

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 949

S.P. 324

In Senate, February 19, 2005

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**An Act To Enhance the Supervisory Powers of the Department of  
Professional and Financial Regulation, Bureau of Financial  
Institutions**

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Insurance and Financial Services 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 Senator MILLS of Somerset.

Cosponsored by Senators: MITCHELL of Kennebec, SULLIVAN of York, Representatives: PERRY of Calais, RICHARDSON of Warren, VAUGHAN of Durham.

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

4 **Sec. 1. 9-B MRSA §131, sub-§12-B,** as enacted by PL 1995, c. 628, §5, is repealed and the following enacted in its place:

6 **12-B. Deposit production offices.** "Deposit production  
8 offices" means the Maine offices operated by an individual  
10 financial institution authorized to do business in this State or  
12 individual credit union authorized to do business in this State  
that do not reasonably help meet the credit needs of Maine  
communities. For purposes of this subsection, "deposits"  
includes credit union share accounts.

14 **Sec. 2. 9-B MRSA §232, sub-§1, ¶¶B and C,** as amended by PL  
16 1997, c. 660, Pt. A, §3, are further amended to read:

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

20 (1) The financial institution or financial institution  
22 holding company has suffered or will probably suffer  
financial loss or other damage;

24 (2) The interests of the financial institution's  
26 depositors or creditors or the public have been or  
could be prejudiced; or

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

32 C. The violation, practice or breach of fiduciary duty  
34 described in paragraph A involves personal dishonesty on the  
part of the officer or director or demonstrates willful or  
36 continuing disregard by the officer or director for the  
safety or soundness of the financial institution or  
38 financial institution holding company.

40 **Sec. 3. 9-B MRSA §232, sub-§1, ¶D,** as amended by PL 1997, c.  
660, Pt. A, §3, is repealed.

42 **Sec. 4. 9-B MRSA §232, sub-§1, ¶E,** as enacted by PL 1997, c.  
44 660, Pt. A, §4, is repealed.

46 **Sec. 5. 9-B MRSA §232, sub-§1-A** is enacted to read:

48 **1-A. Additional 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

2 officer or director in any manner in the conduct of the affairs  
3 of a financial institution or financial institution holding  
4 company if:

5  
6 A. In the opinion of the superintendent, that officer or  
7 director has evidenced personal dishonesty and unfitness to  
8 continue as an officer or director of the financial  
9 institution or financial institution holding company by  
10 conduct with respect to another business entity that  
11 resulted, or is likely to result, in substantial financial  
12 loss or other damage; or

13  
14 B. The officer or director has been removed or prohibited  
15 from participation in any manner in the conduct of the  
16 affairs of the financial institution by the appropriate  
17 federal banking agency.

18 **Sec. 6. 9-B MRSA §241, sub-§8,** as enacted by PL 1995, c. 628,  
19 §18, is amended to read:

20  
21 **8. Deposit production offices prohibited.** -A- No financial  
22 institution authorized to do business in this State or credit  
23 union authorized to do business in this State is prohibited from  
24 operating may operate deposit production offices in this State.  
25 Each financial institution or credit union authorized to do  
26 business in this State shall submit an annual report to the  
27 superintendent providing deposit and loan information considered  
28 necessary by the superintendent to monitor compliance with this  
29 section. If the superintendent determines that a deposit  
30 production office is being operated, the superintendent may issue  
31 a cease and desist order pursuant to chapter 23. The  
32 superintendent shall annually review the level of lending in this  
33 State relative to the level of deposits in this State of each  
34 financial institution authorized to do business in this State and  
35 each credit union authorized to do business in this State to  
36 determine whether deposit production offices are being operated.  
37 If the superintendent determines that a financial institution  
38 authorized to do business in this State or credit union  
39 authorized to do business in this State is operating deposit  
40 production offices, the superintendent may issue a cease and  
41 desist order pursuant to chapter 23. The superintendent shall  
42 may adopt rules that set forth the factors that the bureau shall  
43 consider in determining whether a branch is being operated as a  
44 deposit production office to implement this subsection. Rules  
45 adopted pursuant to this subsection are routine technical rules  
46 as defined in Title 5, chapter 375, subchapter II-A 2-A. This  
47 subsection does not apply to limited purpose banks.

