

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1534

S.P. 512

In Senate, April 8, 2003

An Act To Amend the Maine Banking Laws

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

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.

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

2
4 **Sec. 1. 9-B MRSA §131, sub-§3**, as amended by PL 1997, c. 398,
Pt. A, §1, is further amended to read:

6 **3. Branch.** "Branch" means any office of a financial
8 institution, including a credit union, where the business of
banking is conducted other than the institution's main office. A
10 branch includes an office or vehicle that is not permanent and
that is capable of being moved or transferred from one location
12 to another.

14 **Sec. 2. 9-B MRSA §131, sub-§17**, as amended by PL 1997, c. 398,
Pt. A, §8, is further amended to read:

16 **17. Financial institution.** "Financial institution" means a
18 universal bank or limited purpose bank organized under the
provisions of this Title, and a trust company, nondepository
20 trust company, savings bank, industrial bank or savings and loan
association organized under the prior laws of this State. ~~As the~~
22 ~~term "financial institution" is used in Parts 1 and 2 and in~~
~~chapter 46, it includes credit unions organized pursuant to the~~
24 ~~laws of this State. When the term "financial institution" is~~
used in Parts 1 and 2 and sections 422-A, 427, 428, 429 and
26 chapter 46, the term also includes a credit union organized
pursuant to the laws of this State.

28 **Sec. 3. 9-B MRSA §131, sub-§23-A**, as enacted by PL 1997, c.
30 398, Pt. A, §13, is amended to read:

32 **23-A. Investor.** "Investor" means any person who has an
ownership interest in a financial institution and is entitled to
34 vote under the institution's organizational documents.
"Investor" does not include a member of a credit union organized
36 pursuant to the laws of this State.

38 **Sec. 4. 9-B MRSA §131, sub-§35**, as amended by PL 1999, c.
229, §1, is further amended to read:

40 **35. Satellite facility.** "Satellite facility" means any
42 facility, automated device or electronic terminal established by
a financial institution authorized to do business in this State
44 or a credit union authorized to do business in this State at
which an existing financial institution customer may initiate
46 banking transactions, including, but not limited to, cash
deposits to and withdrawals from that customer's account, cash
48 advances on a preauthorized credit line, transfers between
deposit or share accounts or payment transfers from the
50 customer's account to accounts of other financial institution
customers. Such a facility is not permanently staffed and is not

part of a main office or branch office of a financial institution. Such a facility may be part of an electronic funds transfer system. Satellite facilities include facilities engaged in soliciting, receiving or accepting money or its equivalent on deposit from new and existing customers. ~~The term "satellite facility"~~ "Satellite facility" does not include a cash dispensing machine that, operating in conjunction with a processor and network, allows a customer to debit an account in exchange for dispensing cash and that may allow a customer to effectuate transfers between the customer's accounts in the same financial institution, a point-of-sale terminal, a night depository or an office or facility engaged solely in the solicitation and origination of loans.

Sec. 5. 9-B MRSA §131, sub-§37-A is enacted to read:

37-A. Share account. "Share account" means a share or deposit account at a credit union held by or offered to a member or potential member. "Share account" includes, but is not limited to, accounts such as share, share draft and term share accounts.

Sec. 6. 9-B MRSA §214, sub-§2, as amended by PL 1993, c. 538, §1, is further amended to read:

2. Assessment on financial institutions.

A. To provide for the balance of the reasonable expenses incurred to fulfill the bureau's duty pursuant to this Title, including general regulatory costs, overhead, transportation and general office and administrative expenses, the superintendent shall assess each financial institution under the superintendent's supervision at the annual rate of at least 6¢ for each \$1,000 of the total of average assets, as defined by the superintendent. The frequency of assessment may coincide with the frequency of filing periodic financial reports with the bureau but may not be more frequent than quarterly. The superintendent may raise the minimum assessment rate of 6¢ for each \$1,000 of the total of average assets by promulgating rules pursuant to section 251 at such time as economic conditions warrant such an increase. In no event may the semiannual assessment be less than \$25.

B. An assessment pursuant to paragraph A may be made on or before the assessment date for the period prescribed as follows:

	Period ending	Assessment date
2		
	Quarterly	March 31st
4		May 1st
		June 30th
		August 1st
		September 30th
6		November 1st
		December 31st
		February 1st
8	Semiannually	June-30th
		August-1st
		December-31st
		February-1st

10 The superintendent shall immediately notify the financial
12 institution of the assessment. The assessment must be paid
14 to the Treasurer of State within 10 days following the
assessment date.

