# LAWS

## OF THE

# STATE OF MAINE

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**FIRST REGULAR SESSION**
**December 1, 2004 to March 30, 2005**

**FIRST SPECIAL SESSION**
**April 4, 2005 to June 18, 2005**

**THE GENERAL EFFECTIVE DATE FOR**
**FIRST REGULAR SESSION**
**NON-EMERGENCY LAWS IS**
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**PUBLISHED BY THE REVISOR OF STATUTES**
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Penmor Lithographers**
**Lewiston, Maine**
**2005**

**4. Exception.** This section does not prohibit the use of any name by a person who received written permission from the superintendent to use the name prior to the effective date of this section.

**Sec. 13. 9-B MRSA §1019-A, sub-§§1 and 2,** as enacted by PL 1991, c. 386, §27, are amended to read:

**1. Issuance of stock, capital notes or debentures.** The issuance of ~~preferred stock~~ equity interest, capital notes or debentures with an original maturity of 3 years or greater. Notice must be provided at least 10 days prior to issuance and must contain a copy of any United States Securities and Exchange Commission filings, private placement memoranda or other documents describing the proposed issue to potential investors; ~~and~~

**2. Purchase of own capital stock.** The purchase of shares of any type of its own ~~capital stock~~ equity interest. Notice must contain such information as required by the superintendent~~.~~; and

**Sec. 14. 9-B MRSA §1019-A, sub-§3** is enacted to read:

**3. Exception requiring approval.** The issuance of equity interest or capital notes by a Maine financial institution holding company that is not required to file notice with the United States Securities and Exchange Commission. Issuance under this subsection also requires prior approval of the superintendent. A Maine financial institution holding company may not purchase or redeem its equity interests without the superintendent's prior written approval if the gross consideration for purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10% or more of the company's consolidated net worth.

**Sec. 15. 9-B MRSA §1215, 2nd ¶,** as enacted by PL 1997, c. 398, Pt. J, §2, is amended to read:

If the holding company is not deemed to be a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than nondepository trust companies, the superintendent may examine the holding company, including its subsidiaries and affiliates, to the extent necessary to determine the soundness and viability of the nondepository trust company.

**Sec. 16. 9-B MRSA §1226, 2nd ¶,** as enacted by PL 1997, c. 398, Pt. J, §2, is amended to read:

If the holding company is not deemed to be a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than a merchant bank, the superintendent may examine the holding company, including its subsidiaries and affiliates, to the extent necessary to determine the soundness and viability of the merchant bank.

See title page for effective date.

## CHAPTER 83

**S.P. 324 - L.D. 949**

### An Act To Enhance the Supervisory Powers of the Department of Professional and Financial Regulation, Bureau of Financial Institutions

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

**Whereas,** the Superintendent of Financial Institutions has identified certain enforcement powers essential to the regulation of Maine-chartered financial institutions that are not currently included in the banking laws; and

**Whereas,** these powers should be made available to the superintendent as soon as possible so that, in the event a Maine-chartered financial institution encounters serious financial difficulties, the superintendent may use the new powers for the protection of depositors, beneficiaries of fiduciary accounts, creditors and the public; and

**Whereas,** pressures of market forces in Maine and across the nation may adversely affect Maine-chartered financial institutions and may warrant responsive action by the superintendent including the use of these new enforcement powers; and

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

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

**Sec. 1. 9-B MRSA §131, sub-§12-B,** as enacted by PL 1995, c. 628, §5, is repealed and the following enacted in its place:

**12-B. Deposit production offices.** "Deposit production offices" means the Maine offices operated by an individual financial institution authorized to do business in this State or individual credit union authorized to do business in this State that do not reasonably help meet the credit needs of Maine

communities. For purposes of this subsection, "deposits" includes credit union share accounts.

**Sec. 2. 9-B MRSA §232, sub-§1, ¶¶B and C,** as amended by PL 1997, c. 660, Pt. A, §3, are further amended to read:

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 or creditors or the public 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; and

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~~;~~.

**Sec. 3. 9-B MRSA §232, sub-§1, ¶D,** as amended by PL 1997, c. 660, Pt. A, §3, is repealed.

**Sec. 4. 9-B MRSA §232, sub-§1, ¶E,** as enacted by PL 1997, c. 660, Pt. A, §4, is repealed.

**Sec. 5. 9-B MRSA §232, sub-§1-A** is enacted to read:

**1-A. Additional 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 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; or

B. The officer or director has been removed or prohibited from participation in any manner in the conduct of the affairs of the financial institution by the appropriate federal banking agency.