48 **Sec. 3. 9-B MRSA §363-A** is enacted to read:

49 **§363-A. Conservation of assets**

2           1. Appointment of conservator. Whenever, in the judgment  
4 of the superintendent, because of unsafe or unsound practice in  
6 conducting the business of a financial institution or other  
8 potentially hazardous condition, it is necessary to conserve or  
10 revalue the assets of the financial institution or to reorganize  
12 and put into sound condition the financial institution for the  
14 benefit of depositors, beneficiaries of fiduciary accounts,  
16 creditors or the public, the superintendent may issue an order  
18 describing the unsafe, unsound or other hazardous condition and  
20 appointing one or more conservators for the financial  
22 institution, who shall endeavor promptly to remedy the condition  
24 or conditions stated in the order.

26           A. The superintendent may require a bond as the  
28 superintendent determines proper and issue orders as  
30 necessary to carry out the provisions of this section. The  
32 superintendent may appoint a deputy superintendent or other  
34 person, including the federal corporation insuring the  
36 financial institution's accounts pursuant to section 422, as  
38 conservator.

40           B. A conservator, in addition to the powers set forth  
42 elsewhere in this chapter and other powers authorized in an  
44 order of the superintendent, has all the rights, powers,  
46 privileges and authority possessed by the officers,  
48 governing body, corporators, members and investors of the  
50 financial institution, including the power to remove any  
officer or member of the governing body if the order of  
removal is approved in writing by the superintendent. The  
conservator may, in the name of the financial institution:

(1) Prosecute and defend all suits and other legal  
proceedings; and

(2) Execute, acknowledge and deliver all deeds,  
assignments, releases and other instruments necessary  
and proper to effectuate any sale of real or personal  
property or any compromise approved by the  
superintendent. Any deed or other instrument executed  
pursuant to this subparagraph is valid and effective  
for all purposes to the same extent as though fully  
authorized by the financial institution.

C. If a deputy superintendent or other employee of the  
bureau is appointed conservator, no additional compensation  
need be paid, but any reasonable and necessary expenses as  
conservator, including expenses for assistants and counsel,  
must be paid by the financial institution. If a person  
other than an employee of the bureau is appointed

2 conservator, then the compensation is determined by the  
3 superintendent and must be paid by the financial institution  
4 along with any reasonable and necessary expenses of the  
5 conservator, including expenses for assistants and counsel.

6 D. In the event that the federal corporation insuring the  
7 financial institution's deposits or accounts pursuant to  
8 section 422 accepts an appointment as conservator, the  
9 corporation acquires both legal and equitable title to all  
10 assets, rights or claims and to all real or personal  
11 property of the financial institution to the extent  
12 necessary for the corporation to perform its duties as  
13 conservator or as may be necessary under applicable federal  
14 law to effectuate the appointment. If the corporation pays  
15 or makes available for payment the insured deposit  
16 liabilities of a financial institution by reason of actions  
17 taken pursuant to this section, the corporation becomes  
18 subrogated to the rights of all the depositors of the  
19 financial institution, whether or not it has become  
20 conservator of the financial institution, in the same manner  
21 and to the same extent as it would be subrogated in the  
22 conservation of a financial institution operating under a  
23 federal charter and insured by the corporation.

24 **2. Segregation of assets.** A conservator appointed under  
25 subsection 1 may order that there be segregated and set aside  
26 investments that in the conservator's judgment are of slow or  
27 doubtful value or that, on account of unusual conditions, cannot  
28 be converted into cash at their full fair value.

29 A. Pursuant to the conservator's segregation order, the  
30 clerk or treasurer of the financial institution shall  
31 withdraw all investments so segregated and the then book  
32 value of the investments from the list of investments and  
33 book values of assets as shown on the books of the financial  
34 institution.

35 B. The clerk or treasurer of the financial institution  
36 shall make and keep a complete and accurate list of the  
37 investments segregated under this subsection, their book  
38 values and any other records with respect to the investments  
39 as the superintendent or conservator may from time to time  
40 prescribe.

