

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
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

presiding judge's discretion and upon a finding that special circumstances exist, the presiding justice judge, in lieu of preparing a statement of facts, may order that a transcript of all or part of the proceedings in the Superior District Court be prepared and transmitted to the ~~law court~~ Law Court. The statement of facts or the transcript ~~so forwarded shall~~ must be returned to the Superior District Court with the order of the court. Denial of the certificate constitutes finality of the proceedings. An appeal after the issuance of a certificate of probable cause to the petitioner or an appeal taken by the State, in which case no certificate of probable cause is necessary, ~~shall~~ may be taken in the same manner as an appeal of a criminal conviction by a defendant except that the appeal must be made directly to the Law Court. The provisions of section 2115-A ~~shall~~ do not apply.

See title page for effective date.

CHAPTER 182

S.P. 341 - L.D. 1119

An Act to Provide for International Banking in the State and Enhanced Enforcement Authority over Financial Institution Holding Companies

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

PART A

Sec. A-1. 9-B MRSA §131, sub-§19-A is enacted to read:

19-A. Foreign bank. "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands that engages directly in the banking business. "Foreign bank" includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in usual banking activities in connection with the banking business in the countries where the foreign institutions are organized or operating.

Sec. A-2. 9-B MRSA §316, sub-§1, ¶B, as enacted by PL 1975, c. 500, §1, is amended to read:

B. At least 2/3 of the directors provided for ~~shall~~ must be residents of this State and any director ~~removing himself from leaving~~ this State ~~shall~~ must immediately be replaced if such removal results in a reduction of the number of resident directors below 2/3. The superintendent may approve in writing, upon application by an

institution and for good cause shown, a lower proportion of directors who must be residents of this State.

Sec. A-3. 9-B MRSA §316, sub-§1, ¶F, as amended by PL 1985, c. 642, §1, is further amended to read:

F. The board of directors, by a majority vote of the directors then in office, may appoint from the full board of directors an executive committee of not less than 5 members, 2/3 of whom ~~shall~~ must be residents of this State and may delegate to the committee the powers of the directors in regard to the ordinary operations of the business of the institution. The superintendent may approve in writing, upon application by an institution and for good cause shown, a lower proportion of executive committee members who must be residents of this State.

Sec. A-4. 9-B MRSA §1011, sub-§3, as enacted by PL 1975, c. 500, §1, is amended to read:

3. Company. "Company" means a corporation, partnership, business trust, association or similar organization organized under the laws of the United States, any political subdivisions of the United States or a country other than the United States.

Sec. A-5. 9-B MRSA §1011, sub-§10, as enacted by PL 1985, c. 642, §4, is amended to read:

10. Person. "Person" means an individual or individuals acting in concert, including individuals who are citizens of one or more countries, and any colonies, dependencies or possessions of those countries, other than the United States.

Sec. A-6. 9-B MRSA §1011, sub-§13 is enacted to read:

13. Foreign bank holding company. "Foreign bank holding company" means any company that controls, directly or indirectly, a foreign bank.

Sec. A-7. 9-B MRSA §1013, sub-§1, ¶B, as repealed and replaced by PL 1989, c. 16, §1, is amended to read:

B. Acquisition of more than 5% of the voting shares of a Maine financial institution or any financial institution or financial institution holding company controlling, directly or indirectly, a Maine financial institution, by a financial institution ~~or~~ financial institution holding company, foreign bank or foreign bank holding company; or

Sec. A-8. 9-B MRSA §1013, sub-§1, ¶C, as amended by PL 1995, c. 628, §30, is further amended to read:

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

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

3. Requirements for acquisition or establishment. A financial institution holding company, foreign bank or foreign bank holding company may establish, acquire or maintain control of a Maine financial institution or Maine financial institution holding company with prior approval of the superintendent, subject to the following conditions.

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

B. A Maine financial institution or Maine financial institution holding company, control of which is to be acquired or held, must have, on the date of acquisition or establishment, and shall maintain a minimum equity capital that the superintendent determines acceptable given the market area to be served and the general plan of business of the Maine financial institution or Maine financial institution holding company. Equity capital must be maintained consistent with sound banking practices.