16 **Sec. 7. 9-B MRSA §214, sub-§2-B**, as amended by PL 2001, c.
18 211, §3, is further amended to read:

20 **2-B. Assessment on nondepository trust companies.**
Nondepository trust companies that are not affiliated with a
22 financial institution shall pay an annual assessment at the
annual rate of not less than \$2,000 or an amount determined by
24 the superintendent of at least 6¢ for every \$10,000 of fiduciary
assets under its management, custody or care. The superintendent
26 may further define by rule fiduciary assets under management,
custody or care or change the minimum assessment whenever
28 economic conditions warrant such a change. Rules adopted
pursuant to this subsection are routine technical rules as
30 defined in Title 5, chapter 375, subchapter II-A 2-A. These
assessments must be paid ~~annually by February 15th of each year~~
~~on fiduciary assets outstanding December 31st of the prior year~~
32 in accordance with subsection 2, paragraph B.

34 **Sec. 8. 9-B MRSA §214, sub-§2-C**, as enacted by PL 2001, c.
36 211, §4, is amended to read:

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

44 **Sec. 9. 9-B MRSA §214, sub-§4**, as enacted by PL 1975, c. 500,
46 §1, is amended to read:

48 **4. Penalty.** Any financial institution ~~which shall fail that~~
fails to make such the payments required under this section
50 within the time specified shall be is subject to a penalty of not

2 more than ~~\$100~~ \$500 per day for each day it is in violation of
this section, which penalty, together with the amount due under
4 ~~foregoing the~~ provisions of this section, may be recovered in a
civil action in the name of the State.

6 **Sec. 10. 9-B MRSA §225, sub-§1**, as enacted by PL 1975, c. 500,
§1, is amended to read:

8
10 **1. Superintendent's authority.** All records of financial
institutions authorized to do business in this State and of
12 ~~federally-chartered---financial---institutions~~ credit unions
authorized to do business in this State, insofar as this section
14 does not contravene paramount ~~Federal~~ federal law, shall ~~must~~ be
retained for such minimum periods as the superintendent may
16 prescribe.

18 **Sec. 11. 9-B MRSA §228, sub-§1**, as enacted by PL 1975, c. 500,
§1, is amended to read:

20 **1. Requirement.** If, in the opinion of the superintendent,
any financial institution authorized to do business in this State
22 or credit union authorized to do business in this State, or its
the officers, corporators, directors, employees or agents have of
24 any financial institution authorized to do business in this State
or credit union authorized to do business in this State, has
26 persistently violated any provision of this Title or ~~regulation~~
~~promulgated--thereunder~~ rule adopted under this Title, the
28 superintendent shall ~~forthwith~~ report the same violation, with
such any remarks as ~~he~~ deems the superintendent determines
30 appropriate, to the Attorney General who may ~~forthwith~~ institute
a prosecution ~~therefor~~ of the violation on behalf of the State.

32 **Sec. 12. 9-B MRSA §241, sub-§7**, as repealed and replaced by PL
34 1997, c. 660, Pt. D, §2, is amended to read:

36 **7. Restrictions on use of names of Maine financial**
institutions on credit cards. A credit card may be titled and
38 may have the name of a financial institution authorized to do
business in this State or credit union authorized to do business
40 in this State on the card if:

42 A. The terms of the credit card contract comply with the
laws applicable to that financial institution or credit
44 union; or

46 B. The name and state of the financial institution or
credit union underwriting the debt appears on the credit
48 card.

2 **Sec. 13. 9-B MRSA §244**, as enacted by PL 1975, c. 500, §1, is
amended to read:

4 **§244. Exemption.**

6 Any A financial institution authorized to do business in
7 this State or credit union authorized to do business in this
8 State subject to the provisions of this chapter shall--be is
exempt from the provisions of Title 5, chapter 10.

10 **Sec. 14. 9-B MRSA §361**, as amended by PL 1997, c. 398, Pt. H,
12 §1, is further amended to read:

14 **§361. Applicability of chapter**

16 The Notwithstanding any other provisions of law, the
17 provisions of this chapter apply to and supersede any other
18 provision of law governing conservation, liquidation and
19 insolvency of financial institutions organized under the laws of
20 this State.

22 **Sec. 15. 9-B MRSA §427, sub-§14** is enacted to read:

24 **14. Applicability.** This section applies to financial
25 institutions authorized to do business in this State and credit
26 unions authorized to do business in this State.

28 **Sec. 16. 9-B MRSA §824**, as enacted by PL 1975, c. 500, §1, is
amended to read:

30 **§824. Participation in electronic funds transfer system**

32 **1. Authorization.** ~~A credit union, with the prior written~~
34 ~~approval of the superintendent, may issue to its members cards or~~
35 ~~other devices permitting such to its members that permit the~~
36 members to gain access to or participate in an established
electronic funds transfer system.

38 ~~**2. Limitations.** The use of such cards or other devices~~
40 ~~pursuant to subsection 1 by the members of the credit union shall~~
41 ~~be subject to the conditions and limitations set forth in section~~
42 ~~853 and 857.~~

44 **Sec. 17. 9-B MRSA §826**, as amended by PL 1983, c. 373, §2, is
repealed and the following enacted in its place:

46 **§826. Offices and satellite facilities**

48 A credit union may establish, relocate, close and operate a
50 branch or satellite facility in accordance with chapter 33,
except that the limitation of section 337, subsection 2 does not

2 apply. The limits of section 863 apply to credit union
3 investment in real estate for office facilities. The
4 establishment, relocation or closing of a branch or facility must
5 meet the needs and convenience of the credit union's members.