41 As used in this subsection, "investment" or "investments"  
42 includes all assets of the financial institution, whether real or  
43 personal.

2 3. Deposit reductions. Simultaneously with the reductions  
3 taken pursuant to subsection 2, the following actions must be  
4 taken by the financial institution.

5  
6 A. In the case of a mutual financial institution or  
7 cooperative financial institution, each deposit standing in  
8 that financial institution must be reduced so as to divide  
9 pro rata among the depositors or members the aggregate book  
10 value of all investments segregated under subsection 2.  
11 After the order under subsection 2 has been delivered, a  
12 depositor or member may not demand or receive on account of  
13 a deposit more than the amount remaining to the credit of  
14 the deposit after the reduction has been made, and dividends  
15 must be computed only on the amounts so remaining, except as  
16 otherwise provided in this section. The treasurer or clerk  
17 of that financial institution shall withdraw the sum of any  
18 deposit reductions from the statements of the amounts due to  
19 depositors or members and enter the reductions on individual  
20 passbooks as they are presented. The investments and  
21 amounts due depositors or members then remaining with  
22 changes thereafter made in a usual course of business are  
23 deemed to be the investments held by and deposits standing  
24 in that financial institution for the purpose of taxation  
25 and all other purposes, except as elsewhere provided in this  
26 chapter.

27  
28 B. In the case of an investor-owned financial institution,  
29 if the liabilities of that financial institution, excluding  
30 the outstanding equity interest, exceed its assets, the  
31 deficit, after making due allowances for priorities, must be  
32 divided pro rata among the depositors and each account  
33 charged with its proportionate share of the deficit. A  
34 depositor is entitled to withdraw the amount of the  
35 depositor's account as fixed and determined in the amounts  
36 and at the times the conservator, with the prior written  
37 approval of the superintendent, directs. That financial  
38 institution shall issue to each depositor a certificate  
39 showing the amount of the deficit charged to the depositor's  
40 account. The certificate is negotiable and may not bear  
41 interest. No dividend, profit, withdrawal or distribution  
42 may be made thereafter in liquidation of equity interests in  
43 that financial institution until the certificates have been  
44 paid in full with interest compounded at the rate of 3% per  
45 year; otherwise, the certificates may not be deemed to be a  
46 liability of that financial institution.

47  
48 C. Nothing in this subsection permits a conservator or the  
49 superintendent to reduce deposits or accounts insured by a  
50 federal corporation pursuant to section 422 without written  
51 approval of the federal corporation.

2           **4. Sale of segregated investments.** Investments segregated  
3 under subsection 2 may be sold or exchanged for other securities  
4 or investments by a vote of the members of the governing body of  
5 the financial institution but must be sold when so ordered by the  
6 conservator or the superintendent. All money received from the  
7 sales of or as income from the securities or investments must be  
8 entered into a special account and held by the financial  
9 institution for the benefit of the depositors or members whose  
10 deposits were reduced under subsection 3, to be disposed of as  
11 provided in subsection 5.

12           **5. Repayment of reductions.** The members of the governing  
13 body of a financial institution from time to time may, and when  
14 directed by the superintendent shall, declare pro rata dividends  
15 of money received as provided in subsection 4 to be distributed  
16 among the depositors or members whose deposits were reduced under  
17 subsection 3, payable to those who would then have been entitled  
18 to receive the sums deducted if the sums had continued to be  
19 included in the reduced deposits, and payable as other dividends  
20 are paid.

21           **A.** Any depositor or member whose deposit was reduced, any  
22 holder of a certificate issued pursuant to subsection 3,  
23 paragraph B or the financial institution may file a  
24 complaint with the superintendent after one year from the  
25 date of the reduction for an order of distribution whenever  
26 the condition of the financial institution, taking into  
27 account the rights of creditors and of preferred  
28 stockholders, if any, warrants the payment.

29           **B.** The superintendent may at any time declare the repayment  
30 under paragraph A to be final.

31           **6. Conservator continuing business.** The conservator may  
32 continue to operate the financial institution in accordance with  
33 the following conditions and limitations.

