

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2057

S. P. 650

In Senate, January 22, 1976

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Thomas of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Correct and Clarify the Maine Banking Code.

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

Whereas, the complete recodification of the Maine Banking Code which became effective October 1, 1975 has now been in effect for several months and several sections have been found to need correction or clarification; and

Whereas, the prompt correction of these errors or vague provisions will provide for more effective administration of the new Banking Code; 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 § 131, sub-§ 1, as enacted by PL 1975, c. 500, § 1, is amended to read:

1. Agency. "Agency means ~~an~~ a branch office of a financial institution at which all or part of the business of the institution is conducted, but the records pertaining to such business are maintained at another office ~~or branch~~ of the institution, and not at such agency office.

Sec. 2. 9-B MRSA § 131, sub-§ 12-A is enacted to read:

12-A. Credit union authorized to do business in this State. "Credit union authorized to do business in this State" means a credit union:

- A. Organized under provisions of this Title;
- B. Organized under provisions of prior laws of this State and subject to the provisions of this Title; or
- C. Organized under provisions of federal law and maintains its principal office in this State.

Sec. 3. 9-B MRSA § 131, sub-§ 17-A is enacted to read:

17-A. Financial institution authorized to do business in this State. "Financial institution authorized to do business in this State" means a commercial bank, savings bank, industrial bank or savings and loan association:

- A. Organized under provisions of this Title;
- B. Organized under provisions of prior laws of this State and subject to the provisions of this Title; or
- C. Organized under provisions of federal law and maintains its principal office in this State.

Sec. 4. 9-B MRSA § 131, sub-§ 32, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

32. Savings account. "Savings account" or "savings deposit" means a deposit or account in a financial institution in which the depositor is not required by the deposit contract, but may at any time be required by the financial institution, to give notice in writing of an intended withdrawal not less than 30 days before such withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

Sec. 5. 9-B MRSA § 213, sub-§ 2, ¶ A, first sentence, as enacted by PL 1975, c. 500, § 1, is amended to read:

If the superintendent, a deputy superintendent, examiner or other professional personnel of the bureau ~~or a member of such person's immediate family~~ obtains a loan from any financial institution subject to supervision or regulation by the bureau, the fact of such loan, together with the terms and conditions thereof, shall be disclosed immediately to the superintendent in writing by the person obtaining the loan and by the institution making such loan.

Sec. 6. 9-B MRSA § 223, sub-§ 1, first sentence, as enacted by PL 1975, c. 500, § 1, is amended to read:

Within 10 days after submission to the superintendent of the reports required pursuant to section 222, subsection 3, or within such other time period as the superintendent may designate, a financial institution shall cause such condition and income reports to be published, in such form as the superintendent may direct, in a newspaper of general circulation in the county where

the institution's main office is located, or in such other newspapers as the superintendent may direct.

Sec. 7. 9-B MRSA § 226, sub-§ 3, ¶ B, as enacted by PL 1975, c. 500, § 1, is amended to read:

B. ~~The Advisory boards~~ advisory board established pursuant to section 216;

Sec. 8. 9-B MRSA § 251, sub-§ 2, ¶ B, sub-¶ (4), as enacted by PL 1975, c. 500, § 1, is amended to read:

(4) A statement that a hearing will be held upon a bona fide and reasonable request of any interested party; provided that such party presents a written request for such hearing to the superintendent within ~~20 days of the first publication of the notice~~ a time period established by the superintendent which shall not be less than 20 days after the first publication of notice in paragraph A.

Sec. 9. 9-B MRSA § 251, sub-§ 6, as enacted by PL 1975, c. 500, § 1, is amended by adding at the end the following sentences:

The superintendent may waive all or part of the 30-day waiting period following promulgation of any rule, regulation or amendment, if the superintendent determines that conditions exist which warrant such action. The superintendent shall set forth in writing the circumstances and reasons for his waiving all or part of the 30-day waiting period.

Sec. 10. 9-B MRSA § 252, sub-§ 2, ¶ C, sub-¶ (4), as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

(4) A statement that a hearing will be held upon a bona fide and reasonable request of an interested party; provided that such party presents a written request for such hearing to the superintendent within a time period established by the superintendent which shall not be less than 20 days after the first publication of notice in paragraph A.

Sec. 11. 9-B MRSA § 252, sub-§ 6, ¶ D, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

D. The final order of the superintendent shall take effect 30 days after promulgation thereof, unless a later date has been specified in such order. The superintendent may waive all or part of the 30-day waiting period following the promulgation of the final order, if the superintendent determines that conditions exist which warrant such action. The final order shall set forth the circumstances and reasons for his waiving all or part of the 30-day waiting period.