C. A financial institution holding company, foreign bank or foreign bank holding company may not consolidate or merge with or acquire all or part of a Maine financial institution or Maine financial institution holding company if, as the result of the consolidation, acquisition or merger, the financial institution holding company, foreign bank or foreign bank holding company would hold or control more than 30% of the total amount of deposits of financial institutions authorized to do business in this State; except,

upon consideration of the decision-making criteria found in section 253, the superintendent may waive the 30% deposit concentration limits on a case-by-case basis. In calculating the amount of deposits that a financial institution holding company, foreign bank or foreign bank holding company may hold or control under this section, credit union shares are added to the amount of deposits of financial institutions authorized to do business in this State. However, the 30% deposit concentration limit does not apply to credit unions authorized to do business in this State.

Sec. A-10. 9-B MRSA §1015, sub-§1, ¶B, as repealed and replaced by PL 1989, c. 16, §3, is amended to read:

B. Acquisitions by a financial institution ~~or~~ financial institution holding company, foreign bank or foreign bank holding company of interests in a Maine financial institution or any financial institution or financial institution holding company controlling, directly or indirectly, a Maine financial institution in excess of 5% of the voting shares of such financial institution or financial institution holding company;

Sec. A-11. 9-B MRSA §1015, sub-§1, ¶¶C and E, as enacted by PL 1975, c. 500, §1, are amended to read:

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

E. Authority for any financial institution holding company, foreign bank or foreign bank holding company controlling a Maine financial institution to engage in a closely-related activity in Maine, or acquisition or establishment of a subsidiary in Maine to engage in a closely-related activity.

Sec. A-12. 9-B MRSA §1015, sub-§2, as amended by PL 1995, c. 628, §34, is further amended to read:

2. Criteria for approval. Applications for approvals required in subsection 1 must be filed pursuant to procedures established by the superintendent. Action on those applications must be taken in accordance with the requirements of section 252 and is subject to the standards set forth in section 253. In addition, applications for approvals required in subsection 1 by foreign banks are subject to the following additional criteria:

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

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

Sec. A-13. 9-B MRSA §§1016 and 1017, as enacted by PL 1975, c. 500, §1, are amended to read:

§1016. Reports and examinations

The superintendent may require any financial institution holding company that controls a Maine financial institution to furnish such reports as ~~he deems~~ the superintendent considers appropriate to the proper supervision of such companies. Unless the superintendent determines otherwise, reports prepared for Federal authorities or, in the case of a foreign bank or foreign bank holding company, reports prepared for the home country regulatory authorities and translated to English may be submitted by such holding company in satisfaction of the requirements of this section. If such information and reports are inadequate in ~~his~~ the superintendent's judgment for that purpose, the superintendent may examine such financial institution holding company and any subsidiary doing business in Maine. Section 214 ~~shall apply~~ applies with respect to any such examination.

§1017. Conformity with Federal procedures

To the maximum extent consistent with the effective discharge of the superintendent's responsibilities, the forms established under this chapter for registration, applications and reports ~~shall~~ must conform with those established under either the Bank Holding Company Act of 1956 or ~~section~~ section 408 of the National Housing Act, or the federal International Banking Act of 1978 and regulations promulgated under the federal International Banking Act of 1978.

Sec. A-14. 9-B MRSA §1019, sub-§2, as amended by PL 1985, c. 642, §9, is further amended to read:

2. Penalties. Any person or company violating any provision of this chapter, or any regulation promulgated thereunder, ~~shall be~~ is subject to a penalty of not more than \$1,000 per day for each day the violation continues, to be recovered in a civil action in the name of the State.

Any company or Maine financial institution violating section 1013, subsection 3 ~~or~~ 4, or any regulation promulgated under that section, ~~shall be~~ is subject to a penalty of not more than \$1,000 a day for each day the violation continues. The superintendent shall report the violation forthwith, with such remarks as ~~he deems~~ the superintendent determines appropriate, to the Attorney General, who may forthwith institute a civil action therefor on behalf of the State.