34           **A.** All depositors, members and investors of the financial  
35 institution may continue to make payments to the financial  
36 institution in accordance with the terms and conditions of  
37 their contracts.

38           **B.** The conservator may set aside and make available for  
39 withdrawal by depositors or members and payment to other  
40 creditors on a ratable basis the amounts as in the opinion  
41 of the superintendent may safely be used for that purpose.

42           **C.** The conservator may receive deposits under the following  
43 limitations. The deposits:

2           (1) May not be subject to any limitation as to payment  
3           or withdrawal;

4  
5           (2) Must be segregated;

6  
7           (3) May not be used to liquidate any indebtedness of  
8           the financial institution existing at the time that the  
9           conservator was appointed or any subsequent  
10           indebtedness incurred for the purpose of liquidating  
11           the indebtedness of the financial institution existing  
12           at the time the conservator was appointed; and

13           (4) Must be kept in cash or invested in direct  
14           obligations of the United States or deposited with  
15           another financial institution.

16  
17           7. Replacement conservator. The superintendent may,  
18           without notice or hearing, replace a conservator with another  
19           conservator.

20  
21           8. Termination of conservatorship. The superintendent by  
22           order may terminate the conservatorship according to this  
23           subsection.

24  
25           A. The superintendent may terminate the conservatorship at  
26           the superintendent's discretion.

27  
28           B. Any interested party may petition the superintendent for  
29           termination of the conservatorship 6 months following  
30           appointment of the conservator.

31  
32           C. Upon termination of the conservatorship, the powers and  
33           duties of the conservator appointed pursuant to subsection 1  
34           cease.

35           D. Upon termination of the conservatorship:

36  
37           (1) The financial institution is returned to its  
38           governing body and operates as if the conservator had  
39           not been appointed; or

40           (2) A receiver is appointed as provided in section 365.

41  
42           A certified copy of any order discharging the conservator and  
43           returning the financial institution to its governing body is  
44           sufficient evidence of termination of conservatorship.

45  
46           9. Immunity from civil liability. A person serving as a  
47           conservator is immune from any civil liability for acts performed  
48

2 within the scope of the conservator's duties in the same manner  
3 and to the same extent as employees of governmental entities are  
4 under the Maine Tort Claims Act.

6 **10. Judicial review.** Any person affected adversely by any  
7 act or omission of the superintendent or conservator under this  
8 section or section 367-A may bring an action in the Superior  
9 Court of Kennebec County seeking an order annulling, altering or  
10 modifying the act or enjoining the performance of the act or  
11 requiring action to be taken under any provision of this section.

12 A. The proceedings must be given precedence over other  
13 pending court cases and must be expedited. The person  
14 bringing the action has the burden of proof to show that the  
15 act or omission is unlawful or arbitrary and capricious.  
16 Only the financial institution may bring an action  
17 challenging the superintendent's order establishing the  
18 conservatorship. The court must uphold the superintendent's  
19 order establishing the conservatorship and the appointment  
20 of a conservator unless the court finds that the  
21 superintendent's action was unlawful or arbitrary and  
22 capricious.

24 B. The person must bring the action under paragraph A  
25 within 10 business days after receiving notice of the act or  
26 omission in person, by registered mail or by publication of  
27 a certificate signed by the conservator, by the  
28 superintendent or by the president, treasurer or clerk of  
29 the financial institution in a newspaper of general  
30 circulation in the county where the financial institution  
31 has its principal office.

32 C. Notwithstanding paragraph B, action may not be brought  
33 more than 30 days after the order of the superintendent  
34 under subsection 8.

36 D. The court may issue injunctions to prevent multiplicity  
37 of proceedings seeking to annul, alter or modify the actions  
38 of the superintendent or the conservator made under the  
39 provisions of this chapter or to prevent undue interference  
40 with the regulation and conservation of the financial  
41 institution.

44 E. The court, upon application by the superintendent or  
45 conservator, has jurisdiction to enforce orders relating to  
46 the conservatorship and the financial institution in  
47 conservatorship.

48 F. Notwithstanding Title 5, section 8003, the Maine  
49 Administrative Procedure Act does not apply to the  
50 procedures described in this subsection.

