

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1729

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H.P. 1271

House of Representatives, March 21, 2001

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### **An Act to Amend the Maine Banking Code.**

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative O'NEIL of Saco.  
Cosponsored by Senator LaFOUNTAIN of York and  
Representatives: CANAVAN of Waterville, SULLIVAN of Biddeford, Senator: DOUGLASS  
of Androscoggin.

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

2  
3       **Sec. 1. 9-B MRSA §162, sub-§§2 and 3**, as amended by PL 1997, c.  
4 537, §1 and affected by §62, are further amended to read:

6       **2. Disclosure in response to legal process.** The financial  
7 records are disclosed in response to a lawful subpoena, summons,  
8 warrant or court order that meets the requirements of section  
9 163; ~~or~~

10       **3. Disclosure in response to a request by the Department of**  
11 **Human Services.** The financial records are disclosed in response  
12 to a request for information by the Department of Human Services  
13 for purposes related to establishing, modifying or enforcing a  
14 child support order; or

15       **Sec. 2. 9-B MRSA §162, sub-§4** is enacted to read:

16       **4. Disclosure in response to a request by the Department of**  
17 **Labor.** The financial records are disclosed in response to a  
18 notice of levy issued by the Department of Labor pursuant to  
19 Title 26, section 1233.

20       **Sec. 3. 9-B MRSA §214, sub-§2-B**, as enacted by PL 1997, c.  
21 398, Pt. K, §1, is amended to read:

22       **2-B. Assessment on nondepository trust companies.**  
23 Nondepository trust companies that are not affiliated with a  
24 financial institution shall pay an annual assessment of not less  
25 than \$2,000 or an amount determined by the superintendent ~~not to~~  
26 ~~exceed of at least 6¢~~ for every \$10,000 of fiduciary assets under  
27 its management, custody or care. The superintendent may further  
28 define by rule fiduciary assets under management, custody or care  
29 or change the minimum assessment whenever economic conditions  
30 warrant such a change. Rules adopted pursuant to this subsection  
31 are routine technical rules as defined in Title 5, chapter 375,  
32 subchapter II-A. These assessments must be paid annually by  
33 February 15th of each year on fiduciary assets outstanding  
34 December 31st of the prior year.

35       **Sec. 4. 9-B MRSA §214, sub-§2-C** is enacted to read:

36       **2-C. Assessment on uninsured bank or merchant bank.** If an  
37 uninsured bank or merchant bank predominately engages in the  
38 business of a nondepository trust company, then the uninsured  
39 bank or merchant bank shall pay an annual assessment as  
40 prescribed in subsection 2-B. Otherwise, an uninsured bank or  
41 merchant bank shall pay an annual assessment as prescribed in  
42 subsection 2.

2           **Sec. 5. 9-B MRSA, §222, sub-§3, ¶A**, as amended by PL 1975, c.  
500, §1, is further amended to read:

4           A. Every financial institution subject to this Title shall  
6           make semiannually, and at such other times as the  
superintendent may direct, a report of condition to the  
8           superintendent. ~~Such~~ The report shall must exhibit in  
10           detail and under appropriate headings the assets,  
liabilities and capital of the institution as of such date  
12           as the superintendent may specify. Each such report shall  
must contain a declaration that the report is true and  
14           correct signed by an officer designated by the board of  
directors to make such declaration and to so act on the  
16           board's behalf. The financial institution shall retain a  
copy of the report that is filed with the bureau, including  
the original signature or signatures attesting that the  
report is true and correct and shall make it available upon  
examination of the financial institution. The report  
18           ~~required--hereunder--shall~~ must be transmitted to the  
20           superintendent within 10 days after a request ~~therefor~~ for  
the report.

22           **Sec. 6. 9-B MRSA §241, sub-§9, ¶A**, as enacted by PL 1995, c.  
24           628, §18, is amended to read:

26           A. A person, if duly authorized under the laws of this  
State, another state or the United States to conduct the  
28           business of banking, may use as a part of the name or title  
under which it conducts business in this State the terms  
30           "saving," "savings," "savings bank," "bank," "banker,"  
"trust," "trust company," "banking" or "trust and banking  
32           company." The superintendent may require the filing of  
supporting documentation relating to this paragraph in the  
form and manner and containing such information as the  
34           superintendent may prescribe.

36           **Sec. 7. 9-B MRSA §241, sub-§12** is enacted to read:

38           12. Electronic banking. A financial institution or credit  
40           union organized under the provisions of federal law, law of  
another state or law of a foreign country that does not meet the  
42           definition of authorized to do business in this State, pursuant  
to section 131, may engage in the business of banking through  
44           electronic or similar means in this State and is subject to the  
provisions of Parts 1 and 2 to the same extent Parts 1 and 2  
46           apply to a financial institution authorized to do business in  
this State.