PART B

Sec. B-1. 9-B MRSA §131, sub-§20-A, ¶¶A and B, as enacted by PL 1995, c. 628, §8, are amended to read:

A. With respect to a financial institution or out-of-state financial institution, the state under whose laws the financial institution or out-of-state financial institution is organized; ~~or~~

B. With respect to a national bank or federal association, the state in which the main office of the national bank or federal association is deemed to be located under federal law; ~~or~~

Sec. B-2. 9-B MRSA §131, sub-§20-A, ¶C is enacted to read:

C. With respect to a foreign bank, the state that the foreign bank has designated as its home state in accordance with Section 5 of the federal International Banking Act of 1978.

Sec. B-3. 9-B MRSA Pt. 13 is enacted to read:

PART 13

FOREIGN BANKS

CHAPTER 131

FOREIGN BRANCHES, AGENCIES AND

REPRESENTATIVE OFFICES

§1311. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agency. "Agency" means any office or any place of business of a foreign bank located in any state of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent, but at which deposits may not be accepted from persons who are citizens or residents of the United States.

2. Branch. "Branch" means any office or any place of business of a foreign bank located in any state of the United States at which deposits are received.

3. Federal agency. "Federal agency" means an agency of a foreign bank established and operating pursuant to Section 4 of the federal International Banking Act of 1978.

4. Federal branch. "Federal branch" means a branch of a foreign bank established and operating pursuant to Section 4 of the federal International Banking Act of 1978.

5. Maine agency. "Maine agency" means an agency of a foreign bank located in this State and established and operating pursuant to the provisions of this chapter.

6. Maine branch. "Maine branch" means a branch of a foreign bank located in this State and established and operating pursuant to the provisions of this chapter.

7. Maine foreign bank. "Maine foreign bank" means a foreign bank that operates a Maine branch or Maine agency and for which Maine is the home state, in accordance with Section 5 of the federal International Banking Act of 1978.

8. Maine representative office. "Maine representative office" means a representative office located in this State and established and operating pursuant to the provisions of this chapter.

9. Out-of-state foreign bank. "Out-of-state foreign bank" means a foreign bank for which a state other than Maine is the home state, in accordance with Section 5 of the federal International Banking Act of 1978.

10. Representative office. "Representative office" means any office of a foreign bank that is located in any state and is not a federal branch, federal agency, state branch, state agency or subsidiary of a foreign bank.

§1312. Branches and agencies of foreign banks

1. Establishment. A foreign bank that is or will become a Maine foreign bank and engages directly in the banking business outside the United States may, with the prior approval of the superintendent, establish a branch or agency. The establishment of a branch or agency may be de novo or through merger or acquisition.

2. Criteria for approval. Applications for approvals required in subsection 1 must be filed pursuant to procedures established by the superintendent. Action on those applications must be taken in accordance with the requirements of section 252 and is subject to the standards set forth in section 253. Those applications are subject to the following additional criteria:

A. The foreign bank must directly engage in the banking business outside of the United States and be subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, or the superintendent finds that the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of the bank; and

B. The foreign bank has provided the superintendent with adequate assurances that it will make available to the superintendent any information on the operations or activities of the foreign bank and any of its affiliates that the superintendent considers necessary to determine and enforce compliance with this Title and other applicable state law.

3. Application fee. An application for approval required in subsection 1 may not be considered complete by the superintendent unless accompanied by an application fee to be credited and used as provided in section 214. The superintendent shall establish the amount of the fee, which may not exceed \$7,500.

§1313. Federal branches and agencies

1. Permissibility of federal branches and agencies. Nothing in this Title may be construed to prohibit the operation of a federal branch or a federal agency in this State.

2. No concurrent maintenance of federal branches or agencies. No foreign bank authorized to operate a Maine branch or Maine agency pursuant to section 1312 may maintain concurrently a federal branch or federal agency in this State.

§1314. Powers of Maine branches and agencies

1. General powers. Except as otherwise specifically provided in this chapter or in orders or rules adopted by the superintendent, and notwithstanding any other law or rule of this State to the contrary, operations of a foreign bank at a Maine branch or Maine agency must be conducted with the same rights, privileges and powers accorded a trust company at the same location and are subject to all the same duties, restrictions, penalties, liabilities, conditions and limitations that apply under the laws of this State to a trust company doing business at the same location.