6 **Sec. 18. 9-B MRSA §827, sub-§3**, as enacted by PL 1995, c. 512,
7 §1, is amended to read:

8
9 **3. Lien on shares.** A credit union may impress and enforce
10 a lien on the shares and dividends of a member to the extent of
11 any loan made to and any dues or charges payable by that member.
12 A credit union that has been designated a community development
13 credit union pursuant to section 817 may impress and enforce a
14 lien on the shares and dividends of a nonmember to the extent of
15 any loan made to and any dues or charges payable by that
16 nonmember.

17 **Sec. 19. 9-B MRSA §831, sub-§2**, as amended by PL 1997, c. 108,
18 §11, is further amended to read:

19
20 **2. Share transactions.** The provisions of ~~section~~ sections
21 422-A, 427, 428 and 429 are applicable to shares or share
22 accounts in a credit union.

23 **Sec. 20. 9-B MRSA §832, sub-§2**, as amended by PL 1979, c. 663,
24 §54, is further amended to read:

25
26 **2. Payments to fund.** Before the payment of a dividend,
27 there shall must be set apart into the guaranty fund a percentage
28 of the gross income of the credit union which that was
29 accumulated during the preceding dividend period, in the
30 following manner:

31
32 **A.** For credit unions in operation less than 4 years or
33 having assets of less than \$500,000, 10% of gross income
34 until the guaranty fund shall ~~equal~~ equals 7% of the total
35 outstanding loans and risk assets of the credit union and
36 then 5% of the gross income until the guaranty fund shall
37 ~~equal~~ equals 10% of the total outstanding loans and risk
38 assets; or

39
40 **B.** For credit unions in operation more than 4 years and
41 having assets of \$500,000 or more, 10% of gross income until
42 the guaranty fund shall ~~equal~~ equals 4% of the total
43 outstanding loans and risk assets of the credit union and
44 then 5% of the gross income until the guaranty fund shall
45 ~~equal~~ equals 6% of the total outstanding loans and risk
46 assets.
47
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2 The superintendent may waive all or part of the payments required
3 under this subsection for good cause shown by a credit union.

4 **Sec. 21. 9-B MRSA §832, sub-§5** is enacted to read:

6 **5. Rulemaking.** The superintendent may adopt rules to
7 implement this section or vary the amount of the fund required
8 under this section. Rules adopted pursuant to this subsection
9 are routine technical rules as defined in Title 5, chapter 375,
10 subchapter 2-A.

12 **Sec. 22. 9-B MRSA §833, sub-§1**, as amended by PL 1997, c. 398,
13 Pt. L, §8, is repealed.

14 **Sec. 23. 9-B MRSA §833, sub-§1-A** is enacted to read:

16 **1-A. Time for payment of dividends; method.** At such
17 intervals as the board of directors may authorize and after
18 provision for the guaranty fund established pursuant to section
19 832, the board of directors may declare a dividend to be paid at
20 different rates on different types of shares, at different rates
21 and maturity dates in the case of share certificates and at
22 different rates on different types of share draft accounts.
23 Dividends credited may be accrued on various types of shares,
24 share certificates and share draft accounts as authorized by the
25 board of directors.

28 **Sec. 24. 9-B MRSA §833, sub-§2**, as enacted by PL 1975, c. 500,
29 §1, is repealed.

30 **Sec. 25. 9-B MRSA §833, sub-§3-A**, as enacted by PL 1981, c.
31 501, §36, is repealed.

34 **Sec. 26. 9-B MRSA §835**, as enacted by PL 1975, c. 500, §1, is
35 repealed.

36 **Sec. 27. 9-B MRSA §836, sub-§2**, as corrected by RR 1997, c. 2,
37 §37, is repealed.

40 **Sec. 28. 9-B MRSA §836, sub-§3**, as enacted by PL 1975, c. 500,
41 §1, is repealed.

42 **Sec. 29. 9-B MRSA §842, sub-§2, ¶B**, as enacted by PL 1975, c.
43 500, §1, is amended to read:

46 B. To fix from time to time the maximum amount, both
47 secured and unsecured, which may be loaned to any one
48 member, except as limited by chapter 85, and to establish a
49 written loan policy pursuant to section 851, which must be
50 reviewed and ratified at least annually;

2 **Sec. 30. 9-B MRSA §842, sub-§2, ¶H**, as enacted by PL 1975, c.
500, §1, is amended to read:

4 H. To have charge of the investment of funds and to
6 establish a written investment policy pursuant to section
8 861, which must be reviewed and ratified at least annually;

10 **Sec. 31. 9-B MRSA §842, sub-§2, ¶J**, as enacted by PL 1975, c.
500, §1, is amended to read:

12 J. To appoint a supervisory committee of not less than 3
14 members, not more than one member of which may be a
16 director~~+~~. If the duties of the supervisory committee are
18 conducted by an independent public accountant and the board
20 has contracted for an annual audit by an independent public
22 accountant pursuant to section 844, a supervisory committee
24 need not be appointed;

26 **Sec. 32. 9-B MRSA §842, sub-§5**, as enacted by PL 1975, c. 500,
§1, is repealed.