48           **Sec. 8. 9-B MRSA §339-A, sub-§2**, as amended by PL 1997, c.  
50           398, Pt. E, §11, is repealed.

2           **Sec. 9. 9-B MRSA §428**, as repealed and replaced by PL 1977,  
c. 707, §2, is amended to read:

4           **§428. Inactive deposits or accounts**

6           All moneys in unclaimed accounts in each financial  
institution authorized to do business in this State ~~shall~~ must be  
8 disposed of according to Title 33, chapter 27 41.

10           **Sec. 10. 9-B MRSA §446-A, sub-§1**, as amended by PL 1999, c.  
218, §21, is further amended to read:

12           **1. Application required.** A financial institution shall  
14 make application to the superintendent in accordance with section  
252 for authority to engage in a closely related activity, except  
16 that an application is not necessary if all of the following  
conditions are satisfied:

18           A. Before and immediately after the proposed transaction,  
20 the financial institution is well capitalized as determined  
by the superintendent;

22           B. At the time of the transaction, the financial  
24 institution is well managed, which means that in connection  
with the financial institution's most recent examination:

26                   (1) The financial institution received a composite  
28 rating of one or 2 pursuant to the uniform financial  
institution rating system adopted by the Bureau of  
30 Banking; and

32                   (2) The financial institution received at least a  
satisfactory rating for management;

34           C. The book value of the total assets to be acquired does  
36 not exceed 15% of the consolidated total risk-weighted  
assets of the financial institution;

38           D. The consideration to be paid for the securities or  
40 assets to be acquired does not exceed 15% of the  
consolidated capital of the financial institution;

42           E. During the 12-month period prior to the proposed  
44 transaction, the financial institution has not been under an  
enforcement action nor is there an enforcement action  
46 pending;

48           F. The financial institution provides written notification  
to the superintendent ~~not later than 10 business days after~~  
50 at least 30 days prior to consummating the transaction; and

2 G. The activity is authorized pursuant to this Title or by  
4 rule or order of the superintendent.

6 Notwithstanding paragraphs A and G, the superintendent, after  
8 review of the written notification under paragraph F, may require  
10 an application if the superintendent determines that the activity  
12 raises significant supervisory concerns or raises significant  
14 legal or policy issues.

16 **Sec. 11. 9-B MRSA §466, sub-§4,** as amended by PL 1975, c. 666,  
18 §23-A, is further amended to read:

20 **4. Unauthorized business.** ~~No A person shall~~ may not engage  
22 in the business of ~~financial-institutions~~ banking unless he the  
24 person is properly authorized, nor may a person represent that he  
26 that person is acting as such a financial institution, nor use an  
28 artificial or corporate name which that purports to be or  
30 suggests that ~~it~~ the person is such a financial institution  
32 unless the financial institution is properly authorized to do  
34 business in this State and except as provided in section 241,  
36 subsection 12. Financial-institutions-organized-under-the-laws  
38 of-the-United-States-shall-not-be-subject-to-this-provision.

40 **Sec. 12. 9-B MRSA §814, sub-§1.** as amended by PL 1999, c. 218,  
42 §25, is further amended to read:

44 **1. Field of membership.** "Field of membership" of a credit  
46 union means those persons, including nonnatural persons, having a  
48 common bond of occupation or association; multiple groups of such  
50 persons, each group having a common bond of occupation or  
association within that group; residence or employment within a  
well-defined neighborhood, community or rural district;  
employment by a common employer or by employers located within a  
well-defined industrial park or community; membership in a bona  
fide fraternal, religious, cooperative, labor, rural, educational  
or similar organization; and members of the immediate families of  
such persons.

A. When determining whether a credit union's proposed field  
of membership meets the requirements of this section, the  
superintendent shall consider all guidelines established by  
the National Credit Union Administration that address the  
issues of common bond, overlapping fields of membership,  
expansions or conversions of field of membership and the  
documentation required for amending a field of membership.

B. The superintendent shall provide notice to interested  
parties of a bylaw amendment sought by a credit union that  
proposes a change in field of membership.

2 C. For purposes of this section, "nonnatural person" means  
3 a corporation, partnership, joint venture, trust, estate,  
4 unincorporated association, fraternal organization or  
5 voluntary association that is:

6 (1) Specifically listed in a credit union's bylaws as  
7 a member;

10 (2) With respect to a community-chartered credit  
11 union, located within the geographic limits of the  
12 credit union's field of membership; or

14 (3) Composed principally of individual persons within  
15 the credit union's field of membership and the credit  
16 union's field of membership includes organizations of  
17 such persons.