**Sec. 6. 9-B MRSA §241, sub-§8,** as enacted by PL 1995, c. 628, §18, is amended to read:

**8. Deposit production offices prohibited.** ~~A~~ No financial institution authorized to do business in this State or credit union authorized to do business in this State ~~is prohibited from operating~~ may operate deposit production offices in this State. ~~Each financial institution or credit union authorized to do business in this State shall submit an annual report to the superintendent providing deposit and loan information considered necessary by the superintendent to monitor compliance with this section. If the superintendent determines that a deposit production office is being operated, the superintendent may issue a cease and desist order pursuant to chapter 23.~~ The superintendent shall annually review the level of lending in this State relative to the level of deposits in this State of each financial institution authorized to do business in this State and each credit union authorized to do business in this State to determine whether deposit production offices are being operated. If the superintendent determines that a financial institution authorized to do business in this State or credit union authorized to do business in this State is operating deposit production offices, the superintendent may issue a cease and desist order pursuant to chapter 23. The superintendent ~~shall~~ may adopt rules ~~that set forth the factors that the bureau shall consider in determining whether a branch is being operated as a deposit production office~~ to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter ~~II-A~~ 2-A. This subsection does not apply to limited purpose banks.

**Sec. 7. 9-B MRSA §363-A** is enacted to read:

**§363-A. Conservation of assets**

**1. Appointment of conservator.** Whenever, in the judgment of the superintendent, because of unsafe or unsound practice in conducting the business of a financial institution or other potentially hazardous condition, it is necessary to conserve or revalue the assets of the financial institution or to reorganize and put into sound condition the financial institution for the benefit of depositors, beneficiaries of fiduciary accounts, creditors or the public, the superintendent may issue an order describing the unsafe, unsound or other hazardous condition and appointing one or more conservators for the financial institution, who shall endeavor promptly to remedy the condition or conditions stated in the order.

A. The superintendent may require a bond as the superintendent determines proper and issue orders as necessary to carry out the provisions of this section. The superintendent may appoint a deputy superintendent or other person, including

the federal corporation insuring the financial institution's accounts pursuant to section 422, as conservator.

B. A conservator, in addition to the powers set forth elsewhere in this chapter and other powers authorized in an order of the superintendent, has all the rights, powers, privileges and authority possessed by the officers, governing body, corporators, members and investors of the financial institution, including the power to remove any officer or member of the governing body if the order of removal is approved in writing by the superintendent. The conservator may, in the name of the financial institution:

(1) Prosecute and defend all suits and other legal proceedings; and

(2) Execute, acknowledge and deliver all deeds, assignments, releases and other instruments necessary and proper to effectuate any sale of real or personal property or any compromise approved by the superintendent. Any deed or other instrument executed pursuant to this subparagraph is valid and effective for all purposes to the same extent as though fully authorized by the financial institution.

C. If a deputy superintendent or other employee of the bureau is appointed conservator, no additional compensation need be paid, but any reasonable and necessary expenses as conservator, including expenses for assistants and counsel, must be paid by the financial institution. If a person other than an employee of the bureau is appointed conservator, then the compensation is determined by the superintendent and must be paid by the financial institution along with any reasonable and necessary expenses of the conservator, including expenses for assistants and counsel.

D. In the event that the federal corporation insuring the financial institution's deposits or accounts pursuant to section 422 accepts an appointment as conservator, the corporation acquires both legal and equitable title to all assets, rights or claims and to all real or personal property of the financial institution to the extent necessary for the corporation to perform its duties as conservator or as may be necessary under applicable federal law to effectuate the appointment. If the corporation pays or makes available for payment the insured deposit liabilities of a financial institution by reason of actions taken pursuant to this section, the corporation becomes subrogated to the rights of all the depositors of the financial institution, whether or not it has become conservator of the financial institution, in the same manner and to the same extent as it would be subrogated in the conservation of a financial institution operating under a federal charter and insured by the corporation.

**2. Segregation of assets.** A conservator appointed under subsection 1 may order that there be segregated and set aside investments that in the conservator's judgment are of slow or doubtful value or that, on account of unusual conditions, cannot be converted into cash at their full fair value.