28 **Sec. 33. 9-B MRSA §844**, as amended by PL 2001, c. 211, §19,
is further amended to read:

30 **§844. Supervisory committee or independent public accountant**

32 **1. Duties of supervisory committee.** ~~The~~ If a supervisory
34 committee, ~~is~~ appointed pursuant to section 842, subsection 2,
36 the supervisory committee shall keep informed fully and at all
38 times as to the financial condition of the credit union, shall
40 examine or cause to be examined carefully the cash and accounts
42 of the credit union annually, and shall report to the board of
44 directors its findings, together with its recommendations. The
46 supervisory committee shall hold meetings at least once each
48 quarter and shall keep records of the meetings. The supervisory
50 committee shall make an annual report at the annual meeting of
members of the credit union.

1-A. Duties of independent public accountant. If the board
of directors employs an independent public accountant, the annual
audits must be conducted pursuant to section 453. Verification
of share, deposit and loan accounts must be conducted pursuant to
this section.

2. Verification of share, deposit and loan accounts.

 A. At least once in every 2 years, the supervisory
committee or the independent public accountant shall verify
or cause to be verified the share, deposit and loan accounts

2 of members of the credit union and a report of the
verification must be kept on file and available to be
4 reviewed at the time of the next examination or upon request
by the superintendent.

6 (1) If the verification is performed by the
supervisory committee, a controlled verification of
8 100% of the members' share, deposit and loan accounts
must be made.

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

18 B. If the superintendent determines such verification
inadequate, the superintendent may cause the bureau to
20 verify such accounts; and the bureau must have full access
to every aspect of the credit union's activities and to all
22 books, papers, vouchers, resources and all other records and
property belonging to said credit union, whether in its
24 immediate possession or otherwise, for the purpose of
facilitating such verification.

26 C. Expenses incurred by the superintendent in any such
28 verification must be paid by the credit union, to be
credited and used as provided in section 214.

30 ~~3. Meetings. The supervisory committee shall hold meetings
32 at least once each quarter, and shall keep records thereof.~~

34 ~~4. Annual report. The supervisory committee shall make an
annual report at the annual meeting of members of the credit
36 union.~~

38 5. Exception. Notwithstanding the provisions of
40 subsections 1 and 1-A, any credit union that has total assets in
excess of \$50,000,000 must employ an independent public
accountant to conduct an annual audit of the credit union.

42 6. Rulemaking. The superintendent may adopt rules to
44 further define the duties of the supervisory committee. Rules
adopted pursuant to this subsection are routine technical rules
46 as defined in Title 5, chapter 375, subchapter 2-A.

48 **Sec. 34. 9-B MRSA §845, sub-§1**, as enacted by PL 1975, c. 500,
§1 is amended to read:

2 **1. Powers and duties.** The If a credit committee, is
appointed pursuant to section 842, subsection 2, the credit
4 committee shall:

6 A. Hold meetings at least once in each month;

8 B. Act on all applications for loans to members;

10 C. Approve in writing all personal loans granted and the
security, if any, pledged ~~therefor~~ for personal loans; and

12 D. Submit to the board of directors all applications for
14 loans to be secured by mortgages of real estate, with its
recommendations ~~thereon on the applications,~~ which shall
16 must include a signed appraisal as to its best judgment of
the value of the real estate involved.

18 **Sec. 35. 9-B MRSA §846, sub-§1,** as amended by PL 1983, c. 51,
20 §6, is further amended to read:

22 **1. Time and notice.** The annual meeting of the members of a
credit union shall must be held at such time and place as the
24 board of directors may determine, but not later than 180 days
after the close of the fiscal year. Special meetings may be
26 called at any time by a majority of the directors, and shall must
be called by the clerk upon written ~~application of 10 or more~~
28 ~~members entitled to vote~~ request of 25 members or 5% of the total
members entitled to vote as of the date of request, whichever
30 number is greater. Notwithstanding this section, the maximum
number of members required to call a special meeting may not
32 exceed 500. Notice of all meetings of the members shall must be
given in the manner prescribed in the bylaws.

34 **Sec. 36. 9-B MRSA §851,** as amended by PL 1997, c. 398, Pt. L,
36 §9, is further amended to read:

38 **§851. Loans in general**

40 **1. Authorization.** A credit union may make, sell, purchase,
arrange, participate in, invest in and otherwise deal in loans to
42 its members for any purpose in accordance with the provisions of
this chapter.

