

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

OK  
R. of S.

L.D. 497

(Filing No. S-55 )

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44

STATE OF MAINE  
SENATE  
115TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 188, L.D. 497, Bill, "An Act to Enhance the Supervisory Powers in the Maine Banking Code"

Amend the bill by striking out all of sections 4 and 5 and inserting in their place the following:

'Sec. 4. 9-B MRSA §363, as enacted by PL 1975, c. 500, §1, is repealed.

Sec. 5. 9-B MRSA §365, as amended by PL 1977, c. 707, §1, is further amended to read:

**§365. Insolvency liquidation**

**1.--Injunction-against-insolvent-institution.**

~~A.--If,--upon-examination-of-any-financial-institution,--the superintendent-is-of-the-opinion-that-it-is-insolvent-or that--its--condition--is--such--as--to--render--its--further proceedings-hazardous-to-the-public-or-to-those-having-funds in-its-custody,--he-may-apply-to-the-Superior-Court-for-an injunction-to-restrain-such-institution,--in-whole-or-in part,--from-proceeding-further-with-its-business-until-a hearing-can-be-had.~~

~~B.--The-court-may-forthwith-issue-process-for-such-purpose and,--after-a-full-hearing-of-the-institution,--may-dissolve or-modify-the-injunction-or-make-the-same-permanent,--and make--such--orders--or--decrees--to--suspend,--restrain,--or prohibit--the--further--prosecution--of--the--institution's business-as-may-be-necessary-according-to-the-course-of proceedings-in-which-equitable-relief-is-sought.~~

C  
O  
M  
M  
I  
T  
T  
E  
E  
  
A  
M  
E  
N  
D  
M  
E  
N  
T

## COMMITTEE AMENDMENT "A " to S.P. 188, L.D. 497

2 ~~C. The court may appoint one or more receivers or trustees~~  
 4 ~~to take possession of the institution's property and~~  
~~effects, subject to such rules and orders as are from time~~  
 6 ~~to time prescribed by the Superior Court.~~

8 1-A. Appointment of receiver. If, upon examination of a  
financial institution, the superintendent is of the opinion that  
 10 it is insolvent or that its condition renders its further  
proceedings hazardous to the public or to those having funds in  
 12 its custody, the superintendent may appoint a receiver who shall  
proceed to close the institution.

14 2. Powers of receivers. Receivers have the following  
 16 powers.

18 A. The person appointed by the Superior---Court  
 20 superintendent as a receiver may be the superintendent, his  
 22 a deputy, or such other person, including the corporation  
 24 insuring the institution's accounts pursuant to section 422,  
 26 as the ~~seurt~~ superintendent may choose; and a certified copy  
 of the ~~seurt~~ order making such appointment shall ~~be~~ is  
 evidence thereof. A receiver shall ~~have~~ has the power and  
 authority provided in this Title, and such other powers and  
 authority as may be expressed in the order of the ~~seurt~~  
superintendent.

28 B. If the superintendent or his a deputy is appointed  
 30 receiver, ~~he shall receive~~ no additional compensation need  
 32 be paid, but his any reasonable and necessary expenses as a  
 34 receiver shall must be paid ~~to him~~ by the institution. If  
 another person is so appointed, then the compensation of the  
 receiver, ~~as determined by the court,~~ shall must be paid  
 from the assets of said that institution.

36 C. ~~In the event that~~ If the federal corporation insuring  
 38 the institution's deposits or accounts pursuant to section  
 40 422 accepts an appointment as receiver, ~~sush~~ that  
 42 corporation shall ~~acquire~~ acquires both legal and equitable  
 44 title to all assets, rights or claims and to all real or  
 personal property of the institution, to the extent  
 necessary for ~~sush~~ that corporation to perform its duties as  
 receiver or as may be necessary under applicable Federal  
federal law to effectuate ~~sush~~ that appointment.

46 3. Specific powers of receivers. Upon taking possession of  
 48 the property and business of a financial institution under this  
 section, the receiver shall ~~have the following powers:~~

50 A. He ~~may~~ May collect moneys money due to the institution  
 52 and do all acts necessary to conserve its assets and  
 business, and shall proceed to liquidate its affairs. ;

## COMMITTEE AMENDMENT "A" to S.P. 188, L.D. 497

2 B. ~~He shall~~ Shall collect all debts due and claims  
 4 belonging to the institution and, ~~upon the order or decree  
 of the Superior Court,~~ may sell or compound all bad or  
 doubtful debts.