2           **Sec. 4. 9-B MRSA §365, sub-§1-A**, as amended by PL 1997, c.  
398, Pt. H, §4, is further amended to read:

4  
5           **1-A. Appointment of receiver.** If, upon examination of a  
6 financial institution, the superintendent is of the opinion that  
7 it is insolvent or that its condition renders its further  
8 proceedings hazardous to the public or to those having funds  
9 including trust assets in its custody, the superintendent may  
10 order the institution closed and appoint a receiver who shall  
11 proceed to elere liquidate the financial institution.

12           **Sec. 5. 9-B MRSA §365, sub-§11** is enacted to read:

13  
14           **11. Immunity from civil liability.** A person serving as a  
15 receiver is immune from any civil liability, in the same manner  
16 as and to the same extent as employees of governmental entities  
17 are under the Maine Tort Claims Act, for acts performed within  
18 the scope of the receiver's duties.

19           **Sec. 6. 9-B MRSA §367-A** is enacted to read:

20  
21           **§367-A. Additional authority in conservation and liquidation**

22  
23           **1. Attachments and preferences.** The superintendent or a  
24 conservator or receiver may bring an action:

25           A. To dissolve all attachments on the property of a  
26 financial institution made within 4 months before the  
27 appointment made under section 363-A or 365;

28           B. To void as a preference any transfer made after, or in  
29 contemplation of, the appointment under section 363-A or  
30 365; and

31           C. To discontinue all actions pending against the financial  
32 institution.

33  
34           **2. Injunctions.** Whenever proceedings are instituted under  
35 this chapter, the Superior Court may issue an injunction  
36 restraining all persons from proceeding against the financial  
37 institution described in section 363-A or 365 until termination  
38 of conservatorship or final liquidation, including trustee  
39 processes.

40  
41           **3. Other authority.** The superintendent, conservator or  
42 receiver may disaffirm or repudiate any contract or lease to  
43 which the financial institution is a party, fix the rights of the  
44 claimants and adjudicate and fix the time and mode of payment of  
45 all claims, accounts and deposits having priority.

2           4. Proceedings generally. The superintendent, conservator  
4           or receiver may bring an action described in this chapter, or any  
6           other action as determined appropriate, in the county in which  
8           the financial institution is located or has its principal place  
          of business or in the Superior Court of Kennebec County. The  
          proceedings must be given precedence over other pending court  
          cases and must be expedited.

10           5. Powers of superintendent. The superintendent has the  
12           following powers.

14           A. The superintendent may take any actions necessary to  
          carry out the terms and provisions of this chapter.

16           B. All powers conferred under this chapter on the  
18           superintendent are in addition to the powers otherwise  
          conferred upon the superintendent by law.

20           C. The superintendent may adopt rules for the purpose of  
22           carrying out provisions of this chapter. Rules adopted  
24           pursuant to this paragraph are routine technical rules as  
          defined in Title 5, chapter 375, subchapter 2-A.

26           6. Mergers. The conservator or receiver, with the approval  
28           of the superintendent, may order the merger or consolidation of  
30           any financial institution that is described in section 363-A or  
32           365 with any other financial institution, state-chartered or  
          federally chartered, with the consent of the other financial  
          institution and may prescribe the mode or procedure for the  
          merger or consolidation and the terms and conditions of the  
          merger or consolidation.

34           Sec. 7. 9-B MRSA §469 is enacted to read:

36           §469. Fundamental change in asset composition

38           1. Requirement of prior approval. A financial institution,  
40           without the prior written approval of the superintendent, may not  
42           change the composition of all or substantially all of its assets  
44           through sales or other dispositions of assets, through purchases  
          or other acquisitions of assets or through other expansions of  
          its operations.

46           2. Considerations. In determining whether to approve the  
48           change in the asset composition of a financial institution, the  
50           superintendent shall consider the purpose of the proposed  
          transaction, its impact on the safety and soundness of the  
          financial institution and any effect on the customers of the  
          financial institution. If the superintendent concludes that a

2 filing presents significant or novel policy, supervisory or legal  
3 issues, the superintendent may require an application to be filed  
4 in accordance with section 252.