A. Pursuant to the conservator's segregation order, the clerk or treasurer of the financial institution shall withdraw all investments so segregated and the then book value of the investments from the list of investments and book values of assets as shown on the books of the financial institution.

B. The clerk or treasurer of the financial institution shall make and keep a complete and accurate list of the investments segregated under this subsection, their book values and any other records with respect to the investments as the superintendent or conservator may from time to time prescribe.

As used in this subsection, "investment" or "investments" includes all assets of the financial institution, whether real or personal.

**3. Deposit reductions.** Simultaneously with the reductions taken pursuant to subsection 2, the following actions must be taken by the financial institution.

A. In the case of a mutual financial institution or cooperative financial institution, each deposit standing in that financial institution must be reduced so as to divide pro rata among the depositors or members the aggregate book value of all investments segregated under subsection 2. After the order under subsection 2 has been delivered, a depositor or member may not demand or receive on account of a deposit more than the amount remaining to the credit of the deposit after the reduction has been made, and dividends must be computed only on the amounts so remaining, except as otherwise provided in this section. The treasurer or clerk of that financial institution shall withdraw the sum of any deposit reductions from the statements of the amounts due to depositors or members and enter the reductions on individual passbooks as they are presented. The investments and amounts due depositors or members then remaining with changes thereafter made in a usual course of business are deemed to be the investments held

by and deposits standing in that financial institution for the purpose of taxation and all other purposes, except as elsewhere provided in this chapter.

B. In the case of an investor-owned financial institution, if the liabilities of that financial institution, excluding the outstanding equity interest, exceed its assets, the deficit, after making due allowances for priorities, must be divided pro rata among the depositors and each account charged with its proportionate share of the deficit. A depositor is entitled to withdraw the amount of the depositor's account as fixed and determined in the amounts and at the times the conservator, with the prior written approval of the superintendent, directs. That financial institution shall issue to each depositor a certificate showing the amount of the deficit charged to the depositor's account. The certificate is negotiable and may not bear interest. No dividend, profit, withdrawal or distribution may be made thereafter in liquidation of equity interests in that financial institution until the certificates have been paid in full with interest compounded at the rate of 3% per year; otherwise, the certificates may not be deemed to be a liability of that financial institution.

C. Nothing in this subsection permits a conservator or the superintendent to reduce deposits or accounts insured by a federal corporation pursuant to section 422 without written approval of the federal corporation.

**4. Sale of segregated investments.** Investments segregated under subsection 2 may be sold or exchanged for other securities or investments by a vote of the members of the governing body of the financial institution but must be sold when so ordered by the conservator or the superintendent. All money received from the sales of or as income from the securities or investments must be entered into a special account and held by the financial institution for the benefit of the depositors or members whose deposits were reduced under subsection 3, to be disposed of as provided in subsection 5.

**5. Repayment of reductions.** The members of the governing body of a financial institution from time to time may, and when directed by the superintendent shall, declare pro rata dividends of money received as provided in subsection 4 to be distributed among the depositors or members whose deposits were reduced under subsection 3, payable to those who would then have been entitled to receive the sums deducted if the sums had continued to be included in the reduced deposits, and payable as other dividends are paid.

A. Any depositor or member whose deposit was reduced, any holder of a certificate issued pursuant to subsection 3, paragraph B or the financial institution may file a complaint with the superintendent after one year from the date of the reduction for an order of distribution whenever the condition of the financial institution, taking into account the rights of creditors and of preferred stockholders, if any, warrants the payment.

B. The superintendent may at any time declare the repayment under paragraph A to be final.

**6. Conservator continuing business.** The conservator may continue to operate the financial institution in accordance with the following conditions and limitations.

A. All depositors, members and investors of the financial institution may continue to make payments to the financial institution in accordance with the terms and conditions of their contracts.

B. The conservator may set aside and make available for withdrawal by depositors or members and payment to other creditors on a ratable basis the amounts as in the opinion of the superintendent may safely be used for that purpose.

C. The conservator may receive deposits under the following limitations. The deposits:

(1) May not be subject to any limitation as to payment or withdrawal;

(2) Must be segregated;

(3) May not be used to liquidate any indebtedness of the financial institution existing at the time that the conservator was appointed or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of the financial institution existing at the time the conservator was appointed; and

(4) Must be kept in cash or invested in direct obligations of the United States or deposited with another financial institution.

**7. Replacement conservator.** The superintendent may, without notice or hearing, replace a conservator with another conservator.

