

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)



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 904

S.P. 292

March 1, 2007

An Act To Make Technical and Supervisory Amendments to the 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 black ink, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SULLIVAN of York.
Cosponsored by Representative BRAUTIGAM of Falmouth and
Senator: SNOWE-MELLO of Androscoggin, Representatives: CANAVAN of Waterville,
CONOVER of Oakland, CROCKETT of Augusta, McKANE of Newcastle, PRIEST of
Brunswick, RICHARDSON of Warren, SAVAGE of Falmouth.

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

2 **Sec. 1. 9-B MRSA §212, sub-§1, ¶A**, as amended by PL 1995, c. 502, Pt. H, §4,
3 is further amended to read:

4 A. The superintendent may employ ~~a deputy superintendent~~ superintendents,
5 subject to the commissioner's approval and in accordance with the Civil Service Law.

6 **Sec. 2. 9-B MRSA §212, sub-§1, ¶B**, as amended by PL 1995, c. 502, Pt. H, §4,
7 is further amended to read:

8 B. The superintendent shall designate ~~the~~ a deputy superintendent to perform the
9 duties of the superintendent whenever the superintendent is absent from the State; ~~the~~
10 a deputy superintendent is directed to do so by the superintendent; there is a vacancy
11 in the office of superintendent; or the superintendent is incapacitated by illness. In
12 the event of a vacancy in the office of the superintendent, the superintendent's
13 incapacitating illness or absence from the State at a time when there is no deputy
14 superintendent, the commissioner may designate a special deputy superintendent to
15 perform the duties of the superintendent for a period not to exceed 6 months.

16 **Sec. 3. 9-B MRSA §212, sub-§3**, as amended by PL 1995, c. 502, Pt. H, §4, is
17 further amended to read:

18 **3. Training of bureau personnel.** At the expense of the bureau, the superintendent
19 may train the deputy ~~superintendent~~ superintendents and bureau's employees, or have
20 them trained, in a manner the superintendent determines desirable; however training
21 programs may not place such undue emphasis upon safety and soundness of financial
22 institutions that institutions would be inhibited by the bureau from engaging in unusual
23 activities or loans that are in the public interest.

24 **Sec. 4. 9-B MRSA §234, sub-§1**, as enacted by PL 1975, c. 500, §1, is amended
25 to read:

26 **1. Requirement.** In connection with any proceeding under ~~this chapter~~ section 231
27 or 232 involving a financial institution under the concurrent supervision of a federal
28 agency and the bureau, the superintendent shall provide the appropriate federal agency
29 with notice of any such proceeding and the grounds therefor. Such proceeding may then
30 be continued jointly or by either the federal agency or the superintendent.

31 **Sec. 5. 9-B MRSA §235** is enacted to read:

32 **§235. Change of director or senior executive officer**

33 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
34 following terms have the following meanings.

35 A. "Financial institution in troubled condition" includes any financial institution:

36 (1) That is subject to a cease and desist order issued under section 231 or issued
37 by a federal regulator under applicable federal law;

- 1 (2) That is subject to a written agreement as contemplated under section 231;
2 (3) That has a composite rating of 4 or 5 under the federal Uniform Financial
3 Institutions Rating System or comparable composite ratings under a rating system
4 employed by the superintendent;
5 (4) That is not in compliance with section 412-A or is not in compliance with
6 applicable federal capital standards; or
7 (5) That has been notified in writing by the superintendent that it is in troubled
8 condition for the purposes of this section.

9 B. "Senior executive officer" means any person who holds the title of president, chief
10 executive officer, chief operating officer, chief financial officer, chief lending officer
11 or chief investment officer or, without regard to title, salary or compensation,
12 performs the function of one or more of these positions. "Senior executive officer"
13 also includes any other person identified by the superintendent, whether or not hired
14 as an employee, with significant influence over, or who participates in, major policy-
15 making decisions of a financial institution.

16 2. Filing notice. A financial institution in troubled condition shall file notice with
17 the superintendent at least 30 days prior to adding or replacing a member of its board of
18 directors or governing body, employing a senior executive officer or changing the duties
19 of a senior executive officer so that the senior executive officer would assume a different
20 senior executive officer position. The notice must be in a form and contain content as
21 prescribed by the superintendent. For good cause shown, the superintendent may accept
22 notice of less than 30 days.

23 3. Approval. The superintendent shall approve or disapprove the notice under
24 subsection 2 within 10 days after the receipt of the notice.

