

MAINE STATE LEGISLATURE

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L.D. 1774
(Filing No. H-578)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
112TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1265, L.D. 1774, Bill, "AN ACT to Amend the Revised Maine Securities Act."

Amend the bill by striking out all of section 5 and inserting in its place the following:

'Sec. 5. 32 MRSA §10313, sub-§1, ¶F, as enacted by PL 1985, c. 400, §2, is amended to read:

F. Is the subject of any of the following orders which are currently effective and which were issued within the last 5 years:

(1) An order by the securities agency or administrator of another state, Canadian province or territory or the United States Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending or revoking the applicant's license as a broker-dealer, sales representative or investment adviser, or the substantial equivalent of those terms as defined in this Act;

(2) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the United States Securities and Exchange Act of 1934 or the United States Commodity Exchange Act;

(3) A United States Postal Service fraud order;

(4) A cease and desist order entered after notice and opportunity for hearing by the

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1 superintendent or the securities agency or
2 administrator of any other state, Canadian
3 province or territory, the United States Se-
4 curities and Exchange Commission, or the
5 United States Commodity Futures Trading Com-
6 mission; ~~or~~

7 (5) An order entered by the United States
8 Commodity Futures Trading Commission deny-
9 ing, suspending or revoking registration un-
10 der the United States Commodity Exchange
11 Act; or

12 (6) An order entered by a court of compe-
13 tent jurisdiction or entered after notice
14 and opportunity for hearing by a federal or
15 state licensing agency denying, suspending,
16 revoking or restricting the person's license
17 to sell real estate, insurance or any in-
18 vestment other than securities, provided
19 that the order resulted from allegations of
20 misconduct. This subparagraph shall also ap-
21 ply when the denial, suspension, revocation
22 or restriction of the license is pursuant to
23 a consent agreement between the person and
24 the licensing agency, whether or not the
25 agency also issues an order;

26 Further amend the bill by striking out all of
27 subsection 7 and inserting in its place the follow-
28 ing:

29 'Sec. 7. 32 MRSA §10502, sub-§1, as enacted by
30 PL 1985, c. 400, §2, is amended to read:

31 1. Exempt securities. The following securities
32 are exempted from ~~sections~~ section 10401 and 10503:

33 A. Any security, including a revenue obligation,
34 issued, insured or guaranteed by the United
35 States, any agency or corporate or other instru-
36 mentality of the United States, any international

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1 agency or corporate or other instrumentality cre-
2 ated jointly by the United States and one or more
3 foreign governments, any state, any political
4 subdivision of a state or any agency or corporate
5 or other instrumentality of one or more states or
6 their political subdivisions; or any certificate
7 of deposit for any of the foregoing, but this ex-
8 emption does not include any security payable
9 solely from revenues to be received from a non-
10 governmental industrial or commercial enterprise,
11 unless the payments are guaranteed by a person
12 whose securities are exempt from registration by
13 paragraphs F and H paragraph B, C, D, E or F or
14 by a person with at least one security exempt
15 from registration under paragraph H and the guar-
16 antee is senior to that security;

17 B. Any security issued, insured or guaranteed by
18 Canada, any Canadian province or territory, any
19 political subdivision of Canada or any such prov-
20 ince or territory, any agency or corporate or
21 other instrumentality of one or more of the fore-
22 going, or any foreign government with which the
23 United States currently maintains diplomatic re-
24 lations, if the security is recognized as a valid
25 obligation by the issuer, insurer or guarantor;

26 C. Any security issued by and representing an
27 interest in or a direct obligation of, or guaran-
28 teed by, any depository institution or depository
29 institution holding company, the deposit accounts
30 of which are insured by the Federal Deposit In-
31 surance Corporation or Federal Savings and Loan
32 Insurance Corporation or any successor to either
33 agency authorized by federal law or a deposit in-
34 surance fund expressly authorized by state law
35 and supervised by a state governmental official
36 or agency;

37 D. Any security issued by and representing an
38 interest in or a direct obligation of, or guaran-
39 teed by, any federal credit union or any credit

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1 union organized and supervised under the laws of
2 this State, the share accounts of which are in-
3 sured by the National Credit Union Share Insur-
4 ance Fund, or by a deposit insurance fund ex-
5 pressly authorized by state law and supervised by
6 a state governmental official or agency;