2. Exceptions. The following are exceptions to the provisions of subsection 1.

A. A Maine branch may not accept from citizens or residents of the United States deposits, other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers, of less than \$100,000, except to the extent that those deposits are determined by the Federal Deposit Insurance Corporation not to constitute "domestic retail deposit activities requiring deposit insurance protection" within the meaning of Section 6 of the federal International Banking Act of 1978.

B. A Maine agency may not accept any deposits from citizens or residents of the United States, other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers, but it may accept deposits from persons who are neither citizens nor residents of the United States.

C. A Maine branch or Maine agency is not required to maintain deposit insurance pursuant to section 422.

D. Any limitation or restriction based on the capital and surplus of a financial institution is deemed to refer, as applied to a Maine branch or Maine agency, to the United States dollar equivalent of the capital and surplus of the foreign bank and, if the foreign bank has more than one branch or agency in the United States, the business transacted by all such branches and agencies must be aggregated in determining compliance with the limitation.

E. Unless otherwise provided by the superintendent, any provision in this Title and rules adopted under this Title that require a financial institution to obtain the approval of its board of directors are deemed to require a Maine branch or Maine agency to obtain the approval of parent foreign bank senior management.

§1315. Representative offices

1. Notification required. A foreign bank may establish a representative office in this State with 30 days' prior notice to the superintendent. A foreign bank may not establish a representative office in this State without the prior approval of the Board of Governors of the Federal Reserve System pursuant to Section 10 of the federal International Banking Act of 1978.

2. Permitted activities. Foreign banks may conduct the following activities through representative offices:

A. Solicitation for loans and in connection with those loans the assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans including making recommendations with respect to action on those applications, solicitation of investors to purchase loans from the foreign bank and the search for investors to contract with the foreign bank for servicing of those loans;

B. The solicitation of new business;

C. The conduct of research;

D. Back office administrative functions; and

E. Any other activity that may be permitted by the superintendent by rule or order.

§1316. Trust activities

1. Authority. A foreign bank that has established a Maine branch or Maine agency in accordance with section 1312 may engage in trust activities at that Maine branch or Maine agency upon 30 days' prior notification to the superintendent.

2. Territorial application. All trust activities entered into between a foreign bank that has established a Maine branch or Maine agency and persons residing or domiciled in this State or that involve property located in this State are governed by the laws of this State.

§1317. Service of process

A foreign bank having a Maine agency, Maine branch or Maine representative office shall maintain a registered office and is subject to service of process in the manner provided for in Title 13-A, chapter 12.

§1318. Deposit requirements; asset requirements

1. Deposit requirement. Upon the opening of a Maine branch or Maine agency and thereafter, a foreign bank shall keep on deposit, in accordance with rules the superintendent may prescribe, with a financial institution authorized to do business in the

State, except for a foreign bank, United States dollar deposits or investment securities of a type that may be prescribed by the superintendent in an amount as set forth in this section. The financial institution must be approved by the superintendent.

2. Amount of deposit. The aggregate amount of deposited investment securities, calculated on the basis of principal amount or market value, whichever is lower, and United States dollar deposits for each Maine branch or Maine agency established and operating under this chapter may not be less than the amount prescribed by section 412-A or rules adopted under section 412-A as applied to total liabilities of the Maine branch or Maine agency, including acceptances, but excluding accrued expenses, and amounts due and other liabilities to offices, branches, agencies and subsidiaries of the foreign bank. The superintendent may require that the assets deposited pursuant to this subsection must be maintained in such amounts as the superintendent may consider necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest. The superintendent may consider reserves or other assets deposited with or on behalf of a federal banking agency in determining the amount of deposit.

3. Deposit agreement. The deposit must be maintained with the financial institution selected according to subsection 1 pursuant to a deposit agreement in such form and containing such limitations and conditions as the superintendent may prescribe. So long as it continues business in the ordinary course a foreign bank may be permitted to collect income on the securities and funds so deposited and examine and exchange those securities.