**8. Termination of conservatorship.** The superintendent by order may terminate the conservatorship according to this subsection.

A. The superintendent may terminate the conservatorship at the superintendent's discretion.

B. Any interested party may petition the superintendent for termination of the conservatorship 6 months following appointment of the conservator.

C. Upon termination of the conservatorship, the powers and duties of the conservator appointed pursuant to subsection 1 cease.

D. Upon termination of the conservatorship:

(1) The financial institution is returned to its governing body and operates as if the conservator had not been appointed; or

(2) A receiver is appointed as provided in section 365.

A certified copy of any order discharging the conservator and returning the financial institution to its governing body is sufficient evidence of termination of conservatorship.

**9. Immunity from civil liability.** A person serving as a conservator is immune from any civil liability for acts performed within the scope of the conservator's duties in the same manner and to the same extent as employees of governmental entities are under the Maine Tort Claims Act.

**10. Judicial review.** Any person affected adversely by any act or omission of the superintendent or conservator under this section or section 367-A may bring an action in the Superior Court of Kennebec County seeking an order annulling, altering or modifying the act or enjoining the performance of the act or requiring action to be taken under any provision of this section.

A. The proceedings must be given precedence over other pending court cases and must be expedited. The person bringing the action has the burden of proof to show that the act or omission is unlawful or arbitrary and capricious. Only the financial institution may bring an action challenging the superintendent's order establishing the conservatorship. The court must uphold the superintendent's order establishing the conservatorship and the appointment of a conservator unless the court finds that the superintendent's action was unlawful or arbitrary and capricious.

B. The person must bring the action under paragraph A within 10 business days after receiving notice of the act or omission in person, by registered mail or by publication of a certificate signed by the conservator, by the superintendent or by the president, treasurer or clerk of the financial institution in a newspaper of general circulation in the county where the financial institution has its principal office.

C. Notwithstanding paragraph B, action may not be brought more than 30 days after the order of the superintendent under subsection 8.

D. The court may issue injunctions to prevent multiplicity of proceedings seeking to annul, alter or modify the actions of the superintendent or the conservator made under the provisions of this chapter or to prevent undue interference with the regulation and conservation of the financial institution.

E. The court, upon application by the superintendent or conservator, has jurisdiction to enforce orders relating to the conservatorship and the financial institution in conservatorship.

F. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act does not apply to the procedures described in this subsection.

**Sec. 8. 9-B MRSA §365, sub-§1-A,** as amended by PL 1997, c. 398, Pt. H, §4, is further amended to read:

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

**Sec. 9. 9-B MRSA §365, sub-§11** is enacted to read:

**11. Immunity from civil liability.** A person serving as a receiver is immune from any civil liability, in the same manner as and to the same extent as employees of governmental entities are under the Maine Tort Claims Act, for acts performed within the scope of the receiver's duties.

**Sec. 10. 9-B MRSA §367-A** is enacted to read:

**§367-A. Additional authority in conservation and liquidation**

**1. Attachments and preferences.** The superintendent or a conservator or receiver may bring an action:

A. To dissolve all attachments on the property of a financial institution made within 4 months before the appointment made under section 363-A or 365;

B. To void as a preference any transfer made after, or in contemplation of, the appointment under section 363-A or 365; and

C. To discontinue all actions pending against the financial institution.

**2. Injunctions.** Whenever proceedings are instituted under this chapter, the Superior Court may issue an injunction restraining all persons from proceeding against the financial institution described in section 363-A or 365 until termination of conservatorship or final liquidation, including trustee processes.

**3. Other authority.** The superintendent, conservator or receiver may disaffirm or repudiate any contract or lease to which the financial institution is a party, fix the rights of the claimants and adjudicate and fix the time and mode of payment of all claims, accounts and deposits having priority.

**4. Proceedings generally.** The superintendent, conservator or receiver may bring an action described in this chapter, or any other action as determined appropriate, in the county in which the financial institution is located or has its principal place of business or in the Superior Court of Kennebec County. The proceedings must be given precedence over other pending court cases and must be expedited.

**5. Powers of superintendent.** The superintendent has the following powers.

A. The superintendent may take any actions necessary to carry out the terms and provisions of this chapter.

B. All powers conferred under this chapter on the superintendent are in addition to the powers otherwise conferred upon the superintendent by law.