6 C. ~~On order or decree of the court, the receiver may~~ May  
 8 sell, for cash or other consideration or as provided by law,  
 all or any part of the real and personal property of the  
 institution ~~on such terms as the court shall direct.~~

10 D. ~~In the name of such institution, the receiver may~~ May  
 12 take, in the name of the institution, a mortgage on such the  
 14 real property from a bona fide purchaser to secure the whole  
 or part of the purchase price, ~~upon such terms and for such  
 periods as the court shall direct; and~~

16 E. ~~On order or decree of the court, the receiver may~~ May  
 18 borrow money and issue evidence of indebtedness therefor. To  
 20 secure the repayment of same, the receiver may mortgage,  
 22 pledge, transfer in trust or hypothecate any or all of the  
 property of such institution, whether real, personal or  
 mixed, superior to any charge thereon for expenses of  
 liquidation.

24 F. ~~The receiver shall have all rights and powers given to~~  
 26 ~~conservators by section 363.~~

28 G. ~~Whenever the Federal corporation insuring the~~  
 30 ~~institution's deposits or accounts pursuant to section 422~~  
 32 ~~pays or makes available for payment the insured deposit~~  
 34 ~~liabilities of an institution, such corporation shall become~~  
 36 ~~subrogated to the rights of all depositors of the~~  
 institution, ~~whether or not it has become receiver thereof,~~  
 in the same manner and to the same extent as it would be  
 subrogated in the liquidation of a financial institution  
 operating under a federal charter and insured by such  
 corporation.

38 Whenever the federal corporation insuring the institution's  
 40 deposits or accounts pursuant to section 422 pays or makes  
 42 available for payment the insured deposit liabilities of an  
 44 institution, such corporation shall become subrogated to the  
 46 rights of all depositors of the institution, whether or not it  
has become receiver thereof, in the same manner and to the same  
extent as it would be subrogated in the liquidation of a  
financial institution operating under a federal charter and  
insured by such corporation.

48 4. ~~Reports of receiver; legal advice.~~

50

COMMITTEE AMENDMENT

## COMMITTEE AMENDMENT "A" to S.P. 188, L.D. 497

2 A. In May of each year, and at such other time as the  
 4 superintendent requires, the receiver shall make a report to  
 6 the superintendent of the progress made in the settlement of  
 affairs of said institution. The superintendent shall give  
 reasonable notice of the time and furnish blanks for such  
 report.

8 B. The Attorney General shall render such legal services in  
 10 connection with such receivership as the superintendent or  
 deputy superintendent may require, without additional  
 compensation.

12 C. Distribution of assets: stock institution. In the case  
 14 of an insolvent stock institution, the distribution of assets  
 16 after payment of all claims of creditors and depositors shall be  
 made under order of the court by the receiver except as provided  
 in subsection 3, paragraph G.

18 D. Distribution of assets: mutual institution.

20 A. After a decree of sequestration is issued pursuant to  
 22 subsection 1, the court shall appoint commissioners who  
 24 shall give such notice of the times and places of their  
 sessions as the court orders.

26 B. Such commissioners shall receive and decide upon all  
 28 claims against the institution and make reports to the  
 court, at such time as the court orders, of the claims  
 30 allowed and disallowed and of the amount due each depositor,  
 which shall be subject to such objections and amendments as  
 32 the court may permit. On application of any interested  
 party, the court may extend the time for hearing claims by  
 the commissioners, as justice may require.

34 C. When the amount due each person is established, the  
 36 court shall cause others than depositors to be paid in full,  
 38 and after deducting expenses of receivership and  
 liquidation, the balance shall be ratably distributed among  
 depositors except as provided in subsection 3, paragraph G.

40 D. Except as provided in section 366, subsection 2 the  
 42 owners of all classes of shares and accounts of such mutual  
 44 institution shall have the same status as to the assets of  
 the institution, and, in the case of liquidation, one class  
 46 of shares or accounts shall not have preference over any  
 other class of shares or accounts.

