject to the Maine Revised  
46                   Statutes, Title 9-B, chapter 107 and acts supplementing or  
48                   amending that chapter, and this entity may not solicit, receive  
                    or accept money or its equivalent on deposit." The foregoing  
                    provision of the articles of incorporation, articles or  
                    organization or other organizational documents of a merchant bank  
                    may not be amended.

