

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1224, L.D. 1731)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

6 Legislative Document

No. 2159

7  
8 H.P. 1532 House of Representatives, March 11, 1986  
9 Reported by Representative Cooper from the Committee on Judiciary  
10 and printed under Joint Rule 2. Original bill sponsored by Representative  
11 Aliberti of Lewiston. Cosponsored by Representative Stevens of Bangor,  
12 Senator Sewall of Lincoln, and Representative Murray of Bangor.

EDWIN H. PERT, Clerk

13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-SIX  
17

18 AN ACT to Clarify the Confidentiality  
19 Provisions of the Maine Banking Code.  
20

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

23 Sec. 1. 9-B MRSA §161, sub-§1, ¶B, as enacted by  
24 PL 1977, c. 416, is amended to read:

25 B. "Financial records" means any original or any  
26 copy of:

27 (1) A document granting signature authority  
28 over a deposit, deposit-like or share ac-  
29 count;

30 (2) A statement, ledger card or other  
31 record of any deposit or, deposit-like,  
32 share or loan account, which shows each  
33 transaction in or with respect to that ac-  
34 count;

1 (3) A check, clear draft or money order  
2 drawn on an institution or issued and pay-  
3 able by an institution; or

4 (4) Any item, other than an institutional  
5 or periodic charge, made pursuant to any  
6 agreement by an institution and a person  
7 which constitutes a debit or credit to that  
8 person's deposit ~~or~~, deposit-like, share or  
9 loan account, including charges made through  
10 the use of credit cards as authorized by  
11 section 444, if the item is not included in  
12 subparagraph (3).

13 ✓ Sec. 2. 9-B MRSA §163, sub-§1, as enacted by PL  
14 1977, c. 416, is amended to read:

15 1. Service. A fiduciary institution shall dis-  
16 close financial records under section 162 pursuant to  
17 a subpoena, summons, warrant or court order which on  
18 its face appears to have been issued upon lawful au-  
19 thority only if the subpoena, summons, warrant or  
20 court order is ~~first~~ served upon the customer ~~and~~  
21 then upon prior to disclosure by the fiduciary insti-  
22 tution. The agency or person requesting the disclo-  
23 sure of financial records shall certify in writing to  
24 the fiduciary institution the fact that the subpoena,  
25 summons, warrant or court order has been served upon  
26 the customer. The court for good cause shown may de-  
27 lay or dispense with service of the subpoena, sum-  
28 mons, warrant or court order upon the customer. The  
29 court shall delay or dispense with service of the  
30 subpoena, summons, warrant or court order upon the  
31 customer upon notice by the Attorney General or his  
32 designee that such service upon the customer would  
33 not be in the public interest. A subpoena, summons or  
34 warrant issued in connection with a federal grand ju-  
35 ry proceeding need not be served upon the customer.

36 Sec. 3. 9-B MRSA §164, sub-§1, as enacted by PL  
37 1977, c. 416, is amended to read:

38 1. Violation. Any officer or employee of a fidu-  
39 ciary institution or consumer reporting agency who  
40 intentionally or knowingly furnishes financial  
41 records in violation of this chapter commits a civil  
42 violation and shall be subject to a civil penalty of

1 not more than \$1,000. Any fiduciary institution or  
2 any agent or employee of a fiduciary institution mak-  
3 ing a disclosure of financial records in good-faith  
4 reliance upon the certificate of agency or person re-  
5 questing the disclosure, that the provisions of sec-  
6 tion 163 requiring prior notice to the customer have  
7 been complied with, shall not be liable to the cus-  
8 tomer for the disclosures and shall not be liable for  
9 any civil penalties under this section.

