

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1069

S. P. 389

In Senate, February 22, 1967

Referred to Committee on Business Legislation. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator MacLeod of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Revising the Law Relating to Dealers in Securities.

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

Sec. 1. R. S., T. 32, § 751, amended. Section 751 of Title 32 of the Revised Statutes is amended to read as follows:

§ 751. Title; definitions

This Act shall be known and may be cited as “The Maine Securities Act.”

As used in this chapter the term “dealer” shall mean any ~~person individual, partnership, association or corporation,~~ **person individual,** engaging in the business of selling or offering for sale securities, except to, or through the medium of, or as agent or salesman of a registered dealer; but sales made by, or in behalf of, a vendor in the ordinary course of bona fide personal investment, or change of investment, shall not constitute such vendor, or the agent of such vendor, if not otherwise engaged either permanently or temporarily in ~~the business of~~ **the business of** selling securities, a dealer in securities.

The term “issuer” shall mean every person who issues or proposes to issue a security.

The terms “offer” or “offer to sell” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

The term “person” shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

The terms "sale", "sell" or "sold" shall include every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

The term "securities" shall include all stocks, bonds, debentures or certificates of participation, all ship shares, all documents of title and certificates of interest in any profit-sharing agreement, or in any oil, gas or mining lease, royalty, right or interest, or in the title to or any profits or earnings from land or other property situated outside of Maine, and all other forms of securities, except that it shall not be held to include commercial paper or other evidence of debt running not more than 9 months, or notes secured by mortgage of real estate in this State, or the shares of loan and building associations organized under the laws of this State. The term "securities" shall include documents of title to and certificates of interest in real estate, including cemetery lots, and personal estate when the sale and purchase thereof is accompanied by or connected in any manner with any contract, agreement or conditions, other than a policy of title insurance issued by a company authorized to do a title insurance business in this State, under the terms of which the purchaser is insured, guaranteed or agreed to be protected against financial loss, or is promised financial gain. **The term "securities" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.**

~~Persons regularly employed by public utilities whose securities are authorized by the Public Utilities Commission, and by corporations whose securities are legal for purchase by savings banks under the statutes of any New England state, shall not be deemed security dealers, agents or salesmen if the occasional sale by such employee of securities issued by the employer utility or corporation, or issued by a corporation operating in Maine and owning or controlling such employer utility or corporation, is only incident to, and not a part of the usual duties of such employment.~~

Sec. 2. R. S., T. 32, § 754, amended. Section 754 of Title 32 of the Revised Statutes is amended to read as follows:

§ 754. Penalties; injunctions

~~Any dealer or any person violating any provision of this chapter, or knowingly filing with the Bank Commissioner or furnishing to him any false or misleading statements or information, shall be punished upon conviction thereof by a fine of not more than \$1,000 \$5,000 or by imprisonment for not more than 60 days 3 years, or by both. The District Court shall have original and concurrent jurisdiction with the Superior Court~~ The foregoing penalties shall be in addition to, and not a substitute for, any civil or criminal liability now or hereafter existing. Jurisdiction is conferred upon the Superior Court to enjoin, upon a complaint filed by the Bank Commissioner or any party in interest, any violation or threatened violation of any of the provisions of this chapter.

Sec. 3. R. S., T. 32, § 755, additional. Title 32 of the Revised Statutes is amended by adding a new section, 755, to read as follows:

§ 755. Fraudulent and other prohibited practices

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

1. **Device.** To employ any device, scheme or artifice to defraud;
2. **Statement.** To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or;
3. **Acts.** To engage in any act, practice or course of business which operates as a fraud or deceit upon any person.

Sec. 4. R. S., T. 32, § 756, additional. Title 32 of the Revised Statutes is amended by adding a new section, 756, to read as follows:

§ 756. Rules and regulations

The Bank Commissioner may from time to time make, amend and rescind such rules, regulations and forms as are necessary to carry out this chapter, including rules, regulations and forms governing registration statements, applications and reports, and defining any terms whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. Prior to making, amending or rescinding any rule, regulation or form, the Bank Commissioner shall, so far as practicable, publish and circulate to registered dealers notice of the intended action and afford interested persons an opportunity to submit suggestions orally or in writing. The Bank Commissioner shall cause the rules, regulations and forms and any changes therein to be printed in a suitable form, copies of which shall be available to any interested person upon request. All rules and regulations shall be published.