48 E. Attachments dissolved; actions discontinued; judgment  
 50 recovered added to claims.

52 A. All attachments of property of the financial institution  
 shall be dissolved by the decree of sequestration, and all

## COMMITTEE AMENDMENT "A" to S.P. 188, L.D. 497

~~pending actions discontinued and the claim presented to the commissioners or to the court, unless the Superior Court, upon application of the plaintiff within 3 months from said decree, passes an order allowing the receiver to be made a party to the action and that the claim may be prosecuted to a final judgment.~~

~~B. After a decree of sequestration, no action shall be maintained on any claim against the financial institution unless the court, on application therefor within the time named, authorizes it; and, in such cases, the receiver shall be made a party.~~

~~C. Any judgment recovered shall be added to the claims against the institution.~~

~~8. Untimely claims barred. All claims not presented to the commissioners or the court within the time fixed by the court, or litigated as provided, are forever barred.~~

9. **Unknown depositors.** When it appears upon the settlement of the account of the receiver of a financial institution pursuant to this section that there are remaining in his the receiver's hands funds due depositors who cannot can not be found and whose heirs or legal representatives are unknown, the unclaimed funds shall must be disposed of according to Title 33, chapter 27.

10. Procedures in liquidation. When the superintendent appoints the Federal Deposit Insurance Corporation as receiver, federal law prescribes the procedures that the Federal Deposit Insurance Corporation follows in liquidation of the insolvent bank.

Sec. 6. 9-B MRSA §366, as enacted by PL 1975, c. 500, §1, is repealed.

Sec. 7. 9-B MRSA §367, as amended by PL 1975, c. 771, §111, is repealed.

Sec. 8. 9-B MRSA §368, 369, 412-A and 439-A are enacted to read:

§368. Additional authority in liquidation

1. Rulemaking. The superintendent may adopt rules to carry out this chapter.

2. Expenses. All expenses of the superintendent or the superintendent's assistants incurred in carrying out this chapter must be paid out of the assets of the financial institution in connection with which the expenses were incurred.

R. 13.

2 **§369. Judicial review**

4 A financial institution closed by action of the  
6 superintendent pursuant to this chapter may bring an action  
8 challenging the superintendent's appointment of a receiver in  
Superior Court within 10 days after the superintendent appoints a  
receiver.

10 The court must uphold the superintendent's finding that a  
12 financial institution is insolvent or that its condition is such  
14 as to render its further proceedings hazardous to the public or  
to those having funds in its custody and must uphold the  
appointment of a receiver unless the court finds that the  
superintendent's action was arbitrary and capricious.

16 **§412-A. Capital**

18 1. Requirement. Every financial institution shall  
20 establish and maintain adequate levels of capital as set forth in  
22 rules adopted by the superintendent. These rules must address,  
24 at a minimum, composition of capital, capital levels that must be  
maintained and procedures that must be followed to restore  
capital if it becomes impaired or falls below the minimum  
standards. Minimum capital levels established by the  
superintendent may be no less stringent than those applicable to  
federally chartered institutions with similar charters.

28 2. Exception. The superintendent may approve, in writing,  
30 capital levels below the required minimum as considered necessary  
or appropriate under the particular circumstances of a financial  
32 institution.

34 **§439-A. Lending limits**

36 1. Definitions. As used in this section, unless the  
38 context otherwise indicates, the following terms have the  
following meanings.

40 A. "Loans or extensions of credit" includes all direct or  
42 indirect advances of funds to a person that are made on the  
basis of any obligation of that person to repay the funds or  
44 that are repayable from specific property pledged by or on  
behalf of the person. "Loans or extensions of credit" may  
46 include, to the extent specified by the superintendent, any  
liability of a financial institution to advance funds to or  
on behalf of a person pursuant to a contractual commitment.

48 B. "Person" has the same meaning as defined in section 131,  
50 subsection 30. In determining loan limitations pursuant to  
subsection 2, the superintendent may further define

2           "person," including, through rulemaking, the establishment  
3           of standards regarding the aggregation of loans with respect  
4           to related persons.

6           2. Limitations. A financial institution subject to this  
7           Title or a service corporation established pursuant to section  
8           445 may not make loans or extensions of credit outstanding at one  
9           time to a person in excess of 20% of its total capital and  
10           surplus. Total loans or other extensions of credit in excess of  
11           10% of total capital and surplus must be approved by a majority  
12           of the board of directors or the executive committee of that  
13           institution or corporation.

