

MAINE STATE LEGISLATURE

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New Draft of: H. P. 702, L. D. 841
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1656

H. P. 1541

House of Representatives, May 26, 1981

Reported by Representative Brannigan from the Committee on Business
Legislation. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend the Maine Securities Act.

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

Sec. 1. 32 MRSA § 751, as last amended by PL 1979, c. 697, §§ 1-3, is repealed and the following enacted in its place:

§ 751. Title

This Act shall be known and may be cited as the "Maine Securities Act."

Sec. 2. 32 MRSA § 751-A is enacted to read:

§ 751-A. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. **Agent.** "Agent" means any person other than a dealer who represents a dealer or an issuer in effecting or attempting to effect purchases or sales of securities, but does not include a person who represents an issuer in effecting transactions in a security exempt by section 873 or effecting transactions exempt by section 874-A. A partner, officer or director of a dealer or an issuer, or of a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

2. **Bank.** "Bank" means a state or national bank, trust company or savings

institution organized under the law and subject to the examination, supervision and control of any state or of the United States or of any insular possession thereof.

3. Dealer. "Dealer" means any person engaging in the business of selling or offering for sale securities, except to, or through the medium of, or as agent 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 make the vendor, or the agent of the vendor, if not otherwise engaged either permanently or temporarily in the business of selling securities, a dealer in securities. The term "dealer" shall not include an agent, an issuer or a bank when that bank is engaged in its regular course of business.

4. Issuer. "Issuer" means every person who issues or proposes to issue a security.

5. Local economic development corporation. "Local economic development corporation" means any corporation without capital stock incorporated under Title 13, chapter 81 for the purpose of furthering the economic well-being of any group of persons sharing similar economic or geographic characteristics, by raising capital among themselves and the general public for the establishment of one or more subsidiary businesses to provide jobs and investment income in fulfillment of its corporate purpose.

6. Offer or offer to sell. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

7. Person. "Person" means 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.

8. Sale, sell or sold. "Sale," "sell" or "sold" includes every contract of sale of, contract to sell or disposition of, a security or interest in a security for value.

9. Securities. "Securities" includes all stocks; bonds; debentures; notes; evidences of indebtedness; investment contracts; certificates of participation; ship shares; documents of title and certificates of interest in any profit-sharing agreement; documents of title to and certificates of interest in any oil, gas or mining lease, royalty, right or interest; documents of title to and certificates of interest in the title to or any profits or earnings from land or other property situated outside of Maine; 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, or other than any home service contract issued by a home service company licensed by the Maine Real Estate Commission and authorized to sell home service contracts 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; and all other forms of securities. The term "securities" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period; or shares of savings and loan associations organized under the laws of this State; or any note or other evidence of indebtedness issued in a commercial or mercantile transaction.

Sec. 3. 32 MRSA § 752, as amended by PL 1973, c. 585, § 11, is further amended to read:

§ 752. Service of notices

Notice of any requirement or decision of the Bank Superintendent shall be sufficient if sent by mail addressed to the dealer, issuer or agent ~~or salesman~~, as the case may be, at the address designated in the application for registration.

Sec. 4. 32 MRSA § 754, as last amended by PL 1973, c. 585, § 11, is repealed and the following enacted in its place:

§ 754. Penalties and enforcement provisions

1. Criminal penalty. Any person knowingly violating any provision of this chapter, or knowingly filing with or providing the Bank Superintendent with any false or misleading statements or information, shall be punished upon conviction thereof by a fine of not more than \$5,000 or by imprisonment for not more than 3 years, or by both. The foregoing penalties shall be in addition to, and not a substitute for, any civil or criminal liability now or hereafter existing.

2. Civil penalty. The superintendent may bring an action to recover a civil penalty against any person who has violated this chapter, or who has knowingly violated a rule, regulation or order of the superintendent made pursuant to this chapter. The court may assess a civil penalty of not more than \$10,000.

3. Injunction; cease and desist order. Injunctions and cease and desist orders shall be governed by the following paragraphs.