Sec. 12. 9-B MRSA § 252, sub-§ 7, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

7. Time periods.

A. The time periods set forth in this section shall not commence to run until the superintendent determines that the application is complete and the first publication of notice pursuant to subsection 2, paragraph A, has

been made by the applicant. The superintendent shall have the power to request modifications in, and additional information relating to, any application prior to certifying its completeness.

B. The superintendent may suspend or postpone action on an application after the first publication of notice pursuant to subsection 2, paragraph A, upon written request of the applicant or on his own initiative for good cause shown. Notice of any such suspension or postponement shall be published promptly by the superintendent in those newspapers in which notice of the application was given. If and when action is resumed on the application, the superintendent shall publish notice to that effect in those newspapers in which notice of the suspension or postponement was given. The time period for which action on the application is suspended or postponed shall not be charged against the time periods set forth in this section.

Sec. 13. 9-B MRSA § 254, sub-§ 8, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

8. Effective date. A decision by the superintendent after a hearing shall take effect 30 days after issuance of the decision, unless a later date is specified therein. The superintendent may waive all or part of the 30-day waiting period following issuance of the decision, if the superintendent determines that conditions exist which warrant such action. The decision shall set forth the circumstances and reasons for his waiving all or part of the 30-day waiting period.

Sec. 14. 9-B MRSA § 325, sub-§ 1, ¶ F, as enacted by PL 1975, c. 500, § 1, is amended to read:

F. The superintendent shall have the power to comment upon the sociological composition, as defined in section 131, of the board of corporators of any mutual trust company or mutual savings bank, such comment to be made in such form and manner as the superintendent deems appropriate.

Sec. 15. 9-B MRSA § 325, sub-§ 3, ¶ C, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

C. Notice. Notice of the annual meeting or any special meeting shall be given by public advertisement in a newspaper or newspapers of general circulation in the county or counties where each office of the institution is located, or in such other newspapers as the superintendent may designate. The notice shall be published on at least 3 different days and in such manner as to be reasonably conspicuous. The last publication of notice shall be at least 7 days prior to such annual or special meeting. Notice of any special meeting shall state the purpose for which such meeting is called.

Sec. 16. 9-B MRSA § 326, sub-§ 1, ¶ G, as enacted by PL 1975, c. 500, § 1, is amended to read:

G. The superintendent shall have the power to comment upon the sociological composition, as defined in section 131, of the board of directors of any financial institution organized under this chapter, such comment to be made in such form and manner as the superintendent deems appropriate.

Sec. 17. 9-B MRSA § 336, sub-§ 1, as enacted by PL 1975, c. 500, § 1, is amended to read:

1. **Application required.** Approval for the relocation of a main office, or for the establishment, moving or closing of a branch or agency office or facility authorized by this chapter shall be requested by the board of directors of an institution by filing an application for permission relating thereto with the superintendent in such form and manner and containing such information as the superintendent may prescribe.

Sec. 18. 9-B MRSA § 336, sub-§ 5, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

5. **Approvals; time extensions.** If the superintendent approves an application to establish and operate a branch or agency office or facility, copies of the order shall be filed with the Secretary of State and shall be furnished to the applicant institution. The order shall lapse one year after its effective date if the office or facility authorized thereunder has not opened for business, unless the superintendent for good cause shown has granted in writing an extension of time, not to exceed 6 months. No fee shall be charged for such extension. Additional 6-month extensions may be granted by the superintendent for good cause shown at a fee established by the superintendent for such extensions not to exceed \$500.

Sec. 19. 9-B MRSA § 413, sub-§ 2, as enacted by PL 1975, c. 500 § 1, is amended to read:

2. **Mortgage-backed securities.** A financial institution shall have power to issue, or participate with other persons in the issuance of, mortgage-backed securities which ~~are~~ may be guaranteed as to principal and interest by the United States or by an agency of the United States, and are backed in whole or in part by mortgages held by the institution; and, in connection therewith, may enter into and perform such agreements relating to the custody and servicing of such mortgages and to other matters as may be required pursuant to applicable regulations of any such agency.

Sec. 20. 9-B MRSA § 443, first ¶, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

In addition to all customer services incidental to the powers granted in its articles of incorporation and to such other incidental activities as the superintendent may approve and may issue regulations pursuant thereto, a financial institution may offer the services set forth below to its customers, depositors or members.