5 3. Exception. Prior written approval is not required for a  
6 change in the composition of assets that is part of the financial  
7 institution's ordinary and ongoing core banking activities.

8 4. Rules. The superintendent may adopt rules further  
9 defining a fundamental change in asset composition and setting  
10 forth the factors to consider in determining what constitutes a  
11 fundamental change in assets. Rules adopted pursuant to this  
12 subsection are routine technical rules as defined in Title 5,  
13 chapter 375, subchapter 2-A.

14  
15 **Sec. 8. 9-B MRSA §1213-A is enacted to read:**

16  
17 **§1213-A. Asset pledge**

18  
19 1. Pledge requirement. The superintendent may require a  
20 nondepository trust company to pledge readily marketable assets  
21 to the superintendent if the superintendent believes that  
22 circumstances warrant the action. The pledged assets must be  
23 United States dollar denominated, investment grade and subject to  
24 the prior written approval of the superintendent. The pledged  
25 assets must be held on deposit or in safekeeping by an  
26 FDIC-insured depository institution approved by the  
27 superintendent. The pledged assets may be released to the  
28 superintendent only upon certification that a receiver or  
29 conservator of the nondepository trust company has been  
30 appointed. The asset pledge requirement may be lifted by the  
31 superintendent if the superintendent determines that the  
32 condition of the nondepository trust company so warrants that  
33 action.

34  
35 2. Amount of pledge. The aggregate amount of pledged  
36 assets is determined by the superintendent but may not exceed the  
37 greater of \$1,000,000 or 50% of the minimum required capital of  
38 the nondepository trust company at the time the asset pledge is  
39 imposed.

40  
41 3. Pledge agreement. The asset pledge must be maintained  
42 pursuant to an asset pledge agreement in the form and containing  
43 any limitations and conditions the superintendent requires. As  
44 long as the nondepository trust company continues business in the  
45 ordinary course, the nondepository trust company may be permitted  
46 to collect income on the pledged assets and examine and exchange  
47 those assets. The aggregate amount of assets pledged may not be  
48 less than required under subsection 2 without the  
49 superintendent's approval.

2           **4. Noncompliance.** If a nondepository trust company fails  
4 to maintain the minimum required asset pledge, the superintendent  
6 may determine that the nondepository trust company does not meet  
the capital requirements under section 412-A and any rules  
adopted pursuant to section 412-A.

8           **5. Rulemaking.** The superintendent may adopt rules to  
10 implement this section. Rules adopted pursuant to this  
12 subsection are routine technical rules as defined in Title 5,  
14 chapter 375, subchapter 2-A.

16           **Sec. 9. 9-B MRSA §1223-A** is enacted to read:

18           **§1223-A. Asset pledge**

20           **1. Pledge requirement.** The superintendent may require a  
22 merchant bank to pledge readily marketable assets to the  
24 superintendent if the superintendent believes that the action is  
26 necessary for the protection of the public. The pledged assets  
28 must be United States dollar denominated, investment grade and  
30 subject to the prior written approval of the superintendent. The  
pledged assets must be held on deposit or in safekeeping by an  
FDIC-insured depository institution approved by the  
superintendent. The pledged assets may be released to the  
superintendent only upon certification that a receiver or  
conservator of the merchant bank has been appointed. The asset  
pledge requirement may be lifted by the superintendent if the  
superintendent determines that the condition of the merchant bank  
so warrants that action.

32           **2. Amount of pledge.** The aggregate amount of pledged  
34 assets is determined by the superintendent but may not exceed the  
36 greater of \$1,000,000 or 50% of the minimum required capital of  
the merchant bank at the time the asset pledge is imposed.

38           **3. Pledge agreement.** The asset pledge must be maintained  
40 pursuant to an asset pledge agreement in the form and containing  
42 any limitations and conditions the superintendent requires. As  
44 long as the merchant bank continues business in the ordinary  
course, the merchant bank may be permitted to collect income on  
the pledged assets and examine and exchange those assets. The  
aggregate amount of assets pledged may not be less than required  
under subsection 2 without the superintendent's approval.

