

# MAINE STATE LEGISLATURE

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(Governor's Bill)  
SECOND REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1901**

H. P. 1779

House of Representatives, January 25, 1980

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

EDWIN H. PERT, Clerk of the House

Presented by Mrs. Nelson of Portland.

Cosponsor: Mr. Jackson of Yarmouth.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

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**AN ACT to Amend the Maine Securities Act.**

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

**Sec. 1.** 32 MRSA § 751, 2nd ¶, last sentence, as amended by PL 1977, c. 696, § 235, is further amended to read:

The term "dealer" shall not include an issuer which engages in a sale of securities which is exempt under section 874 874-A, subsection 3, 9 or 9-A 10.

**Sec. 2.** 32 MRSA § 751, last ¶, first sentence is amended to read:

The term "securities" shall include all stocks, bonds, debentures, notes, evidence of indebtedness, investment contracts 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.

**Sec. 3.** 32 MRSA § 751, last ¶, last sentence, as amended by PL 1967, c. 484, § 1, is further amended to read:

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.

**Sec. 4. 32 MRSA § 873, sub-§§ 5-A and 5-B are enacted to read:**

**5-A. Exempt organizations. Any security, except notes, bonds, debentures or other evidence of indebtedness, issued by:**

**A. A person organized and operated not for private profit, but exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic or reformatory purposes or as a chamber of commerce or a trade or professional association, if no part of the net earnings of the issuer inures to the benefit of any person, private stockholder, member or individual; or**

**B. To the extent that a person is not described in paragraph A, a person exempt from tax or subsequently determined to have been exempt at the time of the sale under the United States Internal Revenue Code of 1954, as amended, Section 501 (c), (2), (3), (4), (5), (6), (7), (8), (9), (10), (19), 501 (e), 501 (f) or 528, or any similar successor provision thereto;**

**provided, further, that no part of the net earnings of the issuer inures to the benefit of any person, private stockholder, member or individual;**

**5-B. Commercial paper. Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding 9 months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; and**

**Sec. 5. 32 MRSA § 874, as last amended by PL 1977, c. 474, §§ 1 and 2, is repealed.**

**Sec. 6. 32 MRSA § 874-A is enacted to read:**

**§ 874-A. 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 that person, or change of investment if the vendor is not otherwise engaged either permanently or temporarily in the business of selling securities;**

**2. Isolated transaction. Any isolated transaction, not directly or indirectly for the benefit of the issuer, whether effected through a dealer or not;**

**3. Nonpublic offerings by issuers. Any transaction by an issuer not involving any public offering within the meaning of the Securities Act of 1933, as amended, section 4 (2) and the rules and regulations thereunder, including, but not limited to, any transaction exempt from registration with the Securities and Exchange**

Commission under Rule 146 of the Securities and Exchange Commission or any successor rule adopted under the Securities Act of 1933, as amended, and any transaction constituting a nonpublic offering under rules and regulations adopted by the Bank Superintendent pursuant to section 756, 807 or 873, subsection 6.

A. At least 10 days prior to the sale of a security in reliance on the exemption from registration provided in this subsection, the issuer shall file with the Bank Superintendent a notification of exemption, upon such form as the Bank Superintendent may prescribe and pay a filing fee of \$100.

B. If the Bank Superintendent has cause to believe that the exemption provided by this subsection is not available with respect to a given transaction, the Bank Superintendent may, without hearing and notwithstanding the Maine Administrative Procedure Act, issue a written cease and desist order prohibiting the subsequent sale of the securities until such time as either the transaction is registered under section 871 or the issuer establishes to the satisfaction of the Bank Superintendent that the transaction meets all of the conditions of the exemption under this subsection or is otherwise exempt under any other provision of this chapter and the cease and desist order is withdrawn by the Bank Superintendent. Persons who fail to comply with the cease and desist order are subject to section 754. The Bank Superintendent, prior to or subsequent to a sale of securities, if he has reason to believe that the exemption under this subsection or any other exemption under this chapter is not available with respect to the sale, may initiate appropriate enforcement action;

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

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

6. 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 Superintendent, 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 Superintendent 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 the securities in this State would work or tend to work a fraud on the purchaser thereof;

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

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

9. Maine corporation; 10 or fewer holders. Any sale of securities of a

corporation organized under the laws of this State if the number of holders of the securities does not at the time of the sale, and will not in consequence of the sale, exceed 10 in number exclusive of persons specified in subsection 11. Under no circumstances shall the exemption under this subsection apply when there are more than 10 stockholders in any given business entity, regardless of the number of classes of stock offered;

10. Maine corporation; 11 to 25 holders. Any sale of securities of a corporation organized under the laws of this State if the number of holders of the securities does at the time of the sale, or will in consequence of the sale, exceed 10, but does not at the time of the sale, and will not in consequence of the sale, exceed 25 in number exclusive of persons specified in subsection 11, and if the securities sold in reliance on this subsection have not been offered to the general public by advertisement or solicitation. Any person who relies on this exemption, for sales of securities of a corporation organized under the laws of this State, which results in, as a consequence of the sales, from more than 10 but not more than 25 holders of the securities, shall file with the Bank Superintendent, a notification for exemption, which shall be in the form as follows:

**NOTIFICATION FOR EXEMPTION**

(To be filed with the Bank Superintendent, State of Maine, with a copy to be made available to each offeree of securities sold in reliance on this exemption.)

A. 1. Name, address and telephone number of the issuer corporation.

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2. State of incorporation and date incorporated.

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3. Name, address and telephone number of persons who may respond to inquiries about the issuer.

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4. Location at which the books and records of the issuer shall be kept.

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5. Shall books and records be available for inspection by shareholders?

Yes  No

Explain.....

