

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

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

Penmor Lithographers
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1. The superintendent shall convene a working group that includes representatives of the Bureau of Insurance within the Department of Professional and Financial Regulation, insurance companies, persons or companies or their trade or professional organizations licensed in this or other jurisdictions to do the business of life settlements, insurance producers and the Office of Policy and Legal Analysis to review current state law, federal law and other state laws and regulations relating to life settlements. The working group shall develop recommended legislation to govern and regulate life settlements under the Maine Revised Statutes, Title 24-A, chapter 85 relating to viatical settlements.

2. The superintendent shall submit legislation based on the recommendations of the working group to the Second Regular Session of the 121st Legislature not later than January 1, 2004 to authorize the use of life settlement contracts and to make other necessary changes to the laws regulating viatical settlement contracts.

See title page for effective date.

CHAPTER 321

S.P. 476 - L.D. 1438

An Act To Require Disclosure of Benefit Offsets under Disability Insurance Policies

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

Sec. 1. 24-A MRSA §2717-A is enacted to read:

§2717-A. Disclosure of benefit offsets to applicants

At or before the time of application for any policy subject to this chapter that provides disability income benefits, the insurer shall provide the applicant with a clear and conspicuous written notice, on the application form or in a separate document, that accurately explains to the applicant all types of other sources of income that may result in a reduction of the benefits payable under the policy.

Sec. 2. 24-A MRSA §2829-A is enacted to read:

§2829-A. Disclosure of benefit offsets to enrollees

For any policy or contract subject to this chapter that provides disability income benefits, if the benefits under that policy or contract are subject to reduction due to other sources of income, then the insurer shall include in any written enrollment material and

certificate of coverage developed by the insurer that is intended to be distributed to persons eligible for coverage under the policy or contract a clear and conspicuous notice that accurately explains all types of other sources of income that may result in a reduction of the benefits payable under the policy or contract. The notice requirement under this section does not apply to an advertisement intended for the general public.

See title page for effective date.

CHAPTER 322

S.P. 512 - L.D. 1534

An Act To Amend the Maine Banking Laws

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

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

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

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

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

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

23-A. Investor. "Investor" means any person who has an ownership interest in a financial institution and is entitled to vote under the institution's organizational documents. "Investor" does not include a

member of a credit union organized pursuant to the laws of this State.

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

35. Satellite facility. "Satellite facility" means any facility, automated device or electronic terminal established by a financial institution authorized to do business in this State or a credit union authorized to do business in this State at which an existing financial institution or credit union customer may initiate banking transactions, including, but not limited to, cash deposits to and withdrawals from that customer's account, cash advances on a preauthorized credit line, transfers between deposit or share accounts or payment transfers from the customer's account to accounts of other financial institution or credit union customers. Such a facility is not permanently staffed and is not part of a main office or branch office of a financial institution or credit union. Such a facility may be part of an electronic funds transfer system. Satellite facilities include facilities engaged in soliciting, receiving or accepting money or its equivalent on deposit from new and existing customers. ~~The term "satellite facility"~~ "Satellite facility" does not include a cash dispensing machine that, operating in conjunction with a processor and network, allows a customer to debit an account in exchange for dispensing cash and that may allow a customer to effectuate transfers between the customer's accounts in the same financial institution or credit union, a point-of-sale terminal, a night depository or an office or facility engaged solely in the solicitation and origination of loans.

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

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

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

2. Assessment on financial institutions.

A. To provide for the balance of the reasonable expenses incurred to fulfill the bureau's duty pursuant to this Title, including general regulatory costs, overhead, transportation and general office and administrative expenses, the superintendent shall assess each financial institution under the

superintendent's supervision at the annual rate of at least 6¢ for each \$1,000 of the total of average assets, as defined by the superintendent. The frequency of assessment may coincide with the frequency of filing periodic financial reports with the bureau but may not be more frequent than quarterly. The superintendent may raise the minimum assessment rate of 6¢ for each \$1,000 of the total of average assets by promulgating rules pursuant to section 251 at such time as economic conditions warrant such an increase. In no event may the ~~semiannual~~ assessment be less than \$25.