C. The superintendent may adopt rules for the purpose of carrying out provisions of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**6. Mergers.** The conservator or receiver, with the approval of the superintendent, may order the merger or consolidation of any financial institution that is described in section 363-A or 365 with any other financial institution, state-chartered or federally chartered, with the consent of the other financial institution and may prescribe the mode or procedure for the merger or consolidation and the terms and conditions of the merger or consolidation.

**Sec. 11. 9-B MRSA §469** is enacted to read:

**§469. Fundamental change in asset composition**

**1. Requirement of prior approval.** A financial institution, without the prior written approval of the superintendent, may not change the composition of all or substantially all of its assets through sales or other dispositions of assets, through purchases or other acquisitions of assets or through other expansions of its operations.

**2. Considerations.** In determining whether to approve the change in the asset composition of a financial institution, the superintendent shall consider the purpose of the proposed transaction, its impact on the safety and soundness of the financial institution and any effect on the customers of the financial institution. If the superintendent concludes that a filing presents significant or novel policy, supervisory or legal issues, the superintendent may require an application to be filed in accordance with section 252.

**3. Exception.** Prior written approval is not required for a change in the composition of assets that is part of the financial institution's ordinary and ongoing core banking activities.

**4. Rules.** The superintendent may adopt rules defining a change in the composition of all or substantially all of a financial institution's assets and setting forth the factors to consider in determining what constitutes a fundamental change in assets. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 12. 9-B MRSA §1213-A** is enacted to read:

**§1213-A. Asset pledge**

**1. Pledge requirement.** The superintendent may require a nondepository trust company to pledge readily marketable assets to the superintendent if the superintendent believes that circumstances warrant the action. The pledged assets must be United States dollar denominated, investment grade and subject to the prior written approval of the superintendent. The pledged assets must be held on deposit or in safekeeping by an FDIC-insured depository institution approved by the superintendent. The pledged assets may be released to the superintendent only upon certification that a receiver or conservator of the nondepository trust company has been appointed. The asset pledge requirement may be lifted by the superintendent if the superintendent determines that the condition of the nondepository trust company so warrants that action.

**2. Amount of pledge.** The aggregate amount of pledged assets is determined by the superintendent but may not exceed the greater of $1,000,000 or 50% of

the minimum required capital of the nondepository trust company at the time the asset pledge is imposed.

**3. Pledge agreement.** The asset pledge must be maintained pursuant to an asset pledge agreement in the form and containing any limitations and conditions the superintendent requires. As long as the nondepository trust company continues business in the ordinary course, the nondepository trust company may be permitted to collect income on the pledged assets and examine and exchange those assets. The aggregate amount of assets pledged may not be less than required under subsection 2 without the superintendent's approval.

**4. Noncompliance.** If a nondepository trust company fails to maintain the minimum required asset pledge, the superintendent may determine that the nondepository trust company does not meet the capital requirements under section 412-A and any rules adopted pursuant to section 412-A.

**5. Rulemaking.** The superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 13. 9-B MRSA §1223-A** is enacted to read:

**§1223-A. Asset pledge**

**1. Pledge requirement.** The superintendent may require a merchant bank to pledge readily marketable assets to the superintendent if the superintendent believes that the action is necessary for the protection of the public. The pledged assets must be United States dollar denominated, investment grade and subject to the prior written approval of the superintendent. The pledged assets must be held on deposit or in safekeeping by an FDIC-insured depository institution approved by the superintendent. The pledged assets may be released to the superintendent only upon certification that a receiver or conservator of the merchant bank has been appointed. The asset pledge requirement may be lifted by the superintendent if the superintendent determines that the condition of the merchant bank so warrants that action.

**2. Amount of pledge.** The aggregate amount of pledged assets is determined by the superintendent but may not exceed the greater of $1,000,000 or 50% of the minimum required capital of the merchant bank at the time the asset pledge is imposed.

**3. Pledge agreement.** The asset pledge must be maintained pursuant to an asset pledge agreement in the form and containing any limitations and conditions the superintendent requires. As long as the merchant bank continues business in the ordinary course, the merchant bank may be permitted to collect income on the pledged assets and examine and exchange those assets. The aggregate amount of assets pledged may not be less than required under subsection 2 without the superintendent's approval.

**4. Noncompliance.** If a merchant bank fails to maintain the minimum required asset pledge, the superintendent may determine that the merchant bank does not meet the capital requirements under section 412-A and any rules adopted pursuant to section 412-A.

