

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

PUBLIC LAWS OF THE STATE OF MAINE
AS PASSED AT
THE FIRST SPECIAL SESSION OF THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE
1997

CHAPTER 66

S.P. 313 - L.D. 1022

**An Act to Promote Investments in
Maine through the Establishment of
Merchant Banking Organizations**

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

Whereas, many businesses, particularly start-up and smaller companies, encounter difficulties in obtaining capital from traditional financial sources, whether in the form of traditional bank loans, subordinated debt or equity; and

Whereas, authorizing the establishment of merchant banks as nondepository financial institutions with enhanced flexibility to make loans to and investments in businesses will promote economic growth, employment opportunities and an expanded tax base; and

Whereas, existing sources of such capital in Maine are inadequate; and

Whereas, authorization of the establishment of merchant banking organizations will promote investments in Maine and be sources of capital for businesses and others; and

Whereas, as illustrated by the recent C. F. Hathaway plant closure and sale, opportunities that require access to and infusions of capital to preserve jobs and expand economic opportunities frequently arise suddenly; 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-A MRSA §1-108, sub-§4, ¶A, as enacted by PL 1973, c. 762, §1, is amended to read:

A. Limitations on powers of supervised financial organizations, subsection ~~38~~ 38-A of section

1-301, with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or

Sec. 2. 9-A MRSA §1-301, sub-§38, as amended by PL 1979, c. 660, §5, is repealed.

Sec. 3. 9-A MRSA §1-301, sub-§38-A is enacted to read:

38-A. "Supervised financial organization" means:

A. A financial institution as defined in Title 9-B, section 131; or

B. A person, other than an insurance company or other organization primarily engaged in an insurance business, that is:

(1) Organized, chartered or holding an authorization certificate under the laws of a state or of the United States that authorize the person both to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(2) Subject to supervision by an official or agency of a state or of the United States.

Sec. 4. 9-A MRSA §1-301, sub-§39, as enacted by PL 1973, c. 762, §1, is amended to read:

39. "Supervised lender" means a person authorized to make or take assignments of supervised loans, either under a license issued by the Administrator (section 2-301), or as a supervised financial organization (section 1-301, subsection ~~38~~ 38-A).

Sec. 5. 9-A MRSA §10-102, sub-§1, ¶B, as amended by PL 1993, c. 495, §1, is further amended to read:

B. "Credit services organization" does not include:

(1) A supervised financial organization as defined in section 1-301, subsection ~~38~~ 38-A;

(2) A supervised lender as defined in section 1-301, subsection 39;

(3) A person licensed by the Real Estate Commission to the extent that the person is engaged in activities regulated by that commission;

(4) A person currently admitted to the practice of law in this State;

(5) Any nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) to the extent that the organization's activities are consistent with those set forth in its application for tax exemption to the Internal Revenue Service; or

(6) A consumer reporting agency, as defined in the Fair Credit Reporting Act, Title 10, chapter 210.

Sec. 6. 9-B MRSA c. 107 is enacted to read:

CHAPTER 107

MERCHANT BANKING

§1101. Organization and structure of merchant banks

1. Organization. A merchant bank is a nondepository trust company organized pursuant to chapter 31 and managed and governed as a trust company pursuant to this Title.

2. Structure. A merchant bank may be organized under the laws of the State as a corporation, limited liability company, limited partnership or limited liability partnership. The superintendent has the authority to approve other forms of entities. The business and affairs of a merchant bank must be managed by a board of directors, management committee or other similar governing body, composed of at least 3 natural persons. If a merchant bank is not organized as a corporation, unless the context indicates otherwise, the following terms have the following meanings in this Title:

A. "Board of directors" or "directors" means the policy-making governing body of a merchant bank.

B. "Bylaws" means the operating agreement, partnership agreement or other similar organizational documents of a merchant bank.

C. "Clerk" means the registered agent or other similar officer of a merchant bank.

D. "Corporation" means the form of entity in which a merchant bank is organized.

E. "Incorporators" means the organizers of a merchant bank.

F. "Stock" or "capital stock" means limited liability company membership interests, partnership interests or similar equity interests.

G. "Stock financial institution" includes a merchant bank.

3. Initial capital. The minimum amount of initial paid-in capital of a merchant bank is \$20,000,000, at least \$10,000,000 of which must consist of common stock or other similar equity capital. The balance of the initial required capital may consist of common stock or other similar equity capital, preferred stock or similar instruments, subordinated notes or debentures or, if approved by the superintendent, capital notes or debentures.

