

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

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TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1991

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

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**1991**

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The Secretary of State shall provide, on each license to operate motor vehicles or motorcycles issued to a person ~~18~~ 16 years of age or older at time of issuance, a statement indicating a willingness to make an anatomical gift under Title 22, chapter 710.

**Sec. 3. 29 MRSA §540, 6th ¶**, as enacted by PL 1981, c. 639, §2, is amended to read:

At the time of issuance of a first license or renewal to any person ~~18~~ 16 years of age or older, the Secretary of State shall make available a decal indicating "organ donor," which may be affixed to the license by the licensee to indicate a willingness to make an anatomical gift under Title 22, chapter 710.

See title page for effective date.

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## CHAPTER 33

### H.P. 8 - L.D. 11

#### **An Act to Conform the Maine Income Tax Law for 1990 with the United States Internal Revenue Code**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas**, the 90-day period would delay the processing of the 1990 income tax returns; and

**Whereas**, legislative action is immediately necessary to ensure continued and efficient administration of the Maine Income Tax Law and certain other state taxes; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 36 MRSA §111, sub-§1-A**, as amended by PL 1989, c. 635, §1 and affected by §2, is further amended to read:

**1-A. Code.** "Code" means the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, ~~1989~~ 1990.

**Sec. 2. Application.** This Act applies to tax years beginning on or after January 1, 1990.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 9, 1991.

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## CHAPTER 34

### S.P. 188 - L.D. 497

#### **An Act to Enhance the Supervisory Powers in the Maine Banking Code**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas**, present volatile economic conditions in Maine and across the nation adversely impact the financial industry and may warrant responsive action by the Superintendent of Banking; and

**Whereas**, the federal regulatory agencies have the flexibility in statute to address problematic situations and the Superintendent of Banking should have similar powers to act in the best interest of the State; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 9-B MRSA §312-A** is enacted to read:

#### **§312-A. Authority for expedited charter**

Notwithstanding any other provision of law, the superintendent may grant a charter to organize a stock financial institution effective immediately if the superintendent determines that such action is necessary for the protection of depositors, shareholders or the public. This action may be taken only in conjunction with transactions processed under section 354-A or 355-A.

**Sec. 2. 9-B MRSA §342, sub-§1**, as amended by PL 1983, c. 600, §2, is further amended to read:

**1. Federal savings bank or savings and loan to state thrift institution.** Any federal association or federal savings bank may convert to a savings bank or savings and loan association organized under the laws of this State in the following manner.

**A.** At an annual meeting or a special meeting called for that purpose, 51% or more of the members or share-

holders present and voting must approve of ~~such the~~ conversion. Notice of ~~such the~~ meeting ~~shall must~~ be mailed to each member or shareholder not less than 20 nor more than 30 days prior to ~~such the~~ meeting at ~~his the~~ member's or shareholder's last known address as shown on the books of the institution.

B. At the meeting required in paragraph A, the members or shareholders shall vote upon directors who shall be the directors of the state-chartered institution after conversion becomes effective, and also vote upon incorporators if the state-chartered institution is to be a mutual savings bank.

C. Within 10 days after ~~such the~~ meeting, a copy of the minutes of ~~such the~~ meeting, verified by affidavit of the clerk or secretary, together with such additional information as the superintendent may require, ~~shall must~~ be submitted to the superintendent for ~~his the~~ superintendent's approval or disapproval in writing of the proposed conversion pursuant to the procedures and requirements of section 252. The verified copies of the minutes of the meeting when ~~so~~ filed ~~shall be~~ are presumptive evidence of the holding and action of ~~such the~~ meeting.

D. Copies of the minutes of ~~such the~~ meeting of members or shareholders, verified by affidavit of the clerk or secretary, and copies of the superintendent's written approval ~~shall must~~ be mailed to the Federal Home Loan Bank Board within 10 days after ~~such~~ approval.

E. Following compliance with all applicable requirements of federal law, if any, the directors elected pursuant to paragraph B shall execute 3 copies of the articles of incorporation upon which the superintendent shall endorse ~~his~~ approval and ~~such those~~ articles ~~shall must~~ be filed in accordance with the provisions of section 313 or 323. Each director shall sign and acknowledge the articles, as a subscriber ~~thereto to the~~ articles.