44 **2. Applicability of other sections.** In addition, a credit
46 union is subject to ~~section~~ sections 432 ~~relating to interest~~
~~absent in writing,~~ 433, 435 and 436.

48 **3. Approvals required.** The credit committee provided for in
50 section 845 shall approve all loans to members made by the credit

2 union. In addition, the approval of the credit union's board of
3 directors or executive committee shall be required for all loans
4 other than personal loans to members.

5 4. Written loan policy. The board of directors shall
6 establish a written loan policy, which must be reviewed and
7 ratified at least annually, that addresses at a minimum the
8 following:

9 A. Individual lending officer authority;

10 B. Loan mix and diversification;

11 C. Loan quality parameters; and

12 D. Delegation of authority to officers and committees
13 responsible for administering the portfolio.

14 **Sec. 37. 9-B MRSA §852, sub-§2,** as enacted by PL 1975, c. 500,
15 §1, is repealed.

16 **Sec. 38. 9-B MRSA §854, sub-§3** is enacted to read:

17 3. Rulemaking. The superintendent may adopt rules to
18 administer and carry out this section, including rules to define
19 or further define terms used in this section and to establish
20 limits or requirements other than those specified in this
21 section. Rules adopted pursuant to this subsection are routine
22 technical rules as defined in Title 5, chapter 375, subchapter
23 2-A.

24 **Sec. 39. 9-B MRSA §861, sub-§3** is enacted to read:

25 3. Written investment policy. A credit union's board of
26 directors shall establish a written investment policy, which must
27 be reviewed and ratified at least annually, that addresses at a
28 minimum the following:

29 A. Investment quality parameters;

30 B. Investment mix and diversification;

31 C. Investment maturities; and

32 D. Delegation of authority to officers and committees
33 responsible for administering the portfolio.

34 **Sec. 40. 9-B MRSA §862, sub-§1,** as amended by PL 1985, c. 533,
35 §1, is further amended to read:

2 **1. Deposits in insured institutions.** Deposits or share
3 accounts in any financial institution, or ~~shares in a~~ credit
4 union, ~~provided that~~ as long as deposits or shares in such the
5 financial institution or credit union are insured by the Federal
6 Deposit Insurance Corporation,--the--Federal--Savings--and--Loan
7 Insurance---Corperation or the National Credit Union
8 Administration;

9
10 **Sec. 41. 9-B MRSA §871,** as amended by PL 1979, c. 429, §14,
11 is repealed.

12 **Sec. 42. 9-B MRSA §§871-A and 871-B** are enacted to read:

13 **§871-A. Dissolution**

14
15 **1. Voluntary dissolution.** This subsection governs the
16 voluntary dissolution of a credit union.

17
18 A. A recommendation may be made that a credit union be
19 dissolved and voluntarily liquidated by majority vote of
20 either the entire membership of the credit union entitled to
21 vote or the board of directors of the credit union. Within
22 10 days after recommendation, the credit union shall notify
23 the superintendent, the federal agency that insures the
24 credit union accounts and the credit union members in
25 writing of the recommendation and the reasons for
26 dissolution. If the entire membership votes to dissolve and
27 voluntarily liquidate the credit union, then no additional
28 votes of the entire membership need be taken. If the board
29 of directors of the credit union votes to dissolve and
30 voluntarily liquidate the credit union, then a special
31 meeting of the credit union's entire membership must be
32 called, no sooner than 10 days after notice has been mailed
33 to the superintendent. A majority of the entire membership
34 of the credit union entitled to vote must vote to dissolve
35 and voluntarily liquidate the credit union. Members may
36 cast their votes by proxy on forms prepared by the board of
37 directors and mailed with the meeting notice.

38
39 B. Whenever there is a recommendation of dissolution
40 pursuant to paragraph A, the board of directors shall
41 provide the superintendent with a plan of dissolution. The
42 plan of dissolution must set forth the method and schedule
43 for terminating the business of the credit union and may
44 provide for a restriction on withdrawal of shares or
45 withdrawal of share certificates. Before the 2nd membership
46 vote required in paragraph A may be taken, the board must
47 receive the superintendent's approval of the plan of
48 dissolution.

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2 C. The superintendent may approve the dissolution of a
4 credit union recommended by a majority of the entire board
6 of directors but approved by less than a majority of all
8 members if the superintendent finds, upon the written and
10 verified application of the board, that:

12 (1) The board mailed written notice of the meeting to
14 consider dissolution to all members qualified to vote;

16 (2) The notice disclosed the purpose of the meeting
18 and that approval of dissolution might be sought
20 pursuant to this paragraph;

22 (3) A majority of the votes cast by the members were
24 in favor of dissolution; and

26 (4) The board has an acceptable plan of dissolution.