10 Sec. 4. 9-B MRSA §334, sub-§4, ¶B, as enacted by  
11 PL 1981, c. 352, §4, is amended to read:

12 B. Approval to participate in or discontinue the  
13 use of a satellite facility established under  
14 this chapter or a comparable facility established  
15 under federal law, if any other financial insti-  
16 tution has previously been granted authority to  
17 use the facility, shall be requested by the fi-  
18 nancial institution by the filing of a notice  
19 with the superintendent in such form and manner  
20 and containing such information as the superin-  
21 tendent may require ~~at least 30 days~~ prior to  
22 commencement or discontinuation of that use. A  
23 single notification may be filed by more than one  
24 institution seeking approval with respect to the  
25 same facility or facilities, and a single notifi-  
26 cation may be filed covering more than one facil-  
27 ity. The superintendent may establish fees to ac-  
28 company notification under this subsection. Sec-  
29 tion 336, subsection 3, shall govern the estab-  
30 lishment, credit and use of these fees. If the  
31 superintendent objects to a notification filed  
32 under this subsection, he shall, within 14 days  
33 of receipt of the notification, inform the finan-  
34 cial institution involved that the notification  
35 will be treated as though it were an application  
36 filed under paragraph C.

37 Sec. 5. 9-B MRSA §336, sub-§5, as repealed and  
38 replaced by PL 1975, c. 666, §18, is amended to  
39 read:

40 5. Approvals; time extensions. If the superin-  
41 tendent approves an application to establish and op-  
42 erate a branch or agency office or facility, copies  
43 of the order shall be filed with the Secretary of

1 State and shall be furnished to the applicant insti-  
2 tution. If only the notification is submitted and no  
3 application is requested during the 30-day period, a  
4 copy of the acknowledgement of the action shall be  
5 filed with the Secretary of State. The order or  
6 acknowledgement shall lapse one year after its effec-  
7 tive date if the office or facility authorized there-  
8 under has not opened for business, unless the super-  
9 intendent for good cause shown has granted in writing  
10 an extension of time, not to exceed 6 months. No fee  
11 shall be charged for such extension. Additional  
12 6-month extensions may be granted by the superintend-  
13 ent for good cause shown at a fee established by the  
14 superintendent for such extensions not to exceed  
15 \$500.

16 Sec. 6. 9-B MRSA §342, sub-§3, ¶E, as amended by  
17 PL 1983, c. 600, §3, is further amended to read:

18 E. A copy of the charter issued to ~~such~~ the fed-  
19 eral association or federal savings bank by the  
20 representative of the Federal Home Loan Bank  
21 Board, or a copy of a certificate showing the or-  
22 ganization of such institution as a ~~Federal~~  
23 federal association, ~~certified by the secretary~~  
24 or ~~assistant secretary of the Federal Home Loan~~  
25 Bank, shall be filed immediately with the super-  
26 intendent and with the Secretary of State. The  
27 Upon receipt of a copy of the charter or certifi-  
28 cate, the superintendent shall notify the Secre-  
29 tary of State that ~~such~~ the conversion has been  
30 effected.

31 Sec. 7. 9-B MRSA §436, sub-§1, as enacted by PL  
32 1975, c. 500, §1, is amended to read:

33 1. Authorization; requirements. Any interest in  
34 real property which may be mortgaged to a financial  
35 institution authorized to do business in this State  
36 may be mortgaged to secure existing debts or obliga-  
37 tions, to secure debts or obligations created simul-  
38 taneously with the execution of the mortgage, to se-  
39 ecure future advances necessary to protect the securi-  
40 ty and to secure future advances to be made at the  
41 option of the parties up to a total amount stated in  
42 the mortgage; and all such debts, obligations and fu-  
43 ture advances, from and as of the time the mortgage

1 is filed for record as provided by law, shall be se-  
2 cured by such mortgage and have priority over the  
3 rights of all persons who subsequent to the recording  
4 of such mortgage acquire any rights in or liens upon  
5 the mortgaged real estate. A mortgage securing future  
6 advances remains valid and retains its priority even  
7 if no funds have been advanced or all advances have  
8 been repaid so long as an agreement regarding ad-  
9 vances remains in effect. Upon termination of the  
10 agreement regarding future advances and repayment of  
11 all advances, the mortgage shall be discharged. Such  
12 priority over subsequent persons shall be only to the  
13 extent that the aggregate amount outstanding at any  
14 one time of such debts, obligations and future ad-  
15 vances does not exceed the total amount stated in the  
16 mortgage; except that:

17 A. The mortgagor or his successor in title is  
18 authorized to file for record, and the same shall  
19 be recorded in the same recording office as the  
20 original mortgage, a notice limiting the amount  
21 of optional future advances secured by such mort-  
22 gage to not less than the amount actually ad-  
23 vanced at the time of such filing; provided that  
24 a copy of such filing is filed with the mortga-  
25 gee; and

26 B. The priority of such debts, obligations and  
27 future advances shall not include any future op-  
28 tional advances secured by such mortgage made by  
29 such institution after any such person, in addi-  
30 tion to acquiring such subsequent right or lien,  
31 sends to the institution by registered mail or  
32 delivers to an officer of the institution and se-  
33 cures a receipt therefor, express written notice  
34 stating that any such optional advances thereaf-  
35 ter made will be junior to such person's mortgage  
36 or lien upon or rights in such real estate.

37 Sec. 8. 9-B MRSA §572, as enacted by PL 1975, c.  
38 500, §1, is amended to read:

39 §572. Use of the word "saving"

40 Ne Without the prior written approval of the bank  
41 superintendent, no person, partnership, association,  
42 or corporation, bank or trust company, except a sav-

1 ings bank ~~organized~~ under the laws of authorized to  
2 do business in this State, shall may use as part of  
3 its name or title the word or words "saving", "sav-  
4 ings", or "savings bank"; except that loan and build-  
5 ing associations legally organized under the laws of  
6 this State may use the name or style "savings and  
7 loan association"; provided that in all written uses  
8 of the name or style "savings and loan association",  
9 a loan and building association shall give equal em-  
10 phasis to the word "savings" and the word "loan".  
11 This restriction shall not apply to any business be-  
12 ing conducted under such name or style prior to the  
13 23rd day of April, 1905, nor to any bank or trust  
14 company using such word or words prior to the first  
15 day of January, 1929.

16 Sec. 9. 9-B MRSA §673, as amended by PL 1979, c.  
17 429, §11, is further amended to read:

18 §673. Use of word "bank"

19 ~~No~~ Without the prior written approval of the  
20 bank superintendent, no person, unless duly autho-  
21 rized under the laws of this State or the United  
22 States to conduct the business of a bank or trust  
23 company, shall may use as a part of the name or title  
24 under which such business is conducted or as desig-  
25 nating such business, the word or words "bank",  
26 "banker", "trust company", "banking" or "trust and  
27 banking company" or the plural of any such word or  
28 words, or any abbreviation thereof in or in connec-  
29 tion with any other business than that of a bank or  
30 trust company duly authorized as aforesaid. This re-  
31 striction shall not apply to any such person conduct-  
32 ing business under such name or style prior to the  
33 23rd day of April, 1905. This section shall not ap-  
34 ply to out-of-state banks, corporations, partner-  
35 ships, etc., which in the ordinary course of their  
36 business have to file with the Secretary of State,  
37 Corporation Records Division, in processing the rou-  
38 tine disposition of assets acquired by legitimate  
39 business dealings, or to these organizations provid-  
40 ing services to financial institutions or credit un-  
41 ions authorized to do business in Maine, provided  
42 these organizations obtain the prior written approval  
43 of the superintendent to allow the filing with the  
44 Secretary of State.

1           Sec. 10. 9-B MRSA §874, as enacted by PL 1975,  
2           c. 500, §1, is amended to read:

3           §874. Conversion: State to federal charter

4           A credit union organized under the general or  
5           special laws of this State may convert to a  
6           federally-chartered credit union. Approval of the  
7           members of the credit union for such the conversion  
8           shall be obtained in the manner set forth in section  
9           342, subsection 3. Upon obtaining such approval, the  
10          credit union shall ~~comply with the requirements of~~  
11          ~~section 342, subsection 3, paragraphs C, D and E~~  
12          ~~provided that filings required to be made thereunder~~  
13          ~~and the obtaining of approvals and charters therein~~  
14          ~~specified shall be done in accordance with the re-~~  
15          ~~quirements of provide to the superintendent all nec-~~  
16          ~~essary approvals and charters required by the Nation-~~  
17          ~~al Credit Union Administration and all Federal~~  
18          ~~federal laws and regulations applicable thereto. The~~  
19          ~~superintendent shall notify the Secretary of State~~  
20          ~~that the conversion has been effected. A copy of the~~  
21          ~~approval or charter shall accompany the notification.~~