18 **Sec. 13. 9-B MRSA §814, sub-§2,** as enacted by PL 1975, c. 500,  
19 §1, is repealed.

22 **Sec. 14. 9-B MRSA §827, sub-§2,** as repealed and replaced by PL  
23 1983, c. 51, §2, is amended to read:

24 **2. Receipt of payments from government agencies and other**  
25 **credit unions.** A credit union may act as fiscal agent for and  
26 receive payments on shares and deposits from the Federal  
27 Government, this State or any agency or political subdivision or  
28 another federally insured credit union.

30 **Sec. 15. 9-B MRSA §844, sub-§2,** as amended by PL 1979, c. 429,  
31 §12, is further amended to read:

34 **2. Verification of share, deposit and loan accounts.**

36 ~~A. At least once in every 3 2 years,--or--more--often--if~~  
37 ~~required-by-National-Credit-Union-Administration-law,-rules~~  
38 ~~or-regulations,~~ the supervisory committee shall verify or  
39 cause to be verified,--100%--of the share and, deposit and  
40 loan accounts of members of the credit union and a report of  
41 the verification shall must be ~~made-to-the-superintendent~~  
42 within-30-days-of-the-completion-of-the-verification kept on  
43 file and available to be reviewed at the time of the next  
44 examination or upon request by the superintendent.

46 (1) If the verification is performed by the  
47 supervisory committee, a controlled verification of  
48 100% of the members' share, deposit and loan accounts  
49 must be made.

2           (2) If the verification is performed by a certified  
4           public accountant, the auditor may choose the  
6           verification method set forth in subsection 1 or a  
              sampling method sufficient in both number and scope on  
              which to base conclusions concerning the validity of  
              such records.

8           B. If the superintendent deems determines such verification  
10           inadequate, he the superintendent may cause the bureau to  
12           verify such accounts; and the bureau ~~shall~~ must have full  
14           access to every aspect of the credit union's activities and  
16           to all books, papers, vouchers, resources and all other  
              records and property belonging to said credit union, whether  
              in its immediate possession or otherwise, for the purpose of  
              facilitating such verification.

18           C. Expenses incurred by the superintendent in any such  
20           verification ~~shall~~ must be paid by the credit union, to be  
22           credited and used as provided in section 214.

24           **Sec. 16. 9-B MRSA §862, sub-§4,** as enacted by PL 1983, c. 51,  
26           §11, is repealed.

28           **Sec. 17. 9-B MRSA §872, sub-§1, ¶¶A and B,** as enacted by PL  
30           1975, c. 500, §1, are amended to read:

32           A. ~~Any 2 or more credit unions authorized to do business in~~  
34           ~~this State~~ A credit union organized under provisions of the  
36           laws of this State, another state or federal laws may merge  
38           or consolidate into a credit union organized under the laws  
40           of the State with the approval of the superintendent  
42           obtained pursuant to section 252, and in accordance with  
              such procedures as the superintendent may require.

44           B. If any credit union involved in the proposed merger is a  
46           federal credit union, such merger is subject to all  
48           applicable laws, rules and regulations of the United  
50           States. A credit union involved in the proposed merger that  
              is organized under provisions of law of another state is  
              subject to all applicable laws, rules and regulations of  
              that state.

**Sec. 18. 9-B MRSA §876,** as repealed and replaced by PL 1975,  
              c. 666, §30, is amended to read:

**§876. Acquisitions**

              A credit union organized under the laws of this State may  
              acquire all or substantially all the assets of, or assume the  
              liabilities of, any other credit union organized under provisions



2 of the laws of this State, another state or federal laws or any  
3 financial institution authorized to do business in this State;  
4 provided that such purchase or sale pursuant to this section  
5 shall be executed in accordance with the requirements of section  
6 355 and shall be subject to the provisions of sections 357 and  
7 358.

8 **Sec. 19. 9-B MRSA §1011, sub-§4,** as amended by PL 1991, c.  
9 386, §26, is further amended to read:

10 **4. Control.** A company controls another company, referred  
11 to in this chapter as a "subsidiary," if it owns 25% or more of  
12 the ~~voting-shares~~ equity interest of the subsidiary or if under  
13 the federal Bank Holding Company Act of 1956, as amended, under  
14 the federal Home Owners' Loan Act, Section 1467A, as amended, or  
15 under the Federal Deposit Insurance Act, as amended, or  
16 regulations or policy statements issued thereunder, that company  
17 is presumed to control the subsidiary or a determination has been  
18 made by the superintendent that the company exercises a  
19 controlling influence over the management and policies of the  
20 subsidiary.