4. Asset maintenance. Subject to such conditions and requirements as may be prescribed by the superintendent, each foreign bank operating a Maine branch or Maine agency shall hold in this State assets of such types and in such amounts as the superintendent may prescribe by general or specific rule or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and creditors and the public interest. In determining compliance with any such prescribed asset requirements, the superintendent shall give credit to assets required to be maintained pursuant to subsection 1, reserves required to be maintained with the Federal Reserve System and assets pledged and surety bonds payable to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits.

§1319. Record keeping and reporting

1. General. A Maine branch, Maine agency or Maine representative office shall comply with applicable record-keeping and reporting requirements

that apply to financial institutions organized under this Title and with any additional requirements that may be prescribed by the superintendent. A Maine branch, Maine agency, Maine representative office and the parent foreign bank shall furnish information relating to the affairs of the parent foreign bank and its affiliates that the superintendent may from time to time request. The superintendent may modify record-keeping and reporting requirements if the superintendent determines that circumstances warrant a modification.

2. Reports filed with other agencies. The reporting requirements imposed by this section may be complied with by submitting to the superintendent copies of reports prepared for federal regulatory agencies by the institution, which contain the information requested, unless the superintendent requires otherwise.

3. Maintenance of accounts, books and records. A Maine branch, Maine agency or Maine representative office shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch, agency or representative office. The Maine branch, Maine agency or Maine representative office shall keep a set of accounts and records in English sufficient to permit the superintendent to examine the condition of the branch, agency or representative office and the branch's, agency's or representative office's compliance with applicable laws and rules. The Maine branch, Maine agency or Maine representative office shall promptly provide any additional records requested by the superintendent for examination or supervisory purposes.

4. More than one Maine branch or Maine agency. A foreign bank with more than one Maine branch or Maine agency shall designate one of those branches or agencies to maintain consolidated asset, liability and capital equivalency accounts for all Maine branches or Maine agencies.

§1320. Disclosure of lack of deposit insurance

Each foreign bank operating a Maine branch or Maine agency shall, in a manner established by the superintendent, give notice that deposits and credit balances in that branch or agency are not insured by the Federal Deposit Insurance Corporation.

§1321. Notice of changes in name and location

1. Notice. A foreign bank maintaining a Maine branch, Maine agency or Maine representative office shall provide the superintendent with prior notice of the following events:

A. A change in corporate name;

- B. A change of mailing address;
- C. A relocation of office in Maine;
- D. A conversion of a Maine branch or Maine agency to a federal branch or agency; and
- E. Any changes in the designation of home state.

2. Timing and form of notice. The superintendent shall determine the form and timing of notice of these events.

§1322. Change of control of foreign bank

A foreign bank that is licensed to establish and maintain a Maine branch, Maine agency or Maine representative office shall file with the superintendent a notice, in such form and containing such information as the superintendent may prescribe, no later than 14 calendar days after that foreign bank becomes aware of any acquisition of control of that foreign bank or merges with another foreign bank.

§1323. Voluntary closure of Maine branch, Maine agency or Maine representative office

1. Maine branch or Maine agency. A foreign bank may voluntarily close a Maine branch or Maine agency in accordance with section 335, subsection 2.

2. Maine representative office. A foreign bank may voluntarily close a Maine representative office upon 30 days' prior notice to the superintendent.

§1324. Conversions

1. Authority. A foreign bank may convert a Maine representative office to a Maine agency or Maine branch, or convert a Maine agency to a Maine representative office or a Maine branch, or convert a Maine branch to a Maine agency or Maine representative office with the prior approval of the superintendent. A foreign bank may also convert a federal branch or agency to a Maine branch or Maine agency.

2. Applications. Applications for prior approval of conversions must be processed in accordance with sections 252 and 253 or section 1315 as appropriate.

§1325. Assessment, examination and enforcement

1. Assessment. A foreign bank operating a Maine branch or a Maine agency shall pay assessments to the superintendent in accordance with section 214, subsection 2.

2. Examination. The superintendent may examine each Maine branch, Maine agency or Maine representative office pursuant to section 221 and is

compensated for those examinations according to the provisions of section 214, subsection 1.

3. Enforcement. The superintendent may enforce the provisions of this chapter pursuant to the enforcement authority under sections 231 and 232.