F. So far as applicable, the provisions of this Title ~~shall~~ apply to the resulting institution.

**Sec. 3. 9-B MRSA §355-A**, as enacted by PL 1987, c. 40, §2, is amended to read:

**§355-A. Authority for expedited acquisitions**

Notwithstanding any other provision of law, or any charter, certificate of organization, articles of association, articles of incorporation or bylaw of any participating institution, ~~following approval of a plan of acquisition of assets and an assumption of liabilities by a majority vote of the boards of directors acquiring or assuming financial institution or financial institution holding company and the transferring institution and upon receipt by the superintendent of certified copies of the authorizing resolutions adopted by the respective boards of directors, the super-~~

~~intendent may order that the acquisition of assets and assumption of liabilities become effective immediately if he believes the superintendent determines that the action is necessary for the protection of depositors, shareholders or the public. Any person aggrieved by an acquisition of assets and assumption of liabilities pursuant to this section shall be entitled to judicial review of the superintendent's order in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII. This action may be taken upon receipt of the following:~~

~~1. Authorizing resolutions and plan. Certified copies of the authorizing resolutions adopted by the respective board of directors of the acquiring or assuming financial institution or financial institution holding company, and a copy of the plan of acquisition of assets and assumption of liabilities approved by a majority vote of the boards of directors of the acquiring or assuming financial institution or financial institution holding company and the transferring institution; or~~

~~2. Notice. Notice, containing information required by the superintendent, from any other person of intent to acquire the assets and assume the liabilities of a financial institution or financial institution holding company.~~

~~Any person aggrieved by an acquisition of assets and assumption of liabilities pursuant to this section is entitled to judicial review of the superintendent's order in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.~~

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

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

**§365. Insolvency liquidation**

~~1. Injunction against insolvent institution.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Reports of receiver; legal advice.

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

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

5. Distribution of assets: stock institution. In the case of an insolvent stock institution, the distribution of

assets after payment of all claims of creditors and depositors shall be made under order of the court by the receiver except as provided in subsection 3, paragraph G.

**~~6. Distribution of assets: mutual institution.~~**

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

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

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

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

**~~7. Attachments dissolved; actions discontinued; judgment recovered added to claims.~~**

~~A. All attachments of property of the financial institution shall be dissolved by the decree of sequestration, and all pending actions discontinued and the claim presented to the commissioners or to the court, unless the Superior Court, upon application of the plaintiff within 3 months from said decree, passes an order allowing the receiver to be made a party to the action and that the claim may be prosecuted to a final judgment.~~

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

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

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

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

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

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

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

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

**§368. Additional authority in liquidation**

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

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

**§369. Judicial review**

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

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

**§412-A. Capital**

**1. Requirement.** Every financial institution shall establish and maintain adequate levels of capital as set forth in rules adopted by the superintendent. These rules must address, at a minimum, composition of capital, capital levels that must be maintained and procedures that must be followed to restore capital if it becomes impaired or falls below the minimum standards. Minimum capital

levels established by the superintendent may be no less stringent than those applicable to federally chartered institutions with similar charters.

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

#### **§439-A. Lending limits**

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

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

B. "Person" has the same meaning as defined in section 131, subsection 30. In determining loan limitations pursuant to subsection 2, the superintendent may further define "person," including, through rulemaking, the establishment of standards regarding the aggregation of loans with respect to related persons.

**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.

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

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

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

C. Loans or extensions of credit to the extent that they are secured or covered by guarantees, or by commitments or agreements to take over or purchase the loans or extensions of credit, made by any Federal Reserve Bank, the United States, this State or any department, bureau, board, commission, agency, authority, instrumentality or establishment of the United States or this

State, including any corporation owned directly or indirectly by the United States or this State;

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

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

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

**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, subsection 3.

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

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

A. Every director, corporator, officer, agent or employee of a financial institution who authorizes or assists in procuring, granting or causing the granting of a loan in violation of section 439-A or this section or sections 534-B, 633 and 734-B, or pays or willfully permits the payment of any funds of the institution on such loan, and every director of an institution who votes on a loan in willful violation of any of the provisions of this section and every director, corporator, officer, agent or employee who willfully and knowingly permits or causes the same to be done shall be personally responsible for the payment thereof and shall be guilty of a misdemeanor. For purposes of this paragraph, "agent" or "employee" does not include an individual who is incidentally involved in the preparation of documents or title work relating to a loan;

**Sec. 10. 9-B MRSA §513,** as enacted by PL 1975, c. 500, §1, is repealed.

**Sec. 11. 9-B MRSA §532, sub-§8,** as enacted by PL 1979, c. 661, §4, is amended to read:

**8. Loans made in conformity with federal regulations.** Without regard to any other law, but subject to the lending limitations prescribed under section 439-A, a savings bank may make any loan secured by a first mortgage of real estate if that type of loan is authorized for financial



institutions subject to regulations of the Federal Home Loan Bank Board or a successor federal regulatory agency, provided that the superintendent first determines that that type of loan complies with chapter 24.