46           **4. Noncompliance.** If a merchant bank fails to maintain the  
48 minimum required asset pledge, the superintendent may determine  
50 that the merchant bank does not meet the capital requirements  
under section 412-A and any rules adopted pursuant to section  
412-A.

2           **5. Rulemaking.** The superintendent may adopt rules to  
3 implement this section. Rules adopted pursuant to this  
4 subsection are routine technical rules as defined in Title 5,  
5 chapter 375, subchapter 2-A.

6           **Sec. 10. 9-B MRSA §1233-A** is enacted to read:

7           **§1233-A. Asset pledge**

8           **1. Pledge requirement.** The superintendent may require an  
9 uninsured bank to pledge readily marketable assets to the  
10 superintendent if the superintendent believes that the action is  
11 necessary for the protection of the public. The pledged assets  
12 must be United States dollar denominated, investment grade and  
13 subject to the prior written approval of the superintendent. The  
14 pledged assets must be held on deposit or in safekeeping by an  
15 FDIC-insured depository institution approved by the  
16 superintendent. The pledged assets may be released to the  
17 superintendent only upon certification that a receiver or  
18 conservator of the uninsured bank has been appointed. The asset  
19 pledge requirement may be lifted by the superintendent if the  
20 superintendent determines that the condition of the uninsured  
21 bank so warrants that action.

22           **2. Amount of pledge.** The aggregate amount of pledged  
23 assets is determined by the superintendent but may not exceed the  
24 greater of \$1,000,000 or 50% of the minimum required capital of  
25 the uninsured bank at the time the asset pledge is imposed.

26           **3. Pledge agreement.** The asset pledge must be maintained  
27 pursuant to an asset pledge agreement in the form and containing  
28 any limitations and conditions the superintendent requires. As  
29 long as the uninsured bank continues business in the ordinary  
30 course, the uninsured bank may be permitted to collect income on  
31 the pledged assets and examine and exchange those assets. The  
32 aggregate amount of assets pledged may not be less than required  
33 under subsection 2 without the superintendent's approval.

34           **4. Noncompliance.** If an uninsured bank fails to maintain  
35 the minimum required asset pledge, the superintendent may  
36 determine that the uninsured bank does not meet the capital  
37 requirements under section 412-A and any rules adopted pursuant  
38 to section 412-A.

39           **5. Rulemaking.** The superintendent may adopt rules to  
40 implement this section. Rules adopted pursuant to this  
41 subsection are routine technical rules as defined in Title 5,  
42 chapter 375, subchapter 2-A.

## SUMMARY

2  
4 This bill changes the banking laws to clarify certain  
6 provisions and provides additional regulatory powers essential to  
effective regulation of Maine chartered banks and credit unions.

8 The bill clarifies the definition of deposit production  
10 offices and amends the statutory prohibition for the operation of  
12 deposit production offices to more closely align it to federal  
law.

14 The bill establishes procedures for the appointment of a  
16 conservator in the event that a financial institution is  
operating in an unsafe or unsound or other potentially hazardous  
18 condition and needs to reorganize or be put into a sound  
condition. Conservation is a step that can be taken,  
20 specifically in the case of limited purpose financial  
institutions whose accounts are not insured by a federal  
insurance agency, before liquidation is ordered by the  
Superintendent of Financial Institutions.

22 The bill clarifies the superintendent's authority to order  
24 an institution closed and the appointment of a receiver and sets  
forth additional authority and limitation from liability in  
26 conservation or liquidation.

28 The bill establishes a notification procedure that must be  
30 followed if a state-chartered financial institution makes a  
fundamental change in asset composition.

32 The bill establishes an asset pledge requirement that the  
34 superintendent may enforce in a nondepository trust company,  
merchant bank or uninsured bank as necessary for the protection  
of the public.

36 This bill clarifies existing authority of the superintendent  
38 to remove an officer or director from office or prohibit further  
participation by the officer or director in the conduct of the  
40 affairs of a financial institution or a financial institution  
holding company when similar action has been taken by the  
42 appropriate federal banking agency or when an officer or director  
has evidenced dishonesty or unfitness by conduct with respect to  
44 another business entity.