7 E. Any security issued by and representing an
8 interest in or a direct obligation of, or guaran-
9 teed by, any insurance company organized under
10 the laws of any state and authorized to do busi-
11 ness in this State; but this exemption does not
12 apply to an annuity contract, investment contract
13 or similar security under which the promised pay-
14 ments are not fixed in dollars, but are substan-
15 tially dependent upon the investment results of a
16 segregated fund or account invested in securi-
17 ties;

18 F. Any security issued or guaranteed by any
19 railroad, other common carrier, public utility or
20 holding company which is:

21 (1) Subject to the jurisdiction of the
22 United States Interstate Commerce Commis-
23 sion;

24 (2) A registered holding company under the
25 United States Public Utility Holding Company
26 Act of 1935 or a subsidiary of a registered
27 holding company within the meaning of the
28 Act;

29 (3) Regulated in respect to its rates and
30 charges by a governmental authority of the
31 United States or any state; or

32 (4) Regulated in respect to the issuance or
33 guarantee of the security by a governmental
34 authority of the United States, any state,
35 Canada or any Canadian province or territo-
36 ry;

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1 G. Equipment trust certificates in respect of
2 equipment leased or conditionally sold to a per-
3 son, if securities issued by that person would be
4 exempt under this subsection;

5 H. Any security:

6 (1) Listed for more than 30 days, prior to
7 sale in this State, on the New York Stock
8 Exchange, the American Stock Exchange, the
9 Midwest Stock Exchange or upon a finding by
10 the superintendent that the Securities and
11 Exchange Commission has approved the Nation-
12 al Association of Securities Dealers corpo-
13 rate governance provisions, the National As-
14 sociation of Securities Dealers Automated
15 Quotation - National Marketing System; or

16 (2) Listed or approved for listing upon no-
17 tice of issuance on the New York Stock Ex-
18 change, the American Stock Exchange, the
19 Midwest Stock Exchange, a national market
20 system designated by rule of the superin-
21 tendent or, upon a finding by the superin-
22 tendent that the Securities and Exchange
23 Commission has approved the National Associ-
24 ation of Securities Dealers corporate gov-
25 ernance provisions, the National Association
26 of Securities Dealers Automated Quotation -
27 National Marketing System; any other securi-
28 ty of the same issuer which is of senior or
29 substantially equal rank; any security
30 called for by subscription rights or war-
31 rants so listed or approved on such an ex-
32 change; or any warrant or right to purchase
33 or subscribe to any of the foregoing, pro-
34 vided that there has been filed by the issu-
35 er, any dealer or other offeror of the secu-
36 rity with the superintendent a notice con-
37 taining the name and address of the person
38 intending to offer the security and identi-

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- 1 fication of the security, together with a
2 notice filing fee in the amount of \$300;
- 3 I. Any option issued by a clearing agency regis-
4 tered as such under the United States Securities
5 Exchange Act of 1934, if the security, currency,
6 commodity or other interest underlying the option
7 is registered under this Act, is exempt under
8 this subsection or is not otherwise required to
9 be registered under this Act; provided that this
10 exemption does not include or extend to any
11 off-exchange futures contract or substantially
12 similar arrangement;
- 13 J. Any security issued by:
- 14 (1) Any person organized and operated not
15 for private profit, but exclusively for a
16 religious, educational, benevolent, charita-
17 ble, fraternal, social, athletic or reforma-
18 tory purpose, or as a Chamber of Commerce or
19 trade or professional association; or
- 20 (2) To the extent that a person is not de-
21 scribed in subparagraph (1), a person exempt
22 from tax or subsequently determined to have
23 been exempt at the time of the sale under
24 the United States Internal Revenue Code of
25 1954, as amended, Section 501(c), (2), (3),
26 (4), (5), (6), (7), (8), (9), (10), (19),
27 501(e), 501(f) or 528 or any similar succes-
28 sor provision thereto; provided that no part
29 of the net earnings of the issuer inures to
30 the benefit of any person, private stock-
31 holder, member or individual;
- 32 K. Any commercial paper which arises out of a
33 current transaction the proceeds of which have
34 been or are to be used for current transactions,
35 and which evidences any obligation to pay cash
36 within 9 months of the date of issuance, exclu-
37 sive of days of grace, or any renewal of that pa-

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1 per which is likewise limited or any guarantee of
2 that paper or of any such renewal;

3 L. Any security issued in connection with an em-
4 ployees' stock purchase, pension, savings, op-
5 tion, profit-sharing or similar employees' bene-
6 fit plan; and

7 M. A membership or equity interest in, or a re-
8 tention certificate or like security given in
9 lieu of a cash patronage dividend issued by, a
10 cooperative organized and operated as a nonprofit
11 membership cooperative under the laws of any
12 state when not traded to the public.