**Sec. 12. 9-B MRSA §534, sub-§2**, as repealed and replaced by PL 1987, c. 405, §7, is amended to read:

**2. Limitations.** Loans made pursuant to this section ~~shall be~~ are subject to ~~individual borrower loan limitations~~ lending limits set forth in section ~~534-B~~ 439-A. The aggregate amount of loans made pursuant to this section and section 535 ~~shall~~ may not exceed 40% of deposits.

**Sec. 13. 9-B MRSA §534-B**, as enacted by PL 1987, c. 405, §9, is repealed.

**Sec. 14. 9-B MRSA §535, sub-§3**, as amended by PL 1987, c. 405, §10, is further amended to read:

**3. Limitations.** Total participations in loans to any one borrower ~~shall~~ may not exceed the ~~limitations~~ lending limits set forth in section ~~534-B~~ 439-A. Loans made pursuant to this section ~~shall~~ must be included with those made pursuant to section 534 for purposes of determining the limit as set forth in section 534.

**Sec. 15. 9-B MRSA §539-A, sub-§1**, as amended by PL 1987, c. 405, §13, is further amended to read:

**1. Authorization; limitations.** A savings bank may grant to any person or syndicate a commercial line of credit to an amount not exceeding the limits set forth in section ~~534-B~~ 439-A, subject to the restrictions set forth in section 465.

**Sec. 16. 9-B MRSA §612**, as enacted by PL 1975, c. 500, §1, is repealed.

**Sec. 17. 9-B MRSA §633**, as amended by PL 1987, c. 405, §§17 and 18, is repealed.

**Sec. 18. 9-B MRSA §636, sub-§1**, as amended by PL 1987, c. 405, §19, is further amended to read:

**1. Authorization; limitations.** A trust company may grant to any person or syndicate a line of credit to an amount not exceeding ~~20% of its total capital and reserves~~ the limits set forth in section 439-A, subject to the restrictions, if applicable, as to the vote of the entire board and the rights of interested persons to vote on the same, set forth in ~~sections~~ section ~~465 and 633~~.

**Sec. 19. 9-B MRSA §713**, as enacted by PL 1975, c. 500, §1, is repealed.

**Sec. 20. 9-B MRSA §732, sub-§11**, as enacted by PL 1979, c. 661, §5, is amended to read:

**11. Loans made in conformity with federal regulations.** Without regard to any other law, but subject to

the lending limitations prescribed under section 439-A, savings and loan associations may make any loan secured by a first mortgage of real estate if that type of loan is authorized for financial institutions subject to regulations of the Federal Home Loan Bank Board or a successor federal regulatory agency, provided that the superintendent first determines that that type of loan complies with chapter 24.

**Sec. 21. 9-B MRSA §734, sub-§2**, as repealed and replaced by PL 1987, c. 405, §24, is amended to read:

**2. Limitations.** Loans made pursuant to this section ~~shall be~~ are subject to the ~~individual borrower loan limitations~~ lending limits set forth in section ~~734-B~~ 439-A. The aggregate amount of loans made pursuant to this section and section 735 ~~shall~~ may not exceed 40% of deposits.

**Sec. 22. 9-B MRSA §734-B**, as enacted by PL 1987, c. 405, §26, is repealed.

**Sec. 23. 9-B MRSA §735, sub-§3**, as amended by PL 1987, c. 405, §27, is further amended to read:

**3. Limitations.** Total participations in loans to any one borrower ~~shall~~ may not exceed the limitations set forth in section ~~734-B~~ 439-A. Loans made pursuant to this section ~~shall~~ must be included with those made pursuant to section 734 for purposes of determining the limit as set forth in section 734.

**Sec. 24. 9-B MRSA §739-A, sub-§1**, as amended by PL 1987, c. 405, §30, is further amended to read:

**1. Authorization; limitations.** A savings and loan association may grant to any person or syndicate a commercial line of credit to an amount not exceeding the limits set forth in section ~~734-B~~ 439-A, subject to the restrictions set forth in section 465.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 16, 1991.

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## CHAPTER 35

### H.P. 849 - L.D. 1215

#### An Act to Extend the Reporting Deadline of the Maine Water Resources Management Board

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Water Resources Management Board has completed its finding; and