25 **Sec. 6. 9-B MRSA §241, sub-§10**, as enacted by PL 1995, c. 628, §18, is
26 amended to read:

27 **10. Deposit concentration.** A financial institution authorized to do business in this
28 State, a financial institution not authorized to do business in this State, a financial
29 institution holding company, a foreign bank or a foreign bank holding company may not
30 consolidate or merge or acquire control, directly or indirectly, of all or part of a ~~Maine~~
31 financial institution ~~or Maine financial institution holding company~~ authorized to do
32 business in this State if, as the result of the consolidation, acquisition or merger, the
33 ~~financial~~ acquiring institution would hold or control more than 30% of the total amount of
34 deposits of financial institutions authorized to do business in this State that are
35 attributable to branches located in this State; except, upon consideration of the decision-
36 making criteria found in section 253, the superintendent may waive the 30% deposit
37 concentration limit on a case-by-case basis. In calculating the amount of deposits that a
38 ~~financial institution authorized to do business in this State~~ an acquiring institution may
39 hold or control under this section, credit union shares are added to the amount of deposits
40 of financial institutions authorized to do business in this State that are attributable to
41 branches located in this State. The 30% deposit concentration limit does not apply to
42 credit unions authorized to do business in this State.

1 **Sec. 7. 9-B MRSA §342, sub-§6, ¶D** is enacted to read:

2 D. The financial institution must notify and provide the superintendent with a copy
3 of the application filed with the appropriate federal regulator within 3 days of filing
4 with the federal regulator.

5 **Sec. 8. 9-B MRSA §351, sub-§3**, as enacted by PL 1997, c. 398, Pt. G, §1, is
6 amended to read:

7 **3. Superintendent's approval required.** Following approval by the governing
8 body of each participating institution, the plan of merger, consolidation, purchase or
9 assumption, together with certified copies of the authorizing resolutions adopted by the
10 governing body of each participating institution, must be forwarded to the superintendent
11 for approval or disapproval pursuant to section 252. If the superintendent disapproves the
12 plan, the superintendent shall state the reason or reasons for the disapproval in writing
13 and furnish them to the participating institutions. The institutions must be given an
14 opportunity to amend the plan to obviate the reasons for disapproval.

15 **Sec. 9. 9-B MRSA §351, sub-§3-A** is enacted to read:

16 **3-A. Superintendent's approval not required.** Notwithstanding subsection 3, if
17 the surviving institution of a merger, consolidation, purchase or assumption is a federally
18 chartered institution and the transaction is subject to approval by its federal regulator,
19 approval by the superintendent is not required. The financial institution shall notify and
20 provide the superintendent a copy of the application filed with the appropriate federal
21 regulator within 3 days of filing with the federal regulator.

22 **Sec. 10. 9-B MRSA §846, sub-§2**, as amended by PL 1995, c. 512, §2, is further
23 amended to read:

24 **2. Voting.** A member may not be entitled to vote by proxy, except in a vote for
25 dissolution or merger, or have more than one vote; and a member under the age of 18
26 may be entitled to vote, subject to conditions prescribed in the bylaws. A fraternal
27 organization, voluntary association, partnership or corporation having membership in a
28 credit union may cast one vote at any of the meetings of the credit union by a duly
29 delegated agent.

30 **Sec. 11. 9-B MRSA §874**, as amended by PL 2003, c. 322, §43, is further
31 amended to read:

32 **§874. Conversion: State to federal charter**

33 A credit union organized under the general or special laws of this State may convert
34 to a federally chartered credit union. The credit union must notify and provide the
35 superintendent with a copy of the application filed with the National Credit Union
36 Administration within 3 days of filing with the National Credit Union Administration.
37 Approval of the members of the credit union for the conversion must be obtained in the
38 manner set forth in section 342, subsection 6. Upon obtaining the approval, the credit
39 union shall provide to the superintendent all necessary approvals and charters required by

1 the National Credit Union Administration and all federal laws and regulations applicable
2 to the conversion. The superintendent shall notify the Secretary of State that the
3 conversion has been effected. A copy of the approval or charter must accompany the
4 notification.