§1326. Involuntary termination of authority and receivership

1. Involuntary termination of authority to operate Maine branch, Maine agency or Maine representative office. The involuntary termination of authority to operate a Maine branch, Maine agency or Maine representative office is governed by the following.

A. Authority to operate a Maine branch, Maine agency or Maine representative office terminates when the parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization.

B. The superintendent may terminate a foreign bank's authority to operate a Maine branch, Maine agency or Maine representative office if the superintendent determines that or has reasonable cause to believe that:

(1) The foreign bank has violated or failed to comply with any of the provisions of this chapter or any of the rules or orders of the superintendent made pursuant to this chapter; or

(2) A conservator is appointed for the foreign bank or a similar proceeding is initiated in the foreign bank's country of organization.

C. A foreign bank whose authority to operate a Maine branch, Maine agency or Maine representative office is revoked by the superintendent may bring an action challenging the superintendent's revocation in Superior Court within 10 days of that revocation. The court must uphold the superintendent's revocation of a foreign bank's authority to operate a Maine branch, Maine agency or Maine representative office unless the court finds that the superintendent's action was arbitrary and capricious.

2. Receivership. Whenever the superintendent revokes a foreign bank's authority to operate a Maine branch or Maine agency or whenever any creditor of that foreign bank has obtained a judgment against the foreign bank arising out of a transaction with a branch or agency in any court of record of the United States or any state of the United States and made application, accompanied by a certificate from the clerk of the

court stating that that judgment has been rendered and has remained unpaid for a period of 30 days, or whenever the superintendent becomes satisfied that that foreign bank is insolvent, the superintendent may, after due consideration of its affairs, appoint a receiver who shall take possession of all the property and assets of that foreign bank in Maine pursuant to provisions of chapter 36.

§1327. Interstate operations of Maine foreign banks

1. Establishment. A Maine foreign bank may establish and operate a branch in another state in accordance with section 1312. The establishment of that branch may be de novo or through merger, acquisition or other consolidation.

2. Activities. A Maine foreign bank may conduct any activity at that branch that is permissible for a foreign bank in that host state, as defined in section 131, subsection 20-B.

§1328. Interstate operations of out-of-state foreign banks

1. Establishment. An out-of-state foreign bank may establish a branch or agency in this State in accordance with the procedures set forth in section 373, subsection 3. The establishment of that branch or agency may be de novo or through merger, acquisition or other consolidation.

2. Activities. The activities of branches or agencies located in this State by out-of-state foreign banks are governed by the provisions of this chapter and section 376, subsection 2.

§1329. Rule-making authority

The superintendent may adopt rules to supplement the requirements of this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

PART C

Sec. C-1. 9-B MRSA §232, first ¶, as amended by PL 1995, c. 628, §17, is further amended to read:

The superintendent may remove any officer or director of a financial institution organized pursuant to this Title or any officer of a branch of an out-of-state financial institution authorized to do business in this State; or any officer or director of a financial institution holding company, in accordance with the procedures and subject to the conditions and limitations set forth in this section.

Sec. C-2. 9-B MRSA §232, sub-§1, as repealed and replaced by PL 1993, c. 538, §2, is amended to read:

1. Grounds for removal. The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit further participation by the officer or director in any manner in the conduct of the affairs of a financial institution or financial institution holding company if:

A. In the opinion of the superintendent, that officer or director has directly or indirectly:

- (1) Violated a law, rule, regulation or cease and desist order that has become final;
- (2) Engaged in or participated in any unsafe or unsound practice; or
- (3) Committed or engaged in any act, omission, or practice that constitutes a breach of the fiduciary duty of the officer or director;

B. By reason of the violation, practice or breach of fiduciary duty described in paragraph A:

- (1) The financial institution or financial institution holding company has suffered or will probably suffer financial loss or other damage;
- (2) The interests of the financial institution's depositors have been or could be prejudiced; or
- (3) The officer or director has received financial gain or other benefit by reason of the violation, practice or breach of fiduciary duty;

C. The violation, practice or breach of fiduciary duty described in paragraph A involves personal dishonesty on the part of the officer or director or demonstrates willful or continuing disregard by the officer or director for the safety or soundness of the financial institution or financial institution holding company; and

D. In the opinion of the superintendent, that officer or director has evidenced personal dishonesty and unfitness to continue as an officer or director of the financial institution or financial institution holding company by conduct with respect to another business entity that resulted, or is likely to result, in substantial financial loss or other damage.