Sec. 5. R. S., T. 32, § 801, amended. Section 801 of Title 32 of the Revised Statutes is amended to read as follows:

§ 801. Director of Securities Division; examiners

The Bank Commissioner is authorized to appoint, subject to the Personnel Law, ~~an assistant commissioner~~ a **Director of the Securities Division** and one or more examiners who shall, under his directions, have charge of the enforcement of this chapter and make any necessary investigations thereunder. The salaries and traveling expenses of the ~~assistant commissioner~~ **Director of the Securities Division** and examiners and all expenses of administration and enforcement of this chapter shall be paid out of such amounts as the Legislature may appropriate.

Sec. 6. R. S., T. 32, § 803, amended. The last sentence of section 803 of Title 32 of the Revised Statutes is amended to read as follows:

Thereupon, unless satisfied that all such offerings of the dealer have been and are to be made honestly and in good faith, and with disclosure of pertinent facts sufficient to enable intending purchasers to form a judgment of the nature and value of the securities, and without intent to deceive or defraud, and that such securities will not work a fraud **or tend to work a fraud** upon the purchasers thereof, he may prohibit the dealer from selling or offering the securities, or any of them, or in any way advertising them.

Sec. 7. R. S., T. 32, § 804, repealed. Section 804 of Title 32 of the Revised Statutes is repealed.

Sec. 8. R. S., T. 32, § 852, amended. The last 2 sentences of the next to the last paragraph of section 852 of Title 32 of the Revised Statutes are amended to read as follows:

~~Changes in the certificate, necessitated by Notice of changes in the personnel of a partnership or in the principals, officers, directors or managing agents of any dealer, may shall be made given at any time upon written application to the commissioner, accompanied by statement of the facts necessitating the change. Upon the issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the~~ The commissioner shall be sent notice of the change not later than 30 days after the change.

Sec. 9. R. S., T. 32, § 856, amended. Section 856 of Title 32 of the Revised Statutes is amended to read as follows:

§ 856. Agents and salesmen, examinations

Upon written application by a registered dealer, the Bank Commissioner may register, as agents or salesmen of such dealer, such persons as the dealer may request. The application shall be in such form as the said commissioner may prescribe, and shall state the residences and addresses of the persons whose registration is requested.

The commissioner may deny registration to any person if he finds that the person:

1. **Application.** Has filed an application or sworn statement which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
2. **Conviction.** Has been convicted within the past 10 years of any felony or of any misdemeanor involving a security or any aspect of the securities business;
3. **Court injunction.** Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
4. **Order of commissioner.** Is subject of an order of the Bank Commissioner denying, suspending or revoking registration as a dealer, issuer or agent or salesman;
5. **Other orders.** Is the subject of an order entered within the past 5 years by the securities commissioner of any other state or by the Securities and Exchange Commission denying or revoking licensing as a broker, dealer or a salesman, or the equivalent of those terms, or is subject of an order of the Securities and Exchange Commission suspending or expelling him from a National Securities Exchange or National Securities Association registered under the Securities Exchange Act of 1934, or is the subject of a U. S. post office fraud order, but the Bank Commissioner may not deny registration under this subsection more than one year from the date of the order relied on.

6. Practices. Has engaged in dishonest or unethical practices in the securities business.

The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by applicants or any class of applicants, except that no applicant shall be required to take an examination if he was registered as an agent or salesman of a dealer at any time during the calendar year preceding the date of the application, has passed prior to the date of the application an examination for brokers or salesmen required by the Federal Securities and Exchange Commission or the National Association of Securities Dealers and is a registered representative under the jurisdiction of such commission or such association at the date of such application, or was registered as an agent or salesman of a dealer on October 1, 1967. A \$5 examination fee in addition to all other fees may be charged to an applicant required to take an examination. Unless an applicant fails to pass such a written examination, the said commissioner shall issue to each person so registered a registration certificate, stating his name, residence and address, the name, principal place of business and the address of the dealer, and the fact that he is registered for the current calendar year as agent or salesman as the case may be of the dealer. The certificate shall in other respects be in such form as the Bank Commissioner shall determine, but shall state in bold type that the said commissioner does not recommend or assume any responsibility for securities offered by the dealer or the dealer's agents or salesmen. Upon application by the dealer, the registration of any agent or salesman shall be canceled. **When an agent or salesman begins or terminates a connection with a dealer, or begins or terminates those activities which make him an agent or salesman, the agent or salesman as well as the dealer shall promptly notify the commissioner.**