5 **Sec. 12. 9-B MRSA §1011, sub-§2**, as amended by PL 1995, c. 628, §26, is
6 further amended to read:

7 **2. Maine financial institution holding company.** "Maine financial institution
8 holding company" means any company whose home state is this State and that has
9 control over any Maine financial institution ~~authorized to do business in this State~~ or has
10 control over a company that controls a Maine financial institution ~~authorized to do~~
11 ~~business in this State.~~

12 **Sec. 13. 9-B MRSA §1011, sub-§6**, as amended by PL 1975, c. 666, §31-A, is
13 further amended to read:

14 **6. Maine financial institution.** "Maine financial institution" means a financial
15 institution ~~authorized to do business in this State~~ defined in section 131, subsection 17.

16 **Sec. 14. 9-B MRSA §1013, sub-§1, ¶C**, as amended by PL 1997, c. 182, Pt. A,
17 §8, is further amended to read:

18 C. Acquisition of more than 5% of the voting shares of a financial institution,
19 ~~whose home state is not this State~~, or a foreign bank by a Maine financial institution
20 or a Maine financial institution holding company.

21 **Sec. 15. 9-B MRSA §1013, sub-§1-A**, as enacted by PL 1985, c. 642, §6, is
22 amended to read:

23 **1-A. Notification.** Notwithstanding subsection 1, any person or company ~~which that~~
24 acquires directly or indirectly more than 5% of the voting shares of a Maine financial
25 institution or Maine financial institution holding company shall within 5 days of the
26 acquisition file with the superintendent a statement containing the following information
27 and any additional information as the superintendent ~~shall prescribe~~ prescribes as
28 necessary or appropriate in the public interest:

29 A. The background and identity of the person or company acquiring the voting
30 shares;

31 B. The source and amount of the funds or other consideration used in making the
32 purchase; and

33 C. Any plans or proposals ~~which that~~ any acquiring person or company making the
34 acquisition may have to liquidate the Maine financial institution or Maine financial
35 institution holding company, to sell its assets or merge it with any company or to
36 make any other major change in its business, corporate structure or management.

37 The superintendent shall promptly notify the Maine financial institution or Maine
38 financial institution holding company when a notice has been filed pursuant to this

1 section. The notice ~~shall~~ must identify the fact of the acquisition and the identity of the
2 person or company acquiring the voting shares.

3 Any person or company must also file notice under this section when there is material
4 change in ownership. The acquisition of an aggregate of more than another 5% of the
5 voting shares is a material change.

6 **Sec. 16. 9-B MRSA §1013, sub-§3, ¶A**, as amended by PL 1995, c. 628, §32, is
7 further amended to read:

8 A. The Maine financial institution or Maine financial institution holding company
9 to be established or acquired shall enter into an agreement with the superintendent to
10 provide reports and permit examination of its records to the extent considered
11 necessary by the superintendent to ensure compliance with this section and other
12 relevant provisions of this Title and any rules adopted under this Title. ~~If the~~
13 ~~financial institution to be established or acquired is federally chartered, the agreement~~
14 ~~may provide that compliance examination information must be provided by the~~
15 ~~federal agency responsible for supervision of that financial institution. The~~
16 ~~superintendent may specify the information that requires verification, and must be~~
17 ~~provided a report of that status of compliance by the federal agency.~~

18 **Sec. 17. 9-B MRSA §1013, sub-§3, ¶C**, as amended by PL 1997, c. 182, Pt. A,
19 §9, is repealed.

20 **Sec. 18. 9-B MRSA §1013, sub-§5**, as enacted by PL 1983, c. 302, §3, is
21 amended to read:

22 **5. Regulations.** The superintendent may ~~promulgate regulations~~ adopt rules to
23 supplement the requirements of this section.

24 **Sec. 19. 9-B MRSA §1013, last ¶**, as enacted by PL 1977, c. 223, is amended to
25 read:

26 Notwithstanding the foregoing, ~~no~~ a Maine financial institution holding company
27 ~~shall be~~ is not required to obtain the approval of the superintendent for the acquisition of
28 additional shares in a financial institution ~~which~~ that the Maine financial institution
29 holding company owned or controlled by a majority of the voting shares, prior to the
30 acquisition of additional shares.