21 **Sec. 20. 9-B MRSA §1015, sub-§1, ¶D,** as amended by PL 1997, c.  
22 398, Pt. K, §10, is further amended to read:

23 D. Authority for a Maine financial institution holding  
24 company to engage in a closely related activity or any other  
25 activity or to acquire or establish a subsidiary to engage  
26 in a closely related activity or any other activity; or

27 **Sec. 21. 9-B MRSA §1015, sub-§1, ¶E,** as repealed and replaced  
28 by PL 1997, c. 683, Pt. A, §2, is amended to read:

29 E. Authority for any financial institution holding company,  
30 foreign bank or foreign bank holding company controlling a  
31 Maine financial institution to engage in a closely related  
32 activity in ~~Maine,~~ the State or ~~acquisition to acquire or~~  
33 ~~establishment-of~~ establish a subsidiary in ~~Maine~~ the State  
34 to engage in a closely related activity.

35 **Sec. 22. 9-B MRSA §1239** is enacted to read:

36 **§1239. Holding companies of uninsured banks**

37 If a holding company is not a financial institution holding  
38 company under chapter 101 by virtue of controlling a financial  
39 institution other than a merchant bank, a nondepository trust  
40 company or an uninsured bank, the superintendent may grant the  
41 holding company a waiver from the provisions of chapter 101;  
42 except that, the superintendent may not waive the requirements of

2 section 1013, subsection 1 and the application requirements of  
3 section 1015 relevant to section 1013, subsection 1.

4 If a holding company is not a financial institution holding  
5 company under chapter 101 by virtue of controlling financial  
6 institutions other than a merchant bank, nondepository trust  
7 company or uninsured bank, the superintendent may examine the  
8 holding company, including its subsidiaries and affiliates, to  
9 the extent necessary to determine the soundness and viability of  
10 the uninsured bank.

## 14 SUMMARY

16 This bill makes several technical changes to the Banking  
17 Code.

18 1. It amends the confidential financial records law to  
19 specifically permit a financial institution to respond to a  
20 request from the Department of Labor.

22 2. It amends the current formula for assessments paid by  
23 nondepository trust companies, establishing a base rate that is  
24 consistent with assessments paid by depository institutions and  
25 the ability for the superintendent to change the rate or further  
26 define fiduciary assets under management through rulemaking.

28 3. It establishes an assessment to be paid by an uninsured  
29 bank or merchant bank to be consistent with the assessment paid  
30 by other state-chartered depository or nondepository institutions.

32 4. It removes the requirement that original signatures  
33 attesting to the condition and income reports be filed with the  
34 Department of Professional and Financial Regulation, Bureau of  
35 Banking.

38 5. It clarifies state law with respect to filing notice for  
39 use of restrictive terms such as "savings bank" or "trust and  
40 banking company."

42 6. It enacts a provision to recognize that financial  
43 institutions and credit unions now utilize the Internet to  
44 deliver products and services.

46 7. It repeals a provision that requires a financial  
47 institution to have a branch in the State in order to operate a  
48 satellite facility or an automated teller machine.

50 8. It corrects a reference to the abandoned property law.

2           9. It changes the notice requirement necessary for a  
4 financial institution to engage in a closely related activity or  
6 to have a subsidiary engage in a closely related activity from  
8 not later than 10 business days after consummating the  
10 transaction to at least 30 days prior to consummating the  
12 transaction. The bill also gives the Superintendent of the  
14 Bureau of Banking the flexibility to require a full application  
16 in certain unique circumstances.

18           10. It clarifies banking law with respect to "unauthorized  
20 business."

22           11. It realigns law relating to credit union field of  
24 membership to include nonnatural persons in a field of  
26 membership. Current law utilizes the term "limited members" in  
28 lieu of the term "nonnatural persons," which is used in the  
30 Federal Credit Union Act and implementing regulations. Also  
32 current state law places restrictions and limitations for limited  
34 members that are not imposed under federal law. This bill  
36 establishes parity in this area.

38           12. It provides parity between state and federally  
40 chartered credit unions by clarifying state law as follows. It  
42 permits state chartered credit unions to accept deposits and  
44 shares of other federally insured credit unions. It alters the  
process and timing for verification of accounts. It removes  
outdated limitations on the sale of credit union assets.

          13. It clarifies credit union merger and acquisition  
statutes to more closely parallel federal credit union law.

          14. It clarifies the definition of "control" under bank  
holding company laws.

          15. It makes technical changes to the application  
requirements for a financial institution holding company to  
engage in closely related activities.

          16. It treats companies that own uninsured banks in the  
same fashion as companies that own merchant banks and  
nondepository trust companies with respect to the application of  
the Maine bank holding company laws.