Sec. 10. R. S., T. 32, c. 13, sub-cc. IV and V, additional. Chapter 13 of Title 32 of the Revised Statutes is amended by adding 2 new subchapters IV and V to read as follows:

‘SUBCHAPTER IV

REGISTRATION OF SECURITIES

§ 871. Registration of securities; notice of intention to sell

No security, not exempt under section 873, shall be sold, except in a transaction exempted by section 874, within this State, until there shall have been filed with the Bank Commissioner a notice of intention to sell such security, accompanied by a filing fee of \$25, and this prohibition shall not extend to offers, solicitations or other preliminary negotiations, with no consideration paid or received, no transfer or delivery of any security made, and no binding option, subscription or other contract entered into.

Within 7 days after the filing of said notice, or such further times as the Bank Commissioner may allow in any case, there shall be filed with the Bank Commissioner a statement, upon such form as the Bank Commissioner may prescribe, containing, with any other relevant information prescribed by the Bank Commissioner in such form, the following information relative to such security and the issuer thereof:

1. Name and address. The name and address of the issuer; and, in the case of an organization, the names and addresses of the partners, trustees, directors or other board of management, president, treasurer, clerk or secretary, or corresponding officers thereof.
2. State or government. The State or other government, if the issuer be an organization, under the laws of which such issuer was organized, and a reference to such laws.
3. Nature and purpose. The general nature of the business transacted or to be transacted by such issuer, with, if the issuer be an organization, a statement of the purpose for which it was organized or formed.
4. Capital. The amount of capital devoted and proposed to be devoted to the business in question, with the number of and a classification of the securities issued and to be issued; the amount of the secured debt and the unsecured debt, with a brief description of the date of issuance, maturities and character of such debt, and the security, if any, therefor; and the authorized amount of capital stock, certificates of beneficial interest or other securities of like character, with the number and classes of shares into which the same is divided, and a brief description of the respective voting rights, preferences, rights to dividends or profits and rights to capital with respect to the securities to which the notice relates.
5. Proceeds. The purposes to which the proceeds of the securities to which the notice relates are to be applied.

The Bank Commissioner may accept, in lieu of such statement or of any part thereof, a reference to recognized sources of information approved by the Bank Commissioner and containing such information as he deems to be an adequate substitute therefor.

The Bank Commissioner shall accept, in lieu of such statement, either a copy of a prospectus or of an offering circular, and of each amendment to said prospectus or offering circular, filed under the Federal Securities Act of 1933, as amended, or any regulation thereunder, provided that the Bank Commissioner may require in any case any further information which he deems necessary.

The notice of intention prescribed may be filed by any person who proposes to sell the security or by the issuer. The statement shall be sworn to by such person, or issuer, or by the chief executive officer or any partner of such person or issuer.

Unless the Bank Commissioner shall in writing notify such person within 7 days of the filing of such statement or the last amendment thereto that in his opinion it does not comply with this section, it shall be conclusively deemed to comply with this section.

§ 872. Denial or revocation of registration of securities

The Bank Commissioner may deny effectiveness to, or suspend or revoke the effectiveness of, the registration of any security if, after reasonable notice and opportunity to be heard and, if deemed necessary by the Bank Commissioner, an examination into the affairs of the issuer of such securities, it shall appear

that the sale of such securities would work or tend to work a fraud upon the purchasers thereof or would be unlawful, or that the issuer is insolvent or has violated any of the provisions of this chapter or any order of the Bank Commissioner of which such issuer has notice.

In making such examination the Bank Commissioner shall have access to and may compel the production of all books and papers of such issuer, and he or the Director of the Securities Division may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs, and may require a balance sheet exhibiting the assets and liabilities of such issuer or an income statement, or both, to be certified to by a public accountant approved by the Bank Commissioner.

Whenever the Bank Commissioner may deem it necessary, he may require such balance sheet or income statement, or both, to be made more specific in such particulars as the Bank Commissioner shall point out or to be brought down to the latest practicable date.

If any issuer shall refuse to permit an examination to be made by the Bank Commissioner, it shall be proper ground for denial, revocation or suspension of effectiveness of registration.

If the Bank Commissioner shall deem it necessary, he may enter an order suspending the right to sell securities pending any investigation or hearing, provided that the order shall state the grounds of the Bank Commissioner for taking such action.

