

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)

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48

STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1493, L.D. 2105, Bill, "An Act Regarding Loans to Stockholders, Directors, Corporators or Officers of Financial Institutions"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Loans to Stockholders, Directors or Officers of Financial Institutions'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 9-B MRSA §439-A, sub-§§2 and 4, as enacted by PL 1991, c. 34, §8, are amended to read:

2. Limitations. A financial institution subject to this Title or a service corporation established pursuant to section 445 may not make loans or extensions of credit outstanding at one time to a person in excess of 20% of its total capital and surplus. Total loans or other extensions of credit in excess of 10% of total capital and surplus must be approved by a majority of the board of directors or the executive committee of that institution or corporation. Any loan made in violation of this section is subject to the remedies prescribed in section 465-A.

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

Sec. 2. 9-B MRSA §465, as amended by PL 1991, c. 34, §9, is repealed.

COMMITTEE AMENDMENT

2 Sec. 3. 9-B MRSA §465-A is enacted to read:

4 §465-A. Loans to stockholders, directors or officers

6 1. Authorization. A financial institution authorized to do
8 business in this State may make loans to its principal
10 stockholders, policy-making officers or directors, or to any
 related interest of those persons, subject to the limitations
 contained in this section.

12 2. Terms and credit worthiness. A financial institution
14 may not make a loan to any of its principal stockholders,
16 policy-making officers or directors, or to any related interest
18 of that person, unless the loan is made on substantially the same
20 terms, including interest rates and collateral, as those
 generally available to the public and does not involve more than
 the normal risk of repayment or present other unfavorable
 features.

22 3. Prior approval. A financial institution may not grant a
24 loan to any of its principal stockholders, policy-making officers
26 or directors, or to any related interest of that person, in an
 amount that, when aggregated with the amount of all other loans
 to that person and all related interests of that person, exceeds
 the higher of \$25,000 or 5% of the financial institution's
 capital or unimpaired surplus, unless:

28 A. The loan has been approved in advance by a majority of
30 the entire board of directors of the financial institution;
 and

32 B. Any interested party has abstained from participating
34 directly or indirectly in the voting.

36 A financial institution may not make a loan to any one of its
38 principal stockholders, policy-making officers or directors, or
40 to any related interest of that person, in an amount that, when
 aggregated with the amount of all other loans to that person and
 all related interests of that person, exceeds \$500,000 except in
 compliance with the requirements of this subsection.

42 4. Participation in discussion. Participation by any
44 principal stockholder, policy-making officer or director in the
46 discussion or any attempt to influence the voting by the board of
48 directors regarding a loan to the interested principal
 stockholder, policy-making officer or director, or any related
 interest of that person, constitutes indirect participation in
 the voting by the board of directors on the loan.

50

2 5. Lines of credit. Lines of credit to principal
3 stockholders, policy-making officers or directors, or to any
4 related interest of those persons, must be approved pursuant to
5 the requirements of subsection 3. A loan granted under a line of
6 credit approved pursuant to subsection 3 does not require prior
7 approval pursuant to that subsection as long as the loan is
8 granted within the term of the approved line of credit.

10 6. Liability for making. Every principal stockholder,
11 officer, agent or employee of a financial institution who
12 authorizes or assists in procuring or granting or who causes the
13 granting of a loan in violation of this section or section 539-A
14 or 854, to the extent that the financial institution is subject
15 to the provisions of section 539-A or 854, or who pays or
16 willfully permits the payment of any funds of that institution on
17 such a loan; every director of a financial institution who votes
18 on a loan in violation of any of the provisions of this section;
19 and every director, principal stockholder, officer, agent or
20 employee who knowingly permits or causes any of those actions to
21 be done is personally responsible for payment of the loan and is
22 guilty of a Class E crime. For purposes of this subsection,
23 "agent" or "employee" does not include an individual who is
24 incidentally involved in the preparation of documents or title
25 work related to a loan.

26 7. Violations. A loan granted in violation of this section
27 is due and payable immediately, without demand, whether or not it
28 appears on its face to be a time loan. If the superintendent
29 finds a loan outstanding in violation of this section or section
30 439-A or 854, the superintendent shall notify the president,
31 clerk or treasurer of the financial institution to cause that
32 loan to be paid immediately. If the loan is not paid within 30
33 days or such further time as the superintendent determines, the
34 superintendent shall report the facts to the Attorney General,
35 who shall commence a civil action in the name and for the benefit
36 of the financial institution for the collection of the loan. The
37 Attorney General may employ special counsel to prosecute the
38 civil action. The financial institution shall pay all expenses
39 of special counsel, to be recovered in a civil action in the name
40 of the State.

42 8. Rulemaking. The superintendent may adopt rules to
43 administer and carry out this section.

44 **Sec. 4. 9-B MRSA §854, sub-§1, as repealed and replaced by PL**
45 **1983, c. 51, §8, is amended to read:**

48 **1. Authorization; limitations.** It shall-be is the duty of
49 the board of directors to establish the policies of the credit
50 union with respect to the granting of loans and the extending of

2 lines of credit, including the maximum amount which that may be
loaned to any one member. No A loan may not be made to any
4 member in an aggregate amount in excess of 10% of the credit
union's total assets. Any loan made in violation of this
6 subsection is subject to the remedies prescribed in section 465-A.

8 **FISCAL NOTE**

10 Any costs associated with compliance reviews of lending
practices will be absorbed by current operational procedures of
12 the Bureau of Banking within the Department of Professional and
Financial Regulation.'

14
16 **STATEMENT OF FACT**

18 This amendment clarifies the procedures to be used by
20 financial institutions when making loans to directors or
officers. It removes the application of these provisions to
22 corporators. The amendment also adds a fiscal note to the bill.

Reported by the Committee on Banking and Insurance
Reproduced and distributed under the direction of the Clerk of the
House
2/18/92 (Filing No. H-938)