Sec. 21. 9-B MRSA § 445, sub-§ 4, as enacted by PL 1975, c. 500, § 1, is amended to read:

4. **Joint ownership.** A service corporation formed pursuant to this section may be owned by 2 or more ~~such~~ financial institutions authorized to do business in this State; provided that the superintendent shall approve such joint ownership in accordance with section 252. In approving or disapproving joint ownership of a subsidiary, the superintendent may, in addition to the

criteria set forth in section 253, consider the type of institutions making application, and the competitive effect of such joint ownership.

Sec. 22. 9-B MRSA § 463, sub-§ 3, as enacted by PL 1975, c. 500, § 1, is amended to read:

3. **Exception.** The prohibitions contained in subsections 1 and 2 shall not apply to any shares held in a fiduciary capacity by a financial institution; to shares acquired upon a merger or consolidation pursuant to chapter 36; ~~nor~~ to shares acquired pursuant to chapter 101; nor to shares lawfully held under the Bank Holding Company Act of 1956, as amended, on the effective date of this Act.

Sec. 23. 9-B MRSA § 465, sub-§ 2, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

2. **Thrift institutions and credit unions.**

A. Except for loans adequately secured by a first mortgage on real estate, a savings deposit or a certificate of deposit, or personal loans having an aggregate value of \$5,000 or less, no thrift institution or credit union subject to the laws of this State shall make any loans to its officers or directors, and no thrift institution shall make a loan to its incorporators unless such loans are on the same terms as are generally available to the public.

B. A loan granted to an officer or incorporator under paragraph A shall be approved or ratified within 30 days of its making by the board of directors. A loan granted a director under paragraph A shall be approved by a majority of the entire membership of the board. The director whose loan is under consideration shall not be regarded as voting in the affirmative on such loan.

Sec. 23-A. 9-B MRSA § 466, sub-§ 4, first sentence, as enacted by PL 1975, c. 500, § 1, is amended to read:

No person shall engage in the business ~~authorized for any~~ of financial ~~institution~~ institutions unless he is properly authorized, nor represent that he is acting as such a financial institution, nor use an artificial or corporate name which purports to be or suggests that it is such a financial institution.

Sec. 24. 9-B MRSA § 554, sub-§ 2, as enacted by PL 1975, c. 500, § 1, is amended to read:

2. **Limitations.** An institution shall not acquire or hold stock and obligations described in subsection 1 both by way of investment and as security for loans in excess of 10% of its deposits; nor shall it acquire or hold stock and obligations of any one bank or holding company not operating in this State with a book value in excess of 1% of its deposits; nor shall it acquire or hold such stock in excess of 10% of the capital stock of any one bank or holding company; provided, however, that nothing in this section shall be construed to prohibit the acquisition or holding of shares pursuant to chapters 35 and 101.

Sec. 25. 9-B MRSA § 614, sub-§ 2, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

2. Powers and privileges as member bank. Every such trust company may have and exercise any and all of the corporate powers and privileges which may be exercised by member banks under the Federal Reserve Act; provided that such association shall at all times be subject to the requirements imposed on trust companies by this Title and the laws of this State, unless otherwise provided therein.

Sec. 26. 9-B MRSA § 815, as enacted by PL 1975, c. 500, § 1, is amended by adding at the end the following:

The superintendent may at his discretion waive the publication requirements of section 223, subsection 1, for credit unions.

Sec. 27. 9-B MRSA § 821, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

§ 821. Powers in general; incidental activities

In addition to the implied and incidental powers granted elsewhere in this Part and to such other incidental activities as the superintendent may approve and may issue regulations pursuant thereto, a credit union shall be empowered to do the acts set forth in this chapter, subject to the conditions and limitations set forth herein.

Sec. 28. 9-B MRSA § 826, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

§ 826. Branch offices and office relocations

Subject to the prior written approval of the superintendent, a credit union may establish branches and facilities or change the location of an office, as authorized in chapter 33, at any location within this State; provided that such branches or facilities of a credit union shall meet the needs and convenience of the credit union's common bond members. Applications pursuant to this section for the relocation of a main office or for the establishment, moving or closing of a branch office or facility shall comply with the requirements of section 336, except that the fee schedule established by the superintendent for applications under this section shall in no instance exceed \$100 for a single application.

Sec. 29. 9-B MRSA § 853, as enacted by PL 1975, c. 500, § 1, is amended to read:

§ 853. Unsecured loans

Unsecured loans to members may be made by a credit union in an amount not to exceed \$500 or 2½% of share capital and surplus, whichever is greater, up to a maximum amount of \$5,000 for each such loan member.