B. 1. Describe all classes of securities, including newly authorized classes of securities of the issuer providing the number of authorized units, of each class, par value per unit of each class and the number of units of each class as are issued and outstanding.

Class	No. of Units Authorized	Par Value	No. of Units Outstanding

2. Describe the class of securities as shall be offered for sale, indicating the number of units authorized, par value per unit, the number of units currently outstanding, the number of units being offered for sale, the number of units to be outstanding and the price at which each unit is offered for sale.

Class	Authorized	Par	Outstanding	Offering	To Be Outstanding	Price

C. Describe the rights of holders of the securities offered pursuant to this exemption, including voting rights and if cumulative or noncumulative, liquidation rights, preemptive rights and any other rights or limitations applicable to the securities.

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 .....

D. State whether an annual meeting of securities holders shall be held, and if so, the location, time, date, how securities holders shall be notified and if an annual financial statement and report of activities shall be available to securities holders.

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**E. Describe briefly how the proceeds from the offering shall be used and if proceeds shall be returned to investors in a minimum amount of \$.....  
..... is not raised by a specific date.**

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**F. Describe briefly the issuers plan of business and whether the business is currently operational.**

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**G. List the significant risks which may be assumed by a purchaser of securities, including, but not limited to:**

**1. Management experiences .....**

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**2. Competitive and economic factors .....**

.....

**3. Net worth position of the issuer .....**

.....

**4. The improbable or limited opportunity for resales of securities .....**

.....

**H. Include the legend:**

**“The issuer is required to make a reasonable finding that the securities offered are a suitable investment for the purchaser and that the purchaser shall be able, financially and economically, to bear the risk of entire loss of invested capital.”**

**I. Include the legend:**

**“These securities are offered pursuant to an exemption under Title 32, 874-A, subsection 10, of the Maine Securities Act and are not registered with the Bank Superintendent of the State of Maine.”**

**J. Include the legend:**

**“The securities offered for sale may be deemed restricted securities and as such the holder may not be able to resell the securities unless pursuant to registration under state or federal securities laws or unless an available exemption under such laws exists.”**

**The Bank Superintendent may promulgate regulations as are deemed necessary to further define or implement the provisions of this subsection, consistent with the intent of this subsection. The Bank Superintendent may deny, suspend or revoke any exemption claimed under this subsection, if he deems such action is**

in the public interest. Under no circumstances shall the exemption under this subsection apply when there are more than 25 stockholders in any given business entity, regardless of the number of classes of stock offered:

11. **Financial institutions.** Any sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a registered dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

12. **Transactions with existing security holders.** The following transactions:

A. Any distribution of securities to its existing security holders by an issuer not involving a sale, including, without limitation, stock dividends and stock splits;

B. 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 make the conversion; and

C. The issue and delivery of any security to existing security holders by an issuer pursuant to the exercise by existing security holders of their preemptive rights, provided that the existing shareholders of the issuer do not exceed 50 persons in number;

13. **Mergers and consolidations.** The following distributions or exchanges:

A. Any distribution or exchange of securities pursuant to a statutory merger or consolidation; and

B. Any distribution or exchange of securities to the security holders of a corporate or other person pursuant to a plan of acquisition in which securities of the corporation or other person held by the security holder will become or be exchanged for securities of any other person; and

14. **Sales by local economic development corporations.** Any sale of securities of a corporation organized under the laws of this State, if prior to the sale, the corporation was a subsidiary of a local economic development corporation, and provided further that there be only one security sold to any person, that the value of the security does not exceed the sum of \$25 and that such a security is not resalable.

Sec. 7. 32 MRSA § 857, as enacted by PL 1973, c. 212, § 2, is amended to read:  
§ 857. **Exempted dealers**

No registration shall be required of any local economic development corporation or of any of its agents by reason of the sale of any securities which are exempt under sections 873 or 874 874-A.

Sec. 8. 32 MRSA § 871, first ¶, as amended by PL 1973, c. 585, § 11, is further amended to read:



No security, not exempt under section 873 or section 807, shall be sold, except in a transaction exempted by section ~~874~~ 874-A or section 807, within this State, until there shall have been filed with the Bank Superintendent a notice of intention to sell such security, accompanied by a filing fee of \$50, and this prohibition shall not extend to offers, solicitations or other preliminary negotiations, with no consideration paid or recieved, no transfer or delivery of any security made, and no binding option, subscription or other contract entered into.

#### STATEMENT OF FACT

The purposes of this bill are as follows.

Sec. 1. This change is to exempt individuals dealing in selected types of securities from dealer and agent registration.

Sec. 2 and 3. These changes close a loophole in the securities law relating to short-term notes, and commercial paper is defined as a security. Variable rate annuities are deleted from the definition of securities.

Sec. 4. This change is to exempt selected securities of "not for private profit organizations" from securities registration and exempts commercial paper from securities registration.

Sec. 5. This section repeals section 874 of Title 32 as it is to be replaced by a new section 874-A of Title 32.

Sec. 6. This is a new section 874-A and replaces some of the language now in section 874. The changes from the old section are to add additional wording that will clarify the interpretation of isolated transactions; an exemption from registration is included for qualified nonpublic offerings providing notification and a filing fee submitted to the superintendent; additional changes make it clear that exemptions are only available to Maine corporations; these changes include an exemption from registration for preemptive rights, in small companies; and certain transactions with existing security holders as well as mergers and consolidations are also exempt.

Sec. 7 and 8. These sections are to take care of internal references due to repealing of section 874.

The Bureau of Banking anticipates a loss in revenue of not more than \$5,000 through the granting of the exemptions from registration contained in this bill. However, the addition of a new filing fee as proposed in section 6 of the bill will provide an increase in revenue equal to or in excess of any anticipated loss. The net effect of this bill will be no change in the revenues collected by the securities division.