31 **Sec. 20. 9-B MRSA §1015, sub-§1, ¶A**, as repealed and replaced by PL 1989, c.
32 16, §2, is amended to read:

33 A. Acquisition by a person or company of control of a Maine financial institution or
34 any financial institution or financial institution holding company controlling, directly
35 or indirectly, a Maine financial institution, ~~or establishment by a person or company~~
36 ~~of a Maine financial institution or Maine financial institution holding company;~~

37 **Sec. 21. 9-B MRSA §1015, sub-§1, ¶C**, as amended by PL 1997, c. 182, Pt. A,
38 §11, is further amended to read:

1 C. Acquisition or establishment by a Maine financial institution or a Maine
2 financial institution holding company of a financial institution outside of the State of
3 Maine, including a foreign bank, in excess of 5% of the voting shares of such
4 institution;

5 **Sec. 22. 9-B MRSA §1015, sub-§2**, as amended by PL 1997, c. 182, Pt. A, §12,
6 is further amended to read:

7 **2. Criteria for approval.** Applications for approvals required in subsection 1 must
8 be filed pursuant to procedures established by the superintendent. Action on those
9 applications must be taken in accordance with the requirements of section 252 and is
10 subject to the standards set forth in section 253, except that applications for approval
11 under subsection 1, paragraph A are not subject to the standards set forth in section 253,
12 subsection 2, paragraphs C and D. In addition, applications for approvals required in
13 subsection 1 by foreign banks are subject to the following additional criteria:

14 A. The foreign bank or foreign bank holding company engages in the banking
15 business outside of the United States and is subject to comprehensive supervision or
16 regulation on a consolidated basis by the appropriate authorities in its home country,
17 or the superintendent finds that the appropriate authorities in the home country of the
18 foreign bank are actively working to establish arrangements for the consolidated
19 supervision of such bank; and

20 B. Whether the foreign bank or foreign bank holding company has provided the
21 superintendent with adequate assurances that it will make available to the
22 superintendent such information on the operations or activities of the foreign bank,
23 foreign bank holding company and any affiliate of the foreign bank or foreign bank
24 holding company that the superintendent considers necessary to determine and
25 enforce compliance with this Title and other applicable state law.

26 **Sec. 23. 9-B MRSA §1015, sub-§5, ¶B**, as enacted by PL 1997, c. 398, Pt. K,
27 §12, is amended to read:

28 B. If the assets of the company being acquired are between 15% and 50% of the
29 financial institution holding company's total consolidated assets, the financial
30 institution holding company must notify the superintendent at least 10 days prior to
31 consummating the transaction. The superintendent may require that an application be
32 filed pursuant to section 252 if the following conditions are not satisfied and, based
33 on a preliminary analysis, the superintendent concludes that the transaction may have
34 a material adverse effect on the financial condition of the financial institution holding
35 company and its ability to act as a source of strength to the Maine financial
36 institution:

37 (1) Before and immediately after the proposed transaction, the acquiring Maine
38 financial institution and financial institution holding company are well
39 capitalized, as determined by the superintendent; and

40 (2) At the time of the transaction, the acquiring Maine financial institution and
41 financial institution holding company are well managed, as defined in section
42 446-A.

1 4. It requires notice to the Superintendent of Financial Institutions when a state-
2 chartered financial institution seeks to convert to a federally chartered financial
3 institution.

4 5. It requires notice to the Superintendent of Financial Institutions when a state-
5 chartered financial institution seeks to merge, consolidate with or acquire a federally
6 chartered financial institution. It removes the requirement that the superintendent
7 approve the transaction if the transaction is approved by a federal regulator and the
8 resulting institution is federally chartered.

9 6. It clarifies that proxy voting on credit union mergers is permissible.

10 7. It requires notice to the Superintendent of Financial Institutions when a state-
11 chartered credit union seeks to convert to a federally chartered credit union.

12 8. It provides that the Superintendent of Financial Institutions need only approve
13 acquisitions of interests in Maine financial institutions and acquisitions by Maine
14 financial institutions and Maine holding companies of other financial institutions. The
15 changes eliminate requirements to approve acquisitions made by federally chartered
16 institutions, and by holding companies that control only federally chartered institutions,
17 of federal and out-of-state financial institutions. Approval is still required if these federal
18 institutions acquire a Maine financial institution. It also reduces the number of criteria
19 required for approval of changes in control of Maine financial institutions so as to make
20 the law consistent with federal law.

21 9. It clarifies that approval of a plan of reorganization of a mutual holding company
22 must come from a majority of the board of directors and account holders.

23 10. It allows the Superintendent of Financial Institutions to designate a deputy
24 superintendent to serve on the board of commissioners of the Maine Municipal Bond
25 Bank in place of the superintendent.