28 D. If the superintendent approves dissolution, either by
30 vote of the board or vote of the members, the credit union
32 shall immediately cease to do business, except for the
34 express purposes of liquidation including the discharging of
36 debts, collecting on loans, distributing assets and every
38 other act necessary to wind up and liquidate the business.
40 It may sue and be sued for the purpose of enforcing such
42 debts and obligations until its affairs are fully adjusted.

44 E. The board of directors shall use the assets of the
46 credit union to pay claims in the following order:

48 (1) Claimants whose claims are secured must receive
50 their security. To the extent their respective claims
exceed the value of the security for those claims, as
determined to the satisfaction of the receiver, they
each have an unsecured claim against the credit union
having priority as provided in subparagraph (2); and

(2) Unsecured claims against the liquidation estate
that are proved to the satisfaction of the receiver
have priority in the following order:

(a) Administrative costs and expenses of
liquidation;

(b) Claims for wages and salaries, including
vacation, severance and sick leave pay;

(c) Taxes legally due and owing to the United
States or any state or subdivision of the United
States or state;

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(d) Debts due and owing to the State and the United States, including the National Credit Union Administration;

(e) General creditors, and secured creditors to the extent that the secured creditors' respective claims exceed the value of the security for those claims;

(f) Pro rata distribution to members in proportion to the respective amount of their deposits and shares;

(g) In a case involving liquidation of a corporate credit union, membership capital of the corporate credit union;

(h) In a case involving liquidation of a designated community development credit union, any outstanding secondary capital accounts issued pursuant to state law; and

(i) In a case involving liquidation of a corporate credit union, paid-in capital.

F. Priorities for payment of claims under paragraph E are to be based on the circumstances that exist on the date of the liquidation.

G. If the repudiation or disaffirmance of any contract or lease gives rise to a claim for damages, the claim must be considered a general creditor claim under paragraph E, subparagraph (2), division (e) and not a cost or expense of liquidation under paragraph E, subparagraph (2), division (a).

H. All unsecured claims of any category or class or priority described in paragraph E, subparagraph 2, divisions (a) to (i) must be paid in full, or provisions made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class, payment must be made pro rata. Notwithstanding anything to the contrary in this section, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority categories described in paragraph E, subparagraph (2), divisions (a) to (e) as the receiver believes are reasonably necessary to conduct the liquidation, as long as the

2 receiver determines that adequate funds exist or will be
3 recovered during the liquidation to pay in full all claims
4 of any higher priority. If a surplus remains after making
5 distribution in full on all allowed claims described in
6 paragraph E, subparagraph (2), division (a) to (i), the
7 surplus must be distributed pro rata to the credit union's
8 members.

9
10 I. A credit union liquidating voluntarily may not continue
11 in existence for more than 3 years after approval of
12 dissolution, unless an extension is granted by the
13 superintendent for good cause shown in an application filed
14 prior to expiration of the 3-year period.

15
16 J. After all debts, liabilities and obligations of the
17 credit union are paid or discharged or otherwise adequately
18 provided for, the credit union shall file articles of
19 dissolution with the Secretary of State where the original
20 certificate of organization is recorded. Articles of
21 dissolution must set forth:

22 (1) The name and address of the credit union;

23 (2) The date dissolution was approved;

24 (3) A statement of how dissolution was approved;

25 (4) A report of liquidating activities; and

26 (5) Such other information as the superintendent may
27 require.

28
29 Dissolution is effective upon the superintendent's
30 acceptance of articles of dissolution for filing with the
31 bureau, after recording. At the time of the
32 superintendent's acceptance of the filing, the credit union
33 ceases to exist, except for the purposes of suits or other
34 proceedings provided for by law.

35
36 **2. Involuntary dissolution.** This subsection governs the
37 involuntary dissolution of a credit union.

38
39 A. If, upon examination of a credit union, the
40 superintendent determines that the credit union is insolvent
41 or that the credit union is operating in an unsafe or
42 unsound manner, the superintendent may appoint a receiver
43 who shall proceed to close the credit union. The credit
44 union shall remain in existence for the purpose of winding
45 up its affairs.

2 B. The person appointed by the superintendent as a receiver
3 may be the superintendent, a deputy or any other person,
4 including the agency insuring the credit union's accounts
5 pursuant to section 836, as the superintendent may choose,
6 and a certified copy of the order making such an appointment
7 is evidence of the appointment. The receiver need not post
8 a bond. The receiver has the power and authority provided
9 in this Title and any other powers and authority as may be
10 expressed in the order of the superintendent.

11 C. If the superintendent or a deputy is appointed receiver,
12 no additional compensation need be paid, but any reasonable
13 and necessary expenses of the superintendent or deputy as
14 receiver must be paid by the credit union. If another
15 person is appointed, then the compensation of the receiver
16 must be paid from the assets of that credit union.

