

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Make Technical and Supervisory Amendments to the Laws Governing Banking and Consumer Credit**

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

**Sec. 1. 9-A MRSA §6-202**, as amended by PL 1975, c. 767, §8, is further amended to read:

### **§ 6-202. Notification**

1. Persons subject to this Part shall file notification with the administrator before commencing business in this State, and, thereafter, on or before January 31st of each year. ~~The notification shall state:~~The notification filings must be made to the administrator and must be in a form and contain information that the administrator considers appropriate for the proper supervision and regulation of such persons.

A. ~~Name of the person;~~

B. ~~Name in which business is transacted if different from A;~~

C. ~~Address of principal office, which may be outside this State;~~

D. ~~Address of all offices or retail stores, if any, in this State at which consumer credit transactions are entered into, or in the case of a person taking assignments of obligations, the offices or places of business within this State at which business is transacted;~~

E. ~~If consumer credit transactions are entered into otherwise than at an office or retail store in this State, a brief description of the manner in which they are entered into;~~

F. ~~Address of designated agent upon whom service of process may be made in this State, section 1-203; and~~

G. ~~Whether supervised loans are made.~~

2. ~~If information in a notification becomes inaccurate after filing, the administrator should be advised in writing of such new or corrected information.~~

3. In addition to the notification filings required in subsection 1, the administrator may require reports and other information at such times and in such form as the administrator considers appropriate for the proper supervision of the persons subject to this Part.

4. If information in a notification required in subsection 1 becomes inaccurate after filing, the administrator must be advised in writing of the new or corrected information.

**Sec. 2. 9-B MRSA §222, sub-§3**, as amended by PL 2001, c. 211, §7, is repealed and the following enacted in its place:

**3. Condition and income reports.** Every financial institution subject to this Title shall make quarterly, or at such times as the superintendent may direct, a report of condition and income to the superintendent. The report must be in such form and contain such information as the superintendent considers appropriate for the proper supervision and regulation of such financial institutions.

The report must contain a declaration that the report is true and correct and must be signed by an officer authorized to do so by the board of directors of the financial institution. The financial institution shall retain a copy of the report that is filed with the bureau, including the original signed declaration, and shall make it available to the bureau upon request.

**Sec. 3. 9-B MRSA §223, sub-§2,** as enacted by PL 1975, c. 500, §1, is amended to read:

**2. Reports posted in offices.** Every financial institution shall make available in all of its offices at least 10 days, but not more than 30 days, prior to the annual meeting of its stockholders, corporators or members, its latest condition report or a condition report for its most recently completed fiscal year, and a report of income for the institution's most recently completed fiscal year. In addition to making available its latest condition report or condition report for its most recently completed fiscal year, a nondepository trust company shall make available a report of its fiduciary assets and income.

**Sec. 4. 9-B MRSA §342,** as amended by PL 2007, c. 79, §7, is further amended to read:

### **§ 342. Conversion to new charter: federal to State; State to federal; out of state to State**

**1. Federal savings bank or savings and loan to state financial institution.** Any federal association or federal savings bank may convert to a financial institution organized under the laws of this State in the following manner. A federal savings bank or savings and loan association converting to a financial institution organized under the laws of this State may continue to use the designation "Federal" or "FSB" or derivatives of "Federal" or "FSB" in its corporate title, as long as the converted federal savings bank or savings and loan association also uses the designation "state association" or "S.A." in its corporate title.

A. At an annual meeting or a special meeting called for that purpose, a majority, or more if required by the institution's organizational documents, of the members or investors casting votes in person or by proxy must approve of the conversion. Notice of the meeting must be mailed to each member or investor at least 30 and not more than 60 days prior to the date of the meeting at the member's or investor's last known address as shown on the books of the institution.

B. At the meeting required in paragraph A, the members or investors shall vote upon directors who will be the directors of the state-chartered institution after conversion becomes effective and the members shall also vote upon corporators if a board of corporators is to be established for the resulting state-chartered institution.

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

D. Copies of the minutes of the meeting of members or investors, verified by affidavit of the clerk or secretary, and copies of the superintendent's written approval must be mailed to the Office of Thrift Supervision or its successor within 10 days after approval.

E. Following compliance with all applicable requirements of federal law, if any, the directors elected pursuant to paragraph B shall execute 3 copies of the organizational documents upon which the superintendent shall endorse approval and those documents must be filed in accordance with the provisions of chapter 31 or 32. Each director shall sign and acknowledge the documents as a subscriber to the documents.

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

G. The rights of dissenting investors of a converting federal savings bank or federal savings and loan are governed by federal law.

H. Upon approval of the superintendent and evidence that the converting institution has complied with all applicable state and federal laws, rules and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of the converting institution and shall file a copy of the certificate with the Secretary of State. This certificate, once filed, is conclusive evidence of the conversion and of the correctness of all proceedings relating to the conversion in all courts and places. Unless a later date is specified in the certificate, the conversion is effective upon issuance of the certificate.

**2. National bank to financial institution.** A national bank may convert to a financial institution organized under the laws of this State in the following manner. A national bank converting to a financial institution organized under the laws of this State may continue to use the designation "National" or "NA" or derivatives of "National" or "NA" in its corporate title, as long as the converted national bank also uses the designation "state association" or "S.A." in its corporate title.

A. The national bank must comply with the conditions and limitations imposed by the laws of the United States governing the conversion.

B. The converting national bank may apply for a State charter by filing with the superintendent an application signed by its president and by a majority of its governing body setting forth the corporate action taken in compliance with the laws of the United States in paragraph A and affixing to the application the organizational documents governing the bank as a financial institution.

D. The rights of dissenting investors of a converting national bank are governed by federal law.

E. Upon approval of the superintendent and evidence that the converting institution has complied with all applicable state and federal laws, rules and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of the converting institution and shall file a copy of the certificate with the Secretary of State. This certificate, once filed, is conclusive evidence of the conversion and of the correctness of all proceedings related to the conversion in all courts and places. Unless a later date is specified in the certificate, the conversion is effective upon issuance of the certificate.

**6. State to federal charter.** A financial institution organized under provisions of this Title may convert to a federal association or to a national bank in accordance with applicable federal laws and regulations and the following provisions.

A. A majority of the institution's investors or mutual voters, or more if required by the institution's organizational documents, must approve the conversion at an annual meeting or at a special meeting. Notice of the meeting must be mailed not less than 20 nor more than 30 days prior to the meeting to each investor or mutual voter at the investor's or voter's last known address as shown on the books of the institution.

B. Upon completion of the conversion, the financial institution shall certify in writing that the conversion has been completed under applicable federal law. The charter of the converting