A. The superintendent, or any party in interest, may file a complaint in Superior Court seeking to enjoin any violation or threatened violation of this chapter.

B. Cease and desist orders shall be governed by the following subparagraphs.

(1) Whenever the superintendent reasonably believes that any person is engaged in or is about to be engaged in any act or practice constituting a violation of this chapter or any rule, regulation or order made pursuant to this chapter and the act or practice is causing or may be likely to cause imminent injury or loss to the public, the superintendent may, without prior hearing, order that person to cease and desist from that act or practice. Any such cease and desist order shall be effective against any person subject to the

order upon delivery of a "Notice of Order" in writing to him stating that the order has been entered and the reasons therefor. A Notice of Order shall be deemed delivered upon delivery of that notice in person, or upon mailing that notice, by certified or registered mail, to the person subject to the order, or to any person lawfully authorized to accept service of process for that person.

(2) At any time after issuance of a cease and desist order, after giving notice to all persons subject to that order, the superintendent may initiate a hearing with respect to a cease and desist order and a hearing shall be held at the written request of any person aggrieved by that order. Any hearing held at the request of an aggrieved party shall be held within 12 days after receipt by the superintendent of a written request for a hearing. The superintendent shall issue written findings of fact and conclusions of law within 5 working days after the hearing is concluded and all written memoranda and briefs have been submitted.

(3) Any order issued pursuant to this paragraph shall be subject to judicial review as provided in section 753.

4. Investigation. The superintendent may make an investigation of any person he believes has engaged in conduct governed by this chapter. During an investigation, the superintendent may issue subpoenas to require the attendance of witnesses, to compel testimony and to require the production of any matter which is relevant to the investigation.

Sec. 5. 32 MRSA § 756, 3rd sentence, as enacted by PL 1977, c. 694, § 556, is amended to read:

The procedure for adoption, amendment or rescission of any rule or regulations ~~and forms~~ shall be in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II.

Sec. 6. 32 MRSA § 756, last 2 sentences, as amended, are repealed as follows:

~~The Bank Superintendent 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. 7. 32 MRSA § 802, first 2 sentences, as repealed and replaced by PL 1975, c. 767, § 25, are repealed and the following enacted in their place:

The Bank Superintendent shall prepare annually a list of the then registered dealers in securities and their registered agents and shall, at any time, on request by mail or otherwise, inform any inquirer as to whether or not any person is registered either as a dealer or agent. The superintendent shall, upon a request, send a copy of the list, at cost, to any person.

Sec. 8. 32 MRSA §§ 805 and 806, as last amended by PL 1977, c. 694, §§ 557 and 558, are repealed and the following enacted in their place:

§ 805. Revocation or suspension; dealer's registration

1. **Complaint.** The Bank Superintendent may file a complaint in the Administrative Court seeking revocation or suspension, or other appropriate relief, of the registration of any dealer in securities if the superintendent has reason to believe that any of the following causes exist:

- A. For any cause which would have justified denial of the registration had it then existed and been known to the superintendent;
- B. For violation of or noncompliance with any provision of this chapter, or knowing violation of any rule, regulation or order issued by the superintendent;
- C. For failure to furnish evidence, the disclosure of which is mandated by section 803;
- D. For conducting his business in a dishonest, deceitful or fraudulent manner;
- E. If, in the conduct of his business, the dealer has shown himself to be incompetent, untrustworthy or financially irresponsible so as to be a source of injury or loss to the public; or
- F. If the dealer has failed to supervise his agents in a reasonable manner.

2. **Summary revocation or suspension.** The superintendent may summarily revoke or suspend the registration of a dealer who has been convicted of a Class A, Class B, Class C or Class D crime, or an offense which would have constituted such a crime if it had been committed in Maine, involving a security or any aspect of the securities business, to the extent permitted by Title 5, chapter 341.

3. **Action of others.** Revocation or suspension of a dealer's registration may be based upon the actions of any person deemed registered with the dealer, pursuant to section 852.

4. **Registration of others.** The revocation or suspension of a dealer's registration shall constitute a revocation or suspension of any agent of the dealer.