17 D. In the event that the federal agency insuring the credit
18 union's shares or accounts pursuant to section 836 accepts
19 an appointment as receiver, the agency shall acquire both
20 legal and equitable title to all assets, rights or claims
21 and to all real and personal property of the credit union to
22 the extent necessary for the agency to perform its duties as
23 receiver under applicable federal law to effectuate the
24 appointment. If the agency pays or makes available for
25 payment the insured share liabilities of a credit union by
26 reason of actions taken pursuant to this section, the agency
27 is subrogated to the rights of all the members of the credit
28 union, whether or not it has become receiver of the credit
29 union, in the same manner and to the same extent as it would
30 be subrogated in the receivership of a credit union
31 operating under a federal charter and insured by the agency.

32 E. Upon taking possession of the property and business of a
33 credit union under this chapter, the receiver:

34 (1) May collect money due to the credit union and do
35 all acts necessary to conserve its assets and business
36 and shall proceed to liquidate its affairs;

37 (2) Shall collect all debts due and claims belonging
38 to the credit union and may sell or compound all bad or
39 doubtful debts;

40 (3) May sell, for cash or other consideration or as
41 provided by law, all or any part of the real and
42 personal property of the credit union;

43 (4) May take, in the name of the credit union, a
44 mortgage on the real property from a bona fide
45 owner.

2 purchaser to secure the whole or part of the purchase
3 price;

4 (5) May borrow money and issue evidence of
5 indebtedness for the money. To secure the repayment of
6 the indebtedness, the receiver may mortgage, pledge,
7 transfer in trust or hypothecate any or all of the
8 property of the credit union, whether real, personal or
9 mixed, superior to any charge for expenses of
10 liquidation; and

11 (6) May represent the credit union in lawsuits under
12 the receiver's own name as receiver of the credit union.

13 F. The receiver shall use the assets of the credit union to
14 pay claims in the following order:

15 (1) Claimants whose claims are secured must receive
16 their security. To the extent their respective claims
17 exceed the value of the security for those claims, as
18 determined to the satisfaction of the receiver, they
19 each have an unsecured claim against the credit union
20 having priority as provided in subparagraph (2); and

21 (2) Unsecured claims against the liquidation estate
22 that are proved to the satisfaction of the receiver
23 have priority in the following order:

24 (a) Administrative costs and expenses of
25 liquidation;

26 (b) Claims for wages and salaries, including
27 vacation, severance and sick leave pay;

28 (c) Taxes legally due and owing to the United
29 States or any state or subdivision of the United
30 States or state;

31 (d) Debts due and owing to the State and the
32 United States, including the National Credit Union
33 Administration;

34 (e) General creditors, and secured creditors to
35 the extent that the secured creditors' respective
36 claims exceed the value of the security for those
37 claims;

38 (f) Pro rata distribution to members in
39 proportion to the respective amount of their
40 deposits and shares;

2 (g) In a case involving liquidation of a
4 corporate credit union, membership capital of the
 corporate credit union;

6 (h) In a case involving liquidation of a
8 designated community development credit union, any
 outstanding secondary capital accounts issued
10 pursuant to state law; and

12 (i) In a case involving liquidation of a
 corporate credit union, paid-in capital.

14 G. Priorities for payment of claims under paragraph F are
16 based on the circumstances that exist on the date of the
 liquidation.

18 H. If the repudiation or disaffirmance of any contract or
20 lease gives rise to a claim for damages, the claim must be
22 considered a general creditor claim under paragraph F,
 subparagraph (2), division (e) and not a cost or expense of
24 liquidation under paragraph F, subparagraph (2), division
 (a).

26 I. All unsecured claims of any category or class or
28 priority described in paragraph F, subparagraph (2),
30 divisions (a) to (i) must be paid in full, or provisions
32 made for such payment, before any claims of lesser priority
34 are paid. If there are insufficient funds to pay all claims
36 of a category or class, payment must be made pro rata.
38 Notwithstanding anything to the contrary in this section,
40 the receiver may, at any time, and from time to time, prior
42 to the payment in full of all claims of a category or class
44 with higher priority, make such distributions to claimants
 in priority categories described in paragraph F,
 subparagraph (2), divisions (a) to (e) as the receiver
 believes are reasonably necessary to conduct the
 liquidation, as long as the receiver determines that
 adequate funds exist or will be recovered during the
 liquidation to pay in full all claims of any higher
 priority. If a surplus remains after making distribution in
 full on all allowed claims described in paragraph F,
 subparagraph (2), divisions (a) to (i), the surplus must be
 distributed pro rata to the credit union's members.

46 J. After all debts, liabilities and obligations of the
48 credit union are paid or discharged or otherwise adequately
50 provided for, the receiver shall file articles of
 dissolution with the Secretary of State where the original
 certificate of organization is recorded. Articles of

dissolution must set forth:

- (1) The name and address of the credit union;
- (2) The date dissolution was ordered;
- (3) A statement of how dissolution was ordered;
- (4) A report of liquidating activities; and
- (5) Such other information as the superintendent may require.