22          Sec. 11. 9-B MRSA §882, as enacted by PL 1975,  
23          c. 500, §1, is amended to read:

24          §882. Use of name "credit union"

25          No person, partnership or association and no cor-  
26          poration, except one incorporated under this Part or  
27          the corresponding provisions of earlier laws, shall  
28          may receive payments on shares from its members and  
29          loan such payments on shares and transact business  
30          under any name or title containing the words "credit  
31          union" without the prior written approval of the bank  
32          superintendent or unless organized under provisions  
33          of federal law. Whoever violates any provision of  
34          this section shall be punished by a fine of not more  
35          than \$1,000, and the Superior Court shall have juris-  
36          diction to grant appropriate equitable relief to en-  
37          force this section.



1

STATEMENT OF FACT

2       The purpose of this new draft adds to the Maine  
3 Revised Statutes, Title 9-B, section 163, the re-  
4 quirements that the customer be served with a summons  
5 or warrant prior to disclosure of records and that  
6 the agency or person requesting the disclosure certi-  
7 fy in writing that the customer has been served. Un-  
8 der the new draft the Maine Revised Statutes, Title  
9 9-B, section 164, if the bank relies in good faith on  
10 this certification, it will not be liable to the cus-  
11 tomer for the disclosures and will not be liable for  
12 civil penalties in section 164.

13       The new draft in the Maine Revised Statutes, Ti-  
14 tle 9-B, section 334, removes the requirement of 30  
15 days prior notice to the superintendent for a finan-  
16 cial institution to participate in a satellite facil-  
17 ity. The superintendent retains authority to approve  
18 the establishment of a new facility and the superin-  
19 tendent may object to participation in the facility.

20       The addition to the Maine Revised Statutes, Title  
21 9-B, section 336, subsection 5, is being made to re-  
22 flect the change in Title 9-B, section 336, subsec-  
23 tion 1, whereby a financial institution may notify  
24 the superintendent of a relocation of a main office  
25 or the establishment, moving or closing of a branch  
26 or agency office or facility. Under the notification  
27 process, approval is granted after 30 days if no ap-  
28 plication is requested. This addition will allow the  
29 Bureau of Banking to file a copy of the letter ac-  
30 knowledging receipt of the notification, in cases  
31 where no application has been requested during the  
32 30-day period, with the Secretary of State to satisfy  
33 their requirements.

34       The Maine Revised Statutes, Title 9-B, section  
35 342, subsection 3, paragraph E, is amended to reflect  
36 the recent changes on the federal level that have  
37 delegated the approval of financial institutions con-  
38 verting from state charter to federal charter to the  
39 local Federal Home Loan Bank. With this change, the  
40 certification by a secretary or assistant secretary  
41 of the Federal Home Loan Bank Board is no longer  
42 available. As a result, filings with the Secretary of

1 State under the existing laws have been extremely  
2 cumbersome. This change will provide for ease of fil-  
3 ing.

4 This new draft also makes 2 changes to the Maine  
5 Banking Code provision on open-end mortgages in the  
6 Maine Revised Statutes, Title 9-B, section 436.

7 1. The new draft clarifies that financial insti-  
8 tutions "authorized to do business in this State," a  
9 term which includes federally chartered savings banks  
10 and national banks located in Maine, have the same  
11 authority, security and priority and should follow  
12 the same rules as state chartered banks in writing  
13 open-end mortgages.

14 2. The new draft also makes clear that an open-  
15 end mortgage is valid and its priority protected even  
16 if the customer has received no funds or repaid all  
17 advances so long as the agreement regarding future  
18 advances remains outstanding.

19 The change in the Maine Revised Statutes, Title  
20 9-B, section 874, is made to clarify the procedure  
21 for charter conversion of credit unions.

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