5. **Certificates.** In case of revocation or suspension of a dealer's registration, all certificates shall be surrendered to the superintendent immediately upon his request.

§ 806. Revocation or suspension; agent's registration

1. **Complaint.** The Bank Superintendent may file a complaint in the Administrative Court seeking revocation or suspension, or other appropriate relief, of the registration of any agent of an issuer or of a dealer if the superintendent has reason to believe that any of the following causes exist:

- A. For any cause which would have justified denial of the registration had it then existed and been known to the superintendent;
- B. For violation of or noncompliance with any provision of this chapter, or knowing violation of any rule, regulation or order issued by the superintendent;
- C. For conducting his business in a dishonest, deceitful or fraudulent manner;
or

D. If, in the conduct of his business, the agent has shown himself to be incompetent, untrustworthy or financially irresponsible so as to be a source of injury or loss to the public.

2. Summary revocation or suspension. The superintendent may summarily revoke or suspend the registration of an agent who has been convicted of a Class A, Class B, Class C or Class D crime, or an offense which would have constituted such a crime if it had been committed in Maine, involving a security or any aspect of the securities business, to the extent permitted by Title 5, chapter 341.

3. Certificates. In case of revocation or suspension of an agent's registration, all certificates shall be surrendered to the superintendent immediately upon his request.

Sec. 9. 32 MRSA § 807, as amended by PL 1973, c. 585, § 11, is further amended to read:

§ 807. Exemptions

The Bank Superintendent may, from time to time, by way of written order, exempt certain securities and transactions or certain classes of securities and transactions from registration under section 871 and certain dealers or agents or salesmen or classes of dealers or agents or salesmen from registration under sections 851, 852 and 853, upon such terms and conditions, if any, as he may prescribe, if he finds that such securities, transactions, dealers or agents or salesmen, individually or as a class, are required to be registered with one or more other agencies or departments of this State other than the securities division of the Bureau of Banking and that such other registration is under such conditions and requirements as will fully protect the interest and needs of public investors or the amount of the securities, the nature of the transaction or the activities of the dealers, issuers or agents are of such a de minimis or limited nature that the interests and needs of public investors are adequately protected without registration under the sections listed in this section.

Sec. 10. 32 MRSA § 851, as amended by PL 1973, c. 55, § 2, is further amended to read:

§ 851. Registration required

No dealer in securities, not exempted under section 807, in securities shall in this State, by direct solicitation or through agents or salesmen, or by letter, circular or advertising, sell, offer for sale or invite offers for or inquiries about securities, unless registered as a dealer under this chapter. No salesman or agent, not exempted under section 807, shall in this State, in behalf of any dealer sell, offer for sale or invite offers for or inquiries about securities, unless registered as a salesman or an agent of such dealer under this chapter.

Sec. 11. 32 MRSA § 852, as last amended by PL 1973, c. 585, § 11, is repealed and the following enacted in its place:

§ 852. Dealer application

1. **Written application.** Any dealer in securities desiring registration shall file written application with the Bank Superintendent, which shall be in such form as may be prescribed by the superintendent, and shall state the principal place of business, the name or style of doing business and the address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, specifying the capacity and title of each and the length of time during which the dealer has been engaged in the business. Each application shall be accompanied by certificates or other evidence of the dealer's good repute and, if required by the superintendent, a statement in detail of the assets and liabilities of the dealer, a statement in such form as the superintendent may prescribe of the general affairs of the dealer, a statement in detail of the plan on which the business of the dealer is to be conducted and such other information as the superintendent may deem necessary in considering the application.

2. **Registration of principals.** Registration of a dealer automatically constitutes registration as an agent, of any person who is a general partner, principal operating officer, principal executive officer or principal financial officer, or a person occupying a similar status or performing similar functions for the dealer and who is listed in the dealer's application, provided a fee of \$20 is paid by the dealer for each name listed.

3. **Power of attorney.** Every nonresident shall file a power of attorney, irrevocable, properly authorized, and with satisfactory certificates or other evidence of the authorization, appointing the Bank Superintendent agent for the service of legal process upon the dealer in any actions in the courts of this State, based upon or arising in connection with any sale of, attempt to sell, or advertising of securities in this State, or any violation of this chapter.