13 Sec. 8. 32 MRSA §10502, sub-§§3 and 4, as en-
14 acted by PL 1985, c. 400, §2, is further amended to
15 read:

16 3. Additional exemptions. The superintendent is
17 authorized by rule to exempt securities or classes of
18 securities or certain transactions, including promul-
19 gating a limited offering exemption, which shall fur-
20 ther the objectives to compatibility with the exemp-
21 tions from securities registration authorized by the
22 United States Securities Act of 1933, Section
23 19(c)(2)(C) and uniformity among the states. In any
24 rule establishing an exemption for which a notice
25 must be filed, the superintendent may provide for a
26 filing fee of \$300.

27 To keep any rules adopted by the superintendent in
28 harmony with the rules promulgated by the United
29 States Securities and Exchange Commission from time
30 to time pursuant to the United States Securities Act
31 of 1933 and with the rules of administrators in other
32 states, the purposes, policies and provisions of this
33 Act, in adopting, amending and repealing any rules
34 promulgated under this subsection, take into consid-
35 eration the rules so prescribed by the United States
36 Securities and Exchange Commission and the rules of
37 administrators in other jurisdictions which enact the

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1 Uniform Securities Act or the Revised Uniform Securities Act.
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3 4. Denial and revocation of exemptions. Notwithstanding the Maine Administrative Procedure Act, Title 5, chapter 375, the superintendent may by order deny or revoke any exemption specified in subsection 1, paragraph J, L or M, or in subsection 2 or 3, with respect to a specific security or transaction if the superintendent reasonably believes that the action is necessary or appropriate for the protection of investors. Following entry of any such order, the procedures set forth in section 10708 shall be followed. No order under this subsection may operate retroactively.
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15 Sec. 9. 32 MRSA §10502, sub-§6 is enacted to read:
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17 6. Waiting period. For purposes of exemption notice filed under subsection 2, paragraph L, N or R, or subsection 3, the superintendent may, when he determines that good cause exists, provide in writing for a shorter waiting period than that which is specified in the paragraph.
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23 Further amend the bill by inserting after section
24 8 the following:

25 'Sec. 9. 32 MRSA §10701, sub-§8 is enacted to read:
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27 8. Waiver of fee. The superintendent may, by order, waive the filing fee required to register a security or to secure an exemption from registration, upon a written finding that the fee would be unreasonably high in light of the maximum potential proceeds from the sale of the security in the State or that the imposition of the fee would otherwise be unreasonable.
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35 Further amend the bill by renumbering the sec-

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1 tions to read consecutively.

2 STATEMENT OF FACT

3 This amendment narrows the authority which sec-
4 tion 5 of the original bill would have given to the
5 Superintendent of Banking to deny, suspend or revoke
6 a securities license as a result of misconduct in
7 connection with the sale of real estate, insurance or
8 investments other than securities. The action will be
9 authorized only if similar action had been taken
10 against the person's real estate, insurance or other
11 license by a court or by the appropriate governmental
12 licensing agency.

13 Also, the amendment clarifies the
14 superintendent's power to create and review exemp-
15 tions from registration. In this regard, it should be
16 noted that the authority to deny or revoke exemp-
17 tions, for reasons other than the failure to qualify
18 for the exemption, is not intended to subject exemp-
19 tion filings to the same degree of scrutiny that is
20 accorded registration statements. With respect to
21 such filings, the standards for review should be the
22 adequacy of the disclosure or the existence of rea-
23 sonable grounds for believing that the offering could
24 lead to serious harm to Maine investors. In determin-
25 ing whether and how to apply those standards, more-
26 over, the nature of the potential investors in the
27 State shall be considered.

28 The amendment also allows the superintendent to
29 waive the filing fee for registering a security or
30 for obtaining an exemption from registration. This
31 will most likely occur when only a very small amount
32 of money was being raised in the State or when an is-
33 suer was simultaneously seeking to register or exempt
34 a large number of very similar securities, in which
35 case the superintendent may waive the fee for some of
36 those securities.

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