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

	Period ending	Assessment date
Quarterly	March 31st	May 1st
	June 30th	August 1st
	September 30th	November 1st
	December 31st	February 1st
Semiannually	June 30th	August 1st
	December 31st	February 1st

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

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

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

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

2-C. Assessment on uninsured bank or merchant bank. If an uninsured bank or merchant bank

predominately engages in the business of a nondepository trust company, then the uninsured bank or merchant bank shall pay an ~~annual~~ assessment as prescribed in subsection 2-B. Otherwise, an uninsured bank or merchant bank shall pay an ~~annual~~ assessment as prescribed in subsection 2.

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

4. Penalty. Any financial institution ~~which shall fail that fails~~ to make ~~such the~~ payments ~~required under this section~~ within the time specified ~~shall be is~~ subject to a penalty of not more than ~~\$100~~ \$500 per day for each day it is in violation of this section, which penalty, together with the amount due under ~~foregoing the~~ provisions of this section, may be recovered in a civil action in the name of the State.

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

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

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

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

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

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

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

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

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

§244. Exemption

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

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

§361. Applicability of chapter

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

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

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

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

§824. Participation in electronic funds transfer system

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

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

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

§826. Offices and satellite facilities

A credit union may establish, relocate, close and operate a branch or satellite facility in accordance with chapter 33, except that the limitation of section 337, subsection 2 does not apply. The limits of section 863 apply to credit union investment in real estate for office facilities. The establishment, relocation or closing of a branch or facility must meet the needs and convenience of the credit union's members.

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

3. Lien on shares. A credit union may impress and enforce a lien on the shares and dividends of a member to the extent of any loan made to and any dues or charges payable by that member. A credit union that has been designated a community development credit union pursuant to section 817 may impress and enforce a lien on the shares and dividends of a nonmember to the extent of any loan made to and any dues or charges payable by that nonmember.

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

2. Share transactions. The provisions of section sections 422-A, 427, 428 and 429 are applicable to shares or accounts in a credit union.

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

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

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

B. For credit unions in operation more than 4 years and having assets of \$500,000 or more, 10% of gross income until the guaranty fund ~~shall equal~~ equals 4% of the total outstanding loans and risk assets of the credit union and then 5% of the gross income until the guaranty fund ~~shall equal~~ equals 6% of the total outstanding loans and risk assets.

The superintendent may waive all or part of the payments required under this subsection for good cause shown by a credit union.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§844. Supervisory committee or independent public accountant

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

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

2. Verification of share, deposit and loan accounts.

A. At least once in every 2 years, the supervisory committee ~~or the independent public accountant~~ shall verify or cause to be verified the share, deposit and loan accounts of members of the credit union and a report of the verification must be kept on file and available to be reviewed at the time of the next examination or upon request by the superintendent.

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

(2) If the verification is performed by a certified public accountant, the auditor may choose the verification method set forth in subsection 1 or a sampling method sufficient in both number and scope on which to

base conclusions concerning the validity of such records.

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

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

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

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

5. Exception. Notwithstanding the provisions of subsections 1 and 1-A, any credit union that has total assets in excess of \$100,000,000 must employ an independent public accountant to conduct an annual audit of the credit union.

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

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

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

A. Hold meetings at least once in each month;

B. Act on all applications for loans to members;

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

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

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

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

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

§851. Loans in general

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

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

3. Approvals required. The credit committee provided for in section 845 shall approve all loans to members made by the credit union. In addition, the approval of the credit union's board of directors or executive committee shall be required for all loans other than personal loans to members.