4. **Public notice.** Upon the filing of the application, the Bank Superintendent shall forthwith give notice of the fact and date of the application, and of the name, principal place of business and address of the dealer, by advertisement inserted once in the state paper, and once in a newspaper of general circulation where the dealer's place of business is located, if it is elsewhere in this State other than in the City of Augusta. The registration certificates shall not be issued before the expiration of 2 weeks from the last publication. Any person may, within the period of 2 weeks, file objection to the proposed registration.

5. **Denial.** The superintendent may deny registration to any person if he finds that the principal officers, directors or managing agents:

A. Have filed an application or 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;

B. Have been convicted within the past 10 years of a Class A, Class B, Class C or Class D crime, or an offense which would have constituted such a crime if it had been committed in Maine, involving a security or any aspect of the

securities business, to the extent use of the conviction is permitted by Title 5, chapter 341;

C. Are 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;

D. Are the subject of an order of the Bank Superintendent denying, suspending or revoking registration as a dealer, issuer or agent;

E. Are 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 an agent, or the equivalent of those terms, or is the 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 an United States post office fraud order, but the Bank Superintendent may not deny registration under this subsection more than one year from the date of the order relied on; or

F. Have engaged in dishonest or unethical practices in the securities business.

6. Notice to dealer; hearing. If the Bank Superintendent is not satisfied, or if, within the period of 2 weeks succeeding the publication, objection is made to the proposed registration, the superintendent shall give notice of either fact to the dealer, and upon request from the dealer shall fix a time and place for hearing, and at the hearing opportunity shall be given to the dealer, and to any other persons interested or objecting, to offer further evidence relating to the dealer's application. If satisfied, as a result of the hearing that the qualifications set forth pursuant to this section have been met, the superintendent shall thereupon register the dealer. Registration may be granted upon such reasonable conditions as may be imposed by the superintendent.

7. Bond. Before granting registration to any dealer, the Bank Superintendent shall require the filing with the bureau of a bond in favor of the State in such form and with such sureties as the superintendent may approve, or in lieu thereof, the furnishing of proof satisfactory to the superintendent of the dealer's financial responsibility, the bond to be in an amount not exceeding \$10,000. The bond shall cover the failure of the dealer or any licensed agent of the dealer to pay, satisfy and discharge any judgment or decree that may be rendered against him in a court of competent jurisdiction in an action brought by a purchaser of securities in which it shall be found or adjudged that the purchaser was defrauded in the sale of the securities. Any person claiming to have been damaged by fraudulent misrepresentations in the sale of any security by the dealer or agent may maintain a civil action against the dealer or agent making the fraudulent misrepresentations; or against both the dealer and agent, where the agent makes the fraudulent representations; and may join as parties defendant the sureties on the bonds. The bond may be drawn to cover the original license or any renewal or renewals thereof, and the superintendent may, in his discretion, require a dealer

to execute a bond in an amount not exceeding \$10,000 for each particular year's transactions. The superintendent may prescribe regulations respecting the qualifications of sureties, release of sureties, surrender of bonds, substitution of bonds and other matters relating to bonds.

8. **Certificate.** Upon registration of any dealer, a registration certificate shall be issued stating the name, principal place of business and address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer has been registered for the current registration period as a dealer in securities. The certificate shall in other respects be in such form as the superintendent may determine, but shall state in bold type that the superintendent does not recommend and assumes no responsibility for securities offered by the dealer. Notice of changes in the personnel of a partnership or in the principals, officers, directors or managing agents of any dealer, shall be given to the superintendent, accompanied by statement of the facts necessitating the change. The superintendent shall be sent notice of the change not later than 30 days after the change.