**5. Rulemaking.** The superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 14. 9-B MRSA §1233-A** is enacted to read:

**§1233-A. Asset pledge**

**1. Pledge requirement.** The superintendent may require an uninsured bank to pledge readily marketable assets to the superintendent if the superintendent believes that the action is necessary for the protection of the public. The pledged assets must be United States dollar denominated, investment grade and subject to the prior written approval of the superintendent. The pledged assets must be held on deposit or in safekeeping by an FDIC-insured depository institution approved by the superintendent. The pledged assets may be released to the superintendent only upon certification that a receiver or conservator of the uninsured bank has been appointed. The asset pledge requirement may be lifted by the superintendent if the superintendent determines that the condition of the uninsured bank so warrants that action.

**2. Amount of pledge.** The aggregate amount of pledged assets is determined by the superintendent but may not exceed the greater of $1,000,000 or 50% of the minimum required capital of the uninsured bank at the time the asset pledge is imposed.

**3. Pledge agreement.** The asset pledge must be maintained pursuant to an asset pledge agreement in the form and containing any limitations and conditions the superintendent requires. As long as the uninsured bank continues business in the ordinary course, the uninsured bank may be permitted to collect income on the pledged assets and examine and exchange those assets. The aggregate amount of assets pledged may not be less than required under subsection 2 without the superintendent's approval.

**4. Noncompliance.** If an uninsured bank fails to maintain the minimum required asset pledge, the superintendent may determine that the uninsured bank does not meet the capital requirements under section

412-A and any rules adopted pursuant to section 412-A.

**5. Rulemaking.** The superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

Effective May 10, 2005.

## CHAPTER 84

**S.P. 101 - L.D. 339**

### An Act To Include Androscoggin County in the Law Governing the Use of County Surplus Funds

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

**Sec. 1. 30-A MRSA §725, sub-§9,** as amended by PL 1999, c. 253, §8, is repealed.

**Sec. 2. 30-A MRSA §924, first ¶,** as amended by PL 2001, c. 349, §6, is further amended to read:

The county commissioners of each county shall use any unencumbered surplus funds at the end of a fiscal year in the following fiscal year only as provided in this section~~, except that the Androscoggin County commissioners shall act in accordance with section 725, subsection 9~~.

See title page for effective date.

## CHAPTER 85

**H.P. 309 - L.D. 424**

### An Act To Exempt Certain Religious, Nonpublic, Postsecondary Institutions from State Requirements for Degree-granting Authority

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

**Sec. 1. 20-A MRSA §10708, sub-§§2 and 3,** as enacted by PL 1981, c. 693, §§5 and 8, are amended to read:

**2. Federal reservations.** Offer programs or courses ~~which~~ that are conducted solely on a federal reservation over which the Federal Government has exclusive jurisdiction. The commissioner shall authorize exempt status under this subsection; ~~and~~

**3. Noncredit courses.** Offer courses or programs ~~which~~ that are not for academic credit~~.~~; and

**Sec. 2. 20-A MRSA §10708, sub-§4** is enacted to read:

**4. Religious, nonpublic, educational institution.** Meet the following criteria.

A. The educational institution must be substantially owned, operated or supported by a bona fide church or religious organization.

B. The educational programs of the educational institution must be primarily designed for, aimed at and attended by persons who seek to learn the particular religious faith or beliefs of the church or religious organization under paragraph A.

C. The programs under paragraph B must be intended to prepare students to assume leadership positions in, or enter into some other vocation closely related to, the particular faith of the church or religious organization under paragraph A.

The exemption under this subsection does not apply to any educational institution that represents to any student or prospective student that the major purpose of its program is to prepare the student for a vocation not closely related to the particular religious faith of the educational institution or to provide the student with a general educational program substantially equivalent to the educational programs offered by schools or departments or branches of schools that are not exempt from this section. Any educational institution receiving an exemption under this subsection must inform all applicants of its exempt status in writing and must prominently display the following statement on all written materials, including, but not limited to, any electronic materials, made available to potential applicants or to the general public: "Pursuant to the Maine Revised Statutes, Title 20-A, section 10708, subsection 4, this institution is not required to obtain authorization from either the State Board of Education or the Maine State Legislature in order to: (1) use the name "junior college," "college" or "university," (2) offer courses or programs for academic credit or (3) confer degrees."

See title page for effective date.

## CHAPTER 86

**H.P. 281 - L.D. 379**

### An Act To Raise the Marriage Fees