Dissolution is effective upon the superintendent's acceptance of articles of dissolution for filing with the bureau after recording. At that time the credit union ceases to exist, except for the purposes of suits or other proceedings provided for by law.

§871-B. Applicability of chapter

Notwithstanding any other provisions of law, the provisions of this chapter apply and supersede the provisions of laws relating to the dissolution, merger and conversion of credit unions organized under the laws of this State.

Sec. 43. 9-B MRSA §874, as amended by PL 1985, c. 647, §10, is further amended to read:

§874. Conversion: State to federal charter

A credit union organized under the general or special laws of this State may convert to a ~~federally-chartered~~ federally chartered credit union. Approval of the members of the credit union for the conversion shall must be obtained in the manner set forth in section 342, subsection 3 ~~6~~. Upon obtaining such ~~the~~ approval, the credit union shall provide to the superintendent all necessary approvals and charters required by the National Credit Union Administration and all federal laws and regulations applicable ~~thereto~~ to the conversion. The superintendent shall notify the Secretary of State that the conversion has been effected. A copy of the approval or charter shall must accompany the notification.

SUMMARY

The bill makes technical changes to several definitions in the Maine banking laws.

2 The bill synchronizes the payment of assessments by all
3 financial institutions to the Department of Professional and
4 Financial Regulation, Bureau of Financial Institutions; provides
5 consistency with frequency of reports filed; removes outdated
6 references; and provides for an increase in the penalty for
7 nonpayment of assessments. The current penalty of \$100 was
8 created in 1975. All penalties paid would flow to the General
Fund.

10 The bill clarifies that state law governing requirements for
11 retention of records applies to banks and credit unions
12 authorized to do business in this State to the extent that those
13 requirements do not contravene existing federal law.

14 The bill clarifies the Superintendent of Financial
15 Institutions' authority to report violations of the Maine banking
16 laws to the Attorney General's office for prosecution on behalf
17 of the State.

20 The bill makes a technical change to the law restricting the
21 use of names of Maine financial institutions on credit cards to
22 make it applicable to credit cards underwritten by state and
23 federally chartered credit unions in the same fashion that the
24 law is applicable to state and federally chartered banks.

26 The bill clarifies that those provisions in the banking laws
27 governing the conservation, liquidation and insolvency of a
28 financial institution supersede any other state statute.

30 The bill removes outdated language governing participation
31 in electronic funds transfer systems and the opening, relocating,
32 closing or operation of a branch by a state chartered credit
33 union.

34 The bill clarifies that a credit union that has been
35 designated a community development credit union under state law
36 may impress and enforce a lien on shares and dividends of a
37 nonmember to the same extent that the credit union may impress
38 and enforce a lien on shares and dividends of a member.

40 The bill amends state law to apply general protections to
41 accounts held by credit unions.

44 The bill gives the superintendent the authority to waive all
45 or part of the guaranty fund requirements for individual credit
46 unions. It adds rule-making authority with which to further
47 implement that provision and maintain parity with federal credit
48 union law.

50 The bill amends outdated laws governing credit union payment

2 of dividends and interest on accounts and synchronizes state law
with federal law in this area.

4 The bill removes an outdated reporting requirement for
credit unions and repeals an outdated provision for the
6 transition of credit unions into the state requirement for
insurance of accounts.

8
10 The bill adds a specific requirement that a credit union
board of directors establish a written loan policy and written
investment policy and modifies several outdated provisions
12 relating to the establishment of a supervisory committee or a
credit committee. It also repeals an outdated law that prohibits
14 a credit union director from acting as a surety or comaker on any
loan.

16
18 The bill clarifies the duties and responsibility of a credit
union supervisory committee or independent public accountant.
The bill also requires a credit union over \$50,000,000 in assets
20 to employ an independent public accountant and provides the
superintendent with rule-making authority to further define the
22 duties of the supervisory committee or independent public
accountant.

24
26 The bill repeals outdated provisions in state law governing
powers and duties of credit committees or loan officers of a
credit union.

28
30 The bill amends outdated provisions for credit union members
to call a special meeting of the board of directors and brings it
into alignment with federal law in that area.

32
34 The bill clarifies the lending powers of a credit union,
repeals the outdated provisions relating to mortgage loan
application, inserts statutory provisions that require a credit
36 union to establish a written loan policy, and gives the
superintendent rule-making authority to further regulate lending
38 activities by credit unions.

40
42 The bill requires a credit union to have a written
investment policy and removes an outdated reference to the now
defunct Federal Savings and Loan Insurance Corporation found in
credit union law.

44
46 The bill repeals outdated language governing voluntary or
involuntary dissolution of a credit union and replaces it with
the more modern approach that is consistent with the process
48 followed by the National Credit Union Administration, the federal

2 agency that insures all accounts of each credit union doing
business in Maine.

4 The bill corrects an outdated reference in the credit union
conversion statutes.