Sec. 12. 32 MRSA § 853, as repealed and replaced by PL 1975, c. 767, § 26, is repealed and the following enacted in its place:

§ 853. Fees

An applicant for registration as a dealer shall, except in the case of biennial renewal of registration, pay to the Bank Superintendent, for the use of the State, a filing fee of \$50 and also a registration fee of \$50. An applicant for biennial renewal registration as a dealer shall pay to the Bank Superintendent, for the use of the State, a registration fee of \$100. Upon the original application for registration of an agent for a dealer, the dealer shall pay to the superintendent, for the use of the State, a registration fee of \$10; provided, however, if the unexpired term of the registration of the dealer is or will be more than one year, the registration fee shall be \$20. Upon application for biennial renewal registration of an agent for a dealer, a dealer shall pay to the superintendent, for the use of the State, a registration fee of \$20. Upon the original application for registration of an agent for an issuer, the issuer shall pay to the superintendent, for the use of the State, a registration fee of \$10. Upon application for biennial renewal registration of an agent for an issuer, the issuer shall pay to the superintendent, for the use of the State, a registration fee of \$20.

There shall be no charge for the first copy of a dealer's or agent's registration certificate. Thereafter, a dealer or issuer shall pay to the Bank Superintendent, for the use of the State, a fee of \$2 for each additional copy of the certificate requested.

Sec. 12-A. 32 MRSA § 854, as repealed and replaced by PL 1975, c. 767, § 27, is repealed and the following enacted in its place:

§ 854. Expiration of registration

Original registration of a dealer or an agent for an issuer shall expire on the September 30th immediately following the effective date of registration or at such other times as the Commissioner of Business Regulation may designate. Registration of an agent for a dealer shall expire at the same time as the dealer's registration expires. Registration of a dealer, agent for a dealer or agent for an issuer, may be renewed, for the succeeding 2-year period, upon application by a dealer or issuer and payment of the fee provided for in section 853, without the filing of further statements or furnishing any further information, unless specifically required by the Bank Superintendent. Applications for biennial renewal registration for both dealers and agents received after the expiration date of their registrations shall be treated as, and be subject to the same fees provided for, original registration. The superintendent shall notify every registered dealer under this chapter of the date of expiration of its registration and the amount of fee required for the renewal for the next succeeding biennial period. The notice shall be mailed to each person's last known address at least 30 days in advance of the expiration of the registration.

Sec. 13. 32 MRSA § 855, as amended by PL 1973, c. 585, § 11, is further amended to read:

§ 855. Certificate to be carried and shown

Any dealer in securities or agent may, and any person named in a registration certificate as provided may, in behalf of any dealer or issuer, sell, offer for sale or invite offers for or inquiries about securities in this State, but shall at all times when so engaged carry with him the registration certificate or a copy thereof certified by the Bank Superintendent, which shall at any time be shown to any prospective customer upon request. No dealer or agent or ~~salesman~~ shall advertise publicly the fact of his registration or use such fact or the registration certificate in connection with any sale or effort to sell securities, except by statement of the fact or by exhibiting the certificate or a certified copy thereof.

Sec. 14. 32 MRSA § 856, first sentence, as amended by PL 1973, c. 585, § 11, is further amended to read:

Upon written application by a registered dealer or an issuer, the Bank Superintendent may register, as agents or ~~salesmen~~ of such the dealer or the issuer, such persons as the dealer or issuer may request.

Sec. 15. 32 MRSA § 856, sub-§ 2, as enacted by PL 1967, c. 484, § 9, is repealed and the following enacted in its place:

2. Conviction. Has been convicted within the past 10 years of a Class A, Class B, Class C or Class D crime, or an offense which would have constituted such a crime if it had been committed in Maine, involving a security or any aspect of the securities business, to the extent use of the conviction is permitted by Title 5, chapter 341;

Sec. 16. 32 MRSA § 856, sub-§ 4, as amended by PL 1973, c. 585, § 11, is further amended to read:

4. Order of superintendent. Is subject of an order of the Bank Superintendent denying, suspending or revoking registration as a dealer, issuer or agent or salesman;

Sec. 17. 32 MRSA § 856, next to last ¶, as last amended by PL 1975, c. 767, § 28, is repealed and the following enacted in its place:

The superintendent 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 of a dealer or of an issuer at any time during the calendar year preceding the date of the application or was registered as an agent of a dealer on October 1, 1967, and, further, provided any applicant who 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 principal or representative under the jurisdiction of the commission or the association at the date of the application shall only be required to take an examination which relates to the securities laws of the State. A \$10 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 superintendent shall issue to each person so registered a registration certificate, stating his name, residence address, the name, principal place of business or the mailing address of the dealer or issuer for whom he is an agent, and the fact that he is registered for the applicable registration period as an agent of the dealer or issuer. The certificate shall, in other respects, be in such form as the Bank Superintendent shall determine, but shall state in bold type that the superintendent does not recommend or assume any responsibility for securities offered by the dealer or issuer or their agents. Upon application by the dealer or issuer, the registration of any agent shall be canceled. When an agent begins or terminates a connection with a dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the dealer or issuer shall promptly notify the superintendent.

Sec. 18. 32 MRSA § 856, last ¶, as enacted by PL 1975, c. 767, § 29, is repealed and the following enacted in its place:

All renewal registrations of agents shall expire biennially at midnight on September 30th, or at such other times as the Commissioner of Business Regulation may designate. The Bank Superintendent shall notify every registered dealer or issuer for whom agents have been registered under this chapter of the date of expiration of registrations of his agents and the fee that is required for renewing an agent's registration for a 2-year period. The notice shall be mailed to the dealers or issuers at least 30 days in advance of the expiration of the registration. At least 15 days before the expiration date of agent registrations, the dealer or issuer shall file with the Bank Superintendent an alphabetical list of the names and addresses of his agents whose registrations are to be renewed, accompanied by payment of the biennial renewal fees for each agent. The dealer

or issuer shall also file with the Bank Superintendent an alphabetical list of the names and addresses of all his agents whose registrations in the State are not to be renewed. Any registration not so continued shall be considered to have expired at midnight on the expiration date.

Sec. 19. 32 MRSA § 871, first ¶, as last amended by PL 1979, c. 697, § 8, 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-A or section 807, within this State, until there shall have been filed with the Bank Superintendent a notice of intention to sell ~~such~~ the security, accompanied by a filing fee of ~~\$50~~ \$100, 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.

Sec. 20. 32 MRSA § 872, sub-§ 1, as enacted by PL 1977, c. 694, § 559, is amended to read:

1. **Fraud.** The sale of the securities would work or tend to work a fraud on the purchasers thereof or would be unlawful, or any aspect of the offering would be substantially unfair, unjust, inequitable or oppressive;

Sec. 21. 32 MRSA § 873, sub-§ 3, as enacted by PL 1967, c. 484, § 10, is amended to read:

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;~~

Sec. 22. 32 MRSA § 873, sub-§ 5, as enacted by PL 1967, c. 484, § 10, is repealed and the following enacted in its place:

5. Stock exchanges.

A. A security listed for more than 30 days, prior to sale in this State, on the New York Stock Exchange, the American Stock Exchange or the Midwest Stock Exchange; or

B. A security which is listed or approved for listing on the New York Stock Exchange, the American Stock Exchange or the Midwest Stock Exchange as long as the same shall remain so listed, and any other security of the same issuer which is substantially equal in rank or senior thereto and additional amounts of any security which is so listed or which it is planned at the time of the offering thereof to list, and any security called for by subscription rights or warrants so listed or approved or any warrant or right to purchase or subscribe to any of the foregoing, provided that there has been filed by the issuer, any dealer or other offerer of the security with the Bank Superintendent a notice containing the name and business or post office address of the person intending

to offer the same, and identification of the security, together with a notice filing fee in the amount of \$100.