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

A. Individual lending officer authority;

B. Loan mix and diversification;

C. Loan quality parameters; and

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

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

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

3. 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. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

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

A. Investment quality parameters;

B. Investment mix and diversification;

C. Investment maturities; and

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

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

1. Deposits in insured institutions. Deposits or share accounts in any financial institution, or ~~shares in~~ a credit union, ~~provided that as long as~~ deposits or shares in such the financial institution or credit union are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration;

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

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

§871-A. Dissolution

1. Voluntary dissolution. This subsection governs the voluntary dissolution of a credit union.

A. A recommendation may be made that a credit union be dissolved and voluntarily liquidated by majority vote of either the entire membership of the credit union entitled to vote or the board of directors of the credit union. Within 10 days after recommendation, the credit union shall notify the superintendent, the federal agency that insures the credit union accounts and the credit union members in writing of the recommendation and the reasons for dissolution. If the entire membership votes to dissolve and voluntarily liquidate the credit union, then no additional votes of the entire membership need be taken. If

the board of directors of the credit union votes to dissolve and voluntarily liquidate the credit union, then a special meeting of the credit union's entire membership must be called, no sooner than 10 days after notice has been mailed to the superintendent. A majority of the entire membership of the credit union entitled to vote must vote to dissolve and voluntarily liquidate the credit union. Members may cast their votes by proxy on forms prepared by the board of directors and mailed with the meeting notice.

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

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

- (1) The board mailed written notice of the meeting to consider dissolution to all members qualified to vote;
- (2) The notice disclosed the purpose of the meeting and that approval of dissolution might be sought pursuant to this paragraph;
- (3) A majority of the votes cast by the members were in favor of dissolution; and
- (4) The board has an acceptable plan of dissolution.

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

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

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

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

(a) Administrative costs and expenses of liquidation;

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

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

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

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

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

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

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

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

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

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

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

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

J. After all debts, liabilities and obligations of the credit union are paid or discharged or otherwise adequately provided for, the credit union shall file articles of dissolution with the Secretary of State. Articles of dissolution must set forth:

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

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

2. Involuntary dissolution. This subsection governs the involuntary dissolution of a credit union.

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

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

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

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

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

- (1) May collect money due to the credit union and do all acts necessary to conserve its assets and business and shall proceed to liquidate its affairs;
- (2) Shall collect all debts due and claims belonging to the credit union and may sell or compound all bad or doubtful debts;

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

(4) May take, in the name of the credit union, a mortgage on the real property from a bona fide purchaser to secure the whole or part of the purchase price;

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

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

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

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

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

(a) Administrative costs and expenses of liquidation;

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

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

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

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

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

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

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

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

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

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

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

J. After all debts, liabilities and obligations of the credit union are paid or discharged or otherwise adequately provided for, the receiver shall file articles of dissolution with the Secretary of State. Articles of dissolution must set forth:

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

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

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

§871-B. Applicability of chapter

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

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

§874. Conversion: State to federal charter

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

See title page for effective date.

CHAPTER 323

H.P. 1127 - L.D. 1538

An Act To Clarify the Appointment of Coguardians and Coconservators under the Probate Code

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

Sec. 1. 18-A MRSA §5-304, sub-§(b), as enacted by PL 1985, c. 440, §§2 and 13, is amended to read:

(b) The court may appoint a guardian or coguardians as requested if it is satisfied that the person for whom a guardian is sought is incapacitated, that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person and, if the allegedly incapacitated person has not attended the hearing, that an inquiry has been made as to whether ~~he~~ that person wished to attend the hearing. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

Sec. 2. 18-A MRSA §5-401, first ¶, as enacted by PL 1979, c. 540, §1, is amended to read:

Upon petition and after notice and hearing in accordance with the provisions of this Part, the court may appoint a conservator, coconservator or make other protective order for cause as follows:

See title page for effective date.

CHAPTER 324

S.P. 514 - L.D. 1535

An Act To Authorize Certain Former Members of the Maine State Retirement System To Rejoin the Maine State Retirement System

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

Whereas, with the passage of Public Law 2001, chapter 442, several retirees who would otherwise be eligible to return to state service and rejoin the retirement system are precluded from joining the system; and

Whereas, this legislation must be enacted as an emergency measure in order to correct a hardship created by this result; 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. PL 2001, c. 442, §6 is enacted to read:

Sec. 6. Application; benefit recipient option. A recipient of a service retirement benefit from the Maine State Retirement System who returned to