Sec. C-3. 9-B MRSA §232, sub-§2, ¶B, as amended by PL 1977, c. 694, §156, is further amended to read:

B. The superintendent shall serve such written notice in accordance with Rule 4 of the Maine Rules of Civil Procedure upon the officer or director involved and copies of such notice ~~shall~~ must be served upon the financial institution or financial institution holding company of which ~~he~~ the person is an officer or director or in the conduct of whose affairs ~~he~~ the person has participated.

Sec. C-4. 9-B MRSA §232, sub-§3, ¶A, as enacted by PL 1975, c. 500, §1, is amended to read:

A. If the superintendent ~~deems~~ considers it necessary for the protection of the financial institution or financial institution holding company or the interests of its depositors or shareholders, such written notice may suspend the officer or director from office or prohibit ~~him~~ the officer or director from further participation in any manner in the conduct of the affairs of the financial institution or financial institution holding company.

Sec. C-5. 9-B MRSA §232, sub-§5, ¶C, as enacted by PL 1975, c. 500, §1, is amended to read:

C. In the event of consent pursuant to paragraph B, or if upon the record made at any such hearing the superintendent ~~shall find~~ finds that any of the grounds specified in the notice have been established, ~~he~~ the superintendent may issue such orders of suspension or removal from office or prohibition from participation in the conduct of the affairs of the financial institution or financial institution holding company, as ~~he may deem~~ the superintendent considers appropriate.

Sec. C-6. 9-B MRSA §232, sub-§6, ¶A, as enacted by PL 1975, c. 500, §1, is amended to read:

A. Any order issued pursuant to subsection 5 ~~shall become~~ becomes effective at the expiration of 30 days after service upon the officer or director and the financial institution or financial institution holding company concerned; provided that an order issued upon consent ~~shall become~~ becomes effective within the time specified therein.

Sec. C-7. 9-B MRSA §232, sub-§7, ¶B, as enacted by PL 1975, c. 500, §1, is amended to read:

B. At such time as a judgment of conviction with respect to such offense is entered against such officer or director, and such judgment is not subject to further appellate review, the superintendent may issue and serve upon such officer or director an order removing ~~him~~ the officer or director from such office or prohibiting

~~him~~ the officer or director from further participation in the conduct of the affairs of the financial institution or financial institution holding company except with the written consent of the superintendent. Such order ~~shall become~~ becomes effective after service upon the officer or director and the financial institution or financial institution holding company.

See title page for effective date.

CHAPTER 183

S.P. 219 - L.D. 678

An Act to Amend the Laws Relating to Auctioneers

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

Sec. 1. 32 MRSA §270, sub-§5, as enacted by PL 1995, c. 402, Pt. A, §10, is repealed.

Sec. 2. 32 MRSA §272-A, as enacted by PL 1995, c. 402, Pt. A, §13, is repealed.

Sec. 3. 32 MRSA §273, first ¶, as amended by PL 1995, c. 402, Pt. A, §14, is further amended to read:

Every resident person in this State desiring to do business as an auctioneer ~~or small auctioneer~~, who satisfies the board that that person has knowledge of the laws of this State pertaining to auctions and sales, the ethics and practices of auctioneers, the laws relating to the record of sales of used merchandise and such other related subjects as the board may select, upon application in form designated by the board, must receive a license to conduct auctions. The original application must be accompanied by 2 letters of recommendation as evidence of ethical business practice.

Sec. 4. 32 MRSA §275, sub-§2, as amended by PL 1995, c. 402, Pt. A, §16, is further amended to read:

2. Advertising. No auction may be advertised in this State without including the name and license number of the auctioneer ~~or small auctioneer~~.

Sec. 5. 32 MRSA §276, first ¶, as amended by PL 1995, c. 402, Pt. A, §17, is further amended to read:

Every nonresident person desiring to do business as an auctioneer ~~or small auctioneer~~ in this State shall obtain a license. The board may issue a license to any nonresident upon fulfillment of the same application