14           3. Exclusions from limitations. The limitations contained  
15           in subsection 2 are subject to the following exceptions:

16           A. Loans or extensions of credit arising from the discount  
17           of commercial or business paper evidencing an obligation to  
18           the person negotiating it with recourse;

19           B. Loans or extensions of credit to municipal corporations  
20           located within this State upon their bonds or notes;

21           C. Loans or extensions of credit to the extent that they  
22           are secured or covered by guarantees, or by commitments or  
23           agreements to take over or purchase the loans or extensions  
24           of credit, made by any Federal Reserve Bank, the United  
25           States, this State or any department, bureau, board,  
26           commission, agency, authority, instrumentality or  
27           establishment of the United States or this State, including  
28           any corporation owned directly or indirectly by the United  
29           States or this State;

30           D. Loans or extensions of credit secured by a segregated  
31           deposit account in the lending bank;

32           E. Obligations as endorser, with or without recourse, or as  
33           guarantor, conditional or unconditional of dealer-originated  
34           obligations; and

35           F. Sales of federal funds, interbank deposits, which do not  
36           include certificates of deposit, and clearings.

37           4. Record of directors' actions. When loans in excess of  
38           10% of total capital are approved, the records of the financial  
39           institution or service corporation must show who voted in favor  
40           of the loan. These records and those required by section 222  
41           constitute prima facie evidence of the truth of all facts stated  
42           in the records in prosecutions and civil actions to enforce the  
43           provisions and penalties under section 465, subsection 3.  
44



## COMMITTEE AMENDMENT "A" to S.P. 188, L.D. 497

5. Rulemaking. The superintendent may adopt rules to administer and carry out this section, including rules to define or further define terms used in this section and to establish limits or requirements other than those specified in this section if the superintendent determines that such action is necessary for the protection of depositors, shareholders or the public.

Sec. 9. 9-B MRSA §465, sub-§3, ¶A, as repealed and replaced by PL 1987, c. 405, §2, is amended to read:

A. Every director, corporator, officer, agent or employee of a financial institution who authorizes or assists in procuring, granting or causing the granting of a loan in violation of section 439-A or this section or sections 524-B, 633 and 734-B, or pays or willfully permits the payment of any funds of the institution on such loan, and every director of an institution who votes on a loan in willful violation of any of the provisions of this section and every director, corporator, officer, agent or employee who willfully and knowingly permits or causes the same to be done ~~shall be~~ are personally responsible for the payment thereof and ~~shall be~~ is guilty of a misdemeanor. For purposes of this paragraph, "agent" or "employee" does not include an individual who is incidentally involved in the preparation of documents or title work relating to a loan;

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting before the statement of fact the following:

#### FISCAL NOTE

This bill authorizes the Bureau of Banking of the Department of Professional and Financial Regulation to promulgate rules to establish minimum capital standards. The costs associated with the rule-making process can be absorbed within existing resources of the Bureau of Banking.'

#### STATEMENT OF FACT

This amendment makes a number of additions to the bill. It adds provisions that change the laws governing the proceedings concerning conservation or liquidation of an insolvent financial institution. The current statute governing liquidation of insolvent institutions predates Maine's law requiring federal insurance of accounts and does not adequately recognize the Federal Deposit Insurance Corporation's responsibility under federal law to serve as receiver of insolvent financial

COMMITTEE AMENDMENT "A" to S.P. 188, L.D. 497

2 institutions. This amendment establishes procedures governing  
3 declaration of insolvency and appointment of receivers consistent  
4 with federal law and facilitates a smooth transition in the event  
5 of a bank failure.

6 The amendment clarifies that the capital levels established  
7 for state-chartered financial institutions may be no less  
8 stringent than those for federally chartered institutions with  
9 similar charters.

10 The amendment also defines the term "person" consistent with  
11 the general definition in the Maine Revised Statutes, Title 9-B,  
12 section 131, subsection 30. The amendment changes the provision  
13 concerning liability for making unlawful loans to exclude  
14 individuals who are incidentally involved in the preparation of  
15 documents or title work relating to a loan.

16 The amendment adds a fiscal note, showing that all costs  
17 will be absorbed by the Bureau of Banking.

Reported by Senator Kany for the Committee on Banking and  
Insurance. Reproduced and Distributed Pursuant to Senate Rule  
12.

(4/11/91)

(Filing No. S-55)

C  
O  
M  
M  
I  
T  
T  
E  
E  
  
A  
M  
E  
N  
D  
M  
E  
N  
T