4. Maintenance of capital. A merchant bank shall maintain a capitalization level equal to 150% of the tier-1 risk-based capital and 150% of total risk-based capital established by the Board of Governors of the Federal Reserve System for a "well-capitalized" bank.

5. Bonds. Every merchant bank shall procure a bond, in such amount as the merchant bank may determine or as the superintendent may require, as security for the fidelity and faithful performance of duties by its officers, employees and agents, executed by one or more surety companies authorized to transact business in this State. The expense of this bond must be assumed by the institution.

§1102. Business of merchant banks; powers; limitations

1. Business of merchant banks. Except as provided in this chapter, a merchant bank has all the powers of and is entitled to engage in the business of a trust company, including, without limitation, powers with respect to investments, loans and fiduciary and trust functions and transactions. A merchant bank may not solicit, receive or accept money or its equivalent on deposit as a regular business within the meaning of section 131, subsection 5. A merchant bank may deposit cash, whether constituting principal or income, in any financial institution if the account is held either in the name of the trust to which the cash belongs or in the name of the merchant bank and composed entirely of cash belonging to trust accounts, the respective contributions of which are reflected in the books and records of the merchant bank. A merchant bank may issue drafts drawn on itself in the form of cashier's or treasurer's checks.

A. Without limiting the general investment powers authorized by section 651, a merchant bank may make loans to and investments in any

person, including investments in any "security" as defined in Title 32, section 10501, subsection 18. The board of directors, management committee or other similar governing body of a merchant bank shall establish a written policy under which the merchant bank's investment activities are conducted. At a minimum, this policy must address the following:

- (1) Investment quality parameters;
- (2) Investment mix and diversification;
- (3) Investment maturities; and
- (4) Delegation of authority to officers and committees responsible for making loans and investments and administering the investment portfolio.

B. This policy must be reviewed and ratified by the board of directors, management committee or other similar governing body of the merchant bank at least annually.

C. The terms of any loans by a merchant bank to, or investments by a merchant bank in, any of the following must be disclosed to the board of directors, management committee or other similar governing body of the merchant bank:

- (1) Any person that owns 25% or more of the merchant bank's common stock or other similar equity capital;
- (2) Any member of the board of directors, management committee or other similar governing body of a merchant bank;
- (3) Any policy-making officer of a merchant bank; or
- (4) Any person, 25% of the voting shares or other similar voting equity of which is owned by any of the foregoing.

2. Provisions inapplicable. The following provisions of this Title do not apply to merchant banks: sections 141, 142, 143, 223, 314, 315, 316, 317, 439-A, 445, 446, 465-A, 621, 622, 623, subsection 2, paragraphs E and F, and chapters 33 and 42. The following provisions of this Title do not apply to a person or company that controls a merchant bank and is not otherwise a Maine financial institution holding company: section 1014, 1015, subsection 1, paragraphs D and E, 1017 and 1019-A.

3. Organizational documents. The articles of incorporation, articles of organization or other organizational documents of a merchant bank must contain the following statement: "This entity is subject to the Maine Revised Statutes, Title 9-B,

chapter 107 and Acts supplementing or amending that chapter, and this entity may not solicit, receive or accept money or its equivalent on deposit." The foregoing provision of the articles of incorporation, articles of organization or other organizational documents of a merchant bank may not be amended.

4. Name. Notwithstanding section 241, subsection 9, a merchant bank may use as a part of its name the word or words "bank," "banker," or "banking" or the plural of any such word or words or any abbreviations of those words.

5. Offices. At least 30 days prior to the establishment of any office or branch office for the transaction of its business, a merchant bank shall notify the superintendent.

6. Rules. The superintendent may prescribe rules governing the activities of merchant banks and implementing this chapter. These rules must take into account the objective of merchant banks to provide needed capital and the nondepository nature of merchant banks. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 7. 10 MRSA §1312, sub-§10-A, as enacted by PL 1995, c. 309, §19 and affected by §29, is amended to read:

10-A. Supervised financial organization. "Supervised financial organization" means supervised financial organization as defined in Title 9-A, section 1-301, subsection 38 38-A.

Sec. 8. 32 MRSA §11002, sub-§10, as enacted by PL 1995, c. 309, §23 and affected by §29, is amended to read:

10. Supervised financial organization. "Supervised financial organization" has the same meaning as defined in Title 9-A, section 1-301, subsection 38 38-A.

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

Effective April 8, 1997.

CHAPTER 67

H.P. 13 - L.D. 9

An Act to Amend the Criminal Code Concerning the Crime of Assault on an Officer