Notice of the entry of such order and of any hearings under this section shall be given personally or by telephone, telegraph or by mail to the issuer, the person filing the notice of intention to sell, and every registered dealer who shall have notified the Bank Commissioner of an intention to sell such security.

§ 873. Exempt securities

The following securities are exempt from section 871:

1. United States. Any security, including a revenue obligation or certificate of deposit, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing;
2. Canada. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing;
3. Bank. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;
4. Federal savings and loan, federal credit union. Any security issued by and representing an interest in, or a debt of, or guaranteed by, any federal savings and loan association or federal credit union authorized to do business in

this State, or industrial bank, credit union or similar organization organized under the laws of this State and authorized to do business in this State.

5. Stock exchanges. Any security listed for more than 30 days prior to sale in this State on the New York Stock Exchange or the American Stock Exchange.

6. Others. The Bank Commissioner may, from time to time, in compliance with section 756 exempt securities or classes of securities or certain transactions from section 871, upon such terms and conditions, if any, as he may prescribe, if he finds that such exemption will not be detrimental to the needs of public investors.

§ 874. Exempted transactions and distributions

The following transactions and distributions are exempt from section 871:

1. Ordinary course of investment. Any sale made by, or in behalf of, a vendor in the ordinary course of bona fide personal investment by such person, or change of investment if such vendor is not otherwise engaged either permanently or temporarily in the business of selling securities;

2. Isolated sale. Any isolated sale, whether effected through a dealer or not.

3. Fiduciary. Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

4. Registered dealer. Any transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy.

5. Security manual. Any sale by a registered dealer, acting either as principal or agent, of outstanding securities theretofore sold and distributed to the public, provided that Moody's, Standard & Poor's, or Fitch's security manual, or any other recognized security manual approved by the Bank Commissioner, contains the names of the officers and directors of the issuer, a balance sheet of the issuer as of a date not more than 18 months prior to the sale, and a profit and loss statement for the fiscal year preceding that date. The Bank Commissioner may revoke the exemption afforded by this subsection with respect to any securities, after notice and hearing, by issuing an order to that effect if he finds that the further sale of such securities in this State would work or tend to work a fraud on the purchaser thereof.

6. Underwriter. Any transaction between an issuer or other person on whose behalf an offering is made and an underwriter, or among underwriters.

7. Pledgee. Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

8. Trust. Any sale to a pension or profit sharing trust, financial institution, or registered dealer, whether the purchaser is acting in a fiduciary capacity or not.

9. Corporation. Any sale of securities of a corporation organized under the laws of this State if the number of holders of such securities does not at the time of such sale, and will not in consequence of such sale exceed 10 in number exclusive of persons specified in subsection 8.

10. Nonsales. Any distribution of securities to its existing security holders by an issuer not involving a sale, including without limitation, stock dividends and stock splits, and any distribution or exchange of securities pursuant to a statutory merger or consolidation.

11. Exchange. The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to making such conversion.

SUBCHAPTER V CIVIL LIABILITIES

§ 881. Civil liabilities

1. Liabilities. Any person who

A. Sells a security in violation of section 851 or 871, or

B. Offers or sells a security, whether or not exempt or in an exempt transaction, by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission,

is liable to the person buying the security from him, who may sue to recover the consideration paid for the security, together with interest at 6% per year from the date of payment, costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at 6% per year from the date of disposition.

2. Tender. Any tender specified in this section may be made at any time before entry of judgment.

3. Survival. Every cause of action under this section survives the death of any person who might have been a plaintiff or defendant.

4. Limitations. No person may sue under this section more than 2 years after the contract of sale. No person may sue under this section if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at 6 % per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within 30 days of its receipt, or if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt.

5. Knowledge of violation. No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

6. Additional rights. The rights and remedies provided in this section are in addition to all other rights and remedies provided by law.

Sec. 11. Appropriation. There is appropriated from the General Fund to the Department of Banks and Banking the sum of \$7,597 for the fiscal year ending June 30, 1968, and the sum of \$7,896 for the fiscal year ending June 30, 1969, to carry out the purposes of this Act.

The breakdown shall be as follows:

	1967-68		1968-69
DEPARTMENT, BANKS AND BANKING			
Personal Services	(1) \$6,097	(1)	\$6,396
All Other	1,500		1,500
	<hr/> \$7,597		<hr/> \$7,896

FISCAL NOTE

It is estimated that additional revenues in the amount of approximately \$18,000 for each biennium will be received under this Act.