Sec. 23. 32 MRSA § 874-A, sub-§§ 9 and 10, as enacted by PL 1979, c. 697, § 6, are repealed and the following enacted in their place:

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 securities of the corporation 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, and if the securities sold in reliance on this subsection have not been offered to the public by general advertisement or general solicitation;

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 securities of the corporation, exclusive of persons specified in subsection 11, 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 the persons specified in subsection 11, and if the securities sold in reliance on this subsection have not been offered to the public by general advertisement or general solicitation. Any person who relies on this exemption shall file with the Bank Superintendent a notification for exemption, which shall be in such form as may be prescribed by the Bank Superintendent and which shall require only the following information: The name, address and telephone number of the issuer; the state and date of incorporation of the issuer; the name, address and telephone number of persons who may respond to inquiries about the issuer; the location at which the books and records of the issuer shall be kept and whether they will be available for inspection by shareholders; a description of all classes of securities of the issuer, including newly authorized classes of securities, providing the number of authorized units of each class, par value per unit, and the number of units of each class as are issued and outstanding; a description of the class of securities as shall be offered for sale, including 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; a description of 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; the date the annual meeting of the shareholders will be held, the location, time and date of the meeting, a description of how the shareholders will be notified and if an annual financial statement and report of activity will be available to shareholders; a brief description of how the proceeds of the offering will be used and if proceeds shall be returned to investors if minimum amounts are not raised by a specified date; a brief description of the issuer's plan of business and whether the business is currently operational; a list of the significant risks assumed by the investor, including management experience, competitive and economic factors, net worth position of the issuer and improbable or limited opportunity for resale of the securities. A copy of the notification of exemption shall be made available to each

offeree of securities sold in reliance on this exemption and shall contain such legends as the superintendent shall prescribe, notifying the offeree that the securities have not been registered with the superintendent, that they may be deemed restricted securities and that the issuer is under an obligation to make a reasonable finding that the securities are a suitable investment for the offeree. The Bank Superintendent may promulgate regulations as are considered necessary to further define or implement 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 has reasonable grounds to believe the action is in the public interest.

Sec. 24. 32 MRSA § 881, sub-§ 1, as enacted by PL 1967, c. 484, § 10, is amended by adding at the end a new paragraph to read:

Every person who directly or indirectly controls the seller liable under paragraph A or B, every partner, officer or director of the seller, every person occupying a similar status or performing similar functions, every employee of the seller who materially aids in the sale, and every dealer or agent who materially aids in the sale is also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

Sec. 25. **Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
BUSINESS REGULATION, DEPARTMENT OF		
Bureau of Banking		
Securities Division		
Positions	(2)	(2)
Personal Services	\$30,500	\$30,800

FISCAL NOTE

It is estimated that passage of this bill will generate an additional \$95,000 in revenues to the General Fund from the registration of securities fee increase, an exemption filing fee and minor copying charge increases. However, there will be a decrease of revenues from fees to the General Fund in the amount of \$15,000 as a result of the change in the dealer registration law. With the amended appropriation, there will be a net gain to the General Fund of \$49,000.

STATEMENT OF FACT

This new draft makes numerous technical and grammatical corrections in the bill. In addition, this new draft is intended to indicate that home service contracts, when sold in connection with the sale of real property, shall not be deemed to constitute a promise of profit or guarantee against loss, which if otherwise were held, might cause the transaction in real property to be deemed a sale of securities. The new draft is also designed to make clear that notes or other evidence of indebtedness when issued in a commercial transaction context as opposed to an investment transaction context do not fall within the definition of "securities." Finally, the new draft provides for the addition of an investigator/examiner position, at a cost of \$20,000. This new position is urgently needed to provide professional depth and investigation capability for the division, in as much as registration applications, as well as exemption filings, have increased dramatically, and business plans, as well as investment techniques have grown more complex.

The statement of fact, as submitted with the original bill, as it relates to section 2, should be clarified. The following more accurately describes the intent of section 2 of the bill and to the extent there are inconsistencies between the original statement of fact and the following, the following shall control.

Section 2 of the bill would restate the definition of securities. This essentially is the same definition as presently exists, but in a different format. This revised definition will however remove the exception from the definition of securities for notes secured by Maine real estate, which concept is consistent with the laws of most, if not all, other states and the federal government. The result of the repeal of the exception language would be that any notes may or may not be securities, depending on the tests of "economic realities," as indicated in various federal court cases. Courts essentially have made a distinction as to whether, under the circumstances, a particular note issue would represent an investment transaction or a commercial transaction.