Sec. 30. 9-B MRSA § 876, as enacted by PL 1975, c. 500, § 1, is repealed and the following enacted in place thereof:

§ 876. Acquisitions

A credit union organized under the laws of this State may acquire all or substantially all the assets of, or assume the liabilities of, any other credit union authorized to do business in this State; provided that such purchase or sale pursuant to this section shall be executed in accordance with the requirements of section 355 and shall be subject to the provisions of sections 357 and 358.

Sec. 31. 9-B MRSA § 877 is enacted to read:

§ 877. Fees for mergers, conversions and acquisitions

No application made pursuant to sections 872, 873, 875 or 876 shall be deemed complete unless accompanied by an application fee of \$200 payable to the Treasurer of State to be credited and used as provided in section 214.

Sec. 32. 32 MRSA § 891, sub-§ 1, first sentence, as enacted by PL 1975, c. 500, § 2, is amended to read:

Financial institutions authorized to do business in this State, as defined in Title 9-B, section ~~121~~ 131, subsection 2 may engage directly or indirectly in the business of selling, issuing or registering checks or money orders.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The amendments in this bill are to clarify and correct the comprehensive banking code enacted by the 107th Legislature. All changes are essentially minor housekeeping revisions, based principally upon the Banking Bureau's 3-months' experience in administering the code.

Sec. 1. The purpose is to indicate clearly that an agency office is a type of branch office of a financial institution.

Sec. 2 and 3. The purpose is to make explicit what is now implicit in the present statutes.

Sec. 4. The purpose is to remove from the definition the types of persons who may hold savings deposits in financial institutions consistent with changes that have been made in federal regulations.

Sec. 5. The purpose is to remove the requirement that an examiner's immediate family report to the superintendent all borrowings in their own name from institutions subject to bureau supervision.

Sec. 6. The purpose is to give the superintendent the flexibility to require that the condition and income reports be published on the same day in the newspapers.

Sec. 7. The purpose is to correct reference back to section 216.

Sec. 8 and 10. The purpose of these amendments is to give the superintendent greater flexibility in setting a single concurrent time period for receiving written comments and requests for a hearing in rule making and application proceedings.

Sec. 9, 11 and 13. The purpose of these amendments is to give the superintendent authority to waive the 30-day waiting period following the promulgation of a rule, regulation or order under emergency conditions.

Sec. 12. The purpose is to give the superintendent the authority to postpone or suspend application process for good cause shown.

Sec. 14 and 16. The purpose is to clarify the references to the definition of sociological composition.

Sec. 15. The purpose is to clarify a section of the code.

Sec. 17. The purpose is to correct an omission in the revised banking code.

Sec. 18. The purpose is to clarify and make the section consistent with other sections of this Title.

Sec. 19. The purpose is to provide more flexibility for financial institutions to issue mortgage-backed securities.

Sec. 20. The purpose is to clarify permissible activities incidental to the business of banking.

Sec. 21. The purpose is to apply the decision-making procedures of section 252 to proposals to establish a jointly-owned subsidiary corporation.

Sec. 22. The purpose is to make explicit that all shares of Maine financial institutions purchased by bank holding companies pursuant to the Federal Bank Holding Company Act prior to October 1, 1975 are exempt from section 463, subsection 2.

Sec. 23. The purpose is to make explicit the requirement that the board of directors approve loans to officers, employees and corporators of thrift institutions and credit unions.

Sec. 23-A. The purpose is to replace the term "business authorized by any financial institution" with the term "business of financial institutions" as defined in section 131.

Sec. 24. The purpose is to correct and clarify investment limitations.

Sec. 25. The purpose is to clarify the supremacy of state law over rules and regulations pertaining to members of Federal Reserve System.

Sec. 26. The purpose is to allow superintendent the discretion to exempt credit unions from publication requirements.

Sec. 27. The purpose is to clarify the superintendent's authority to approve activities deemed to be incidental to the operations of credit unions.

Sec. 28. The purpose is to add provision for relocation of offices and establish a fee schedule for credit unions different from other financial institutions.

Sec. 29. The purpose is to correct an erroneous reference in law.

Sec. 30. The purpose is to clarify applicability of the section to acquisitions by credit unions.

Sec. 31. The purpose is to establish a fee schedule for mergers, conversions and acquisitions by credit unions different from other financial institutions.

Sec. 32. The purpose is to correct an erroneous reference in law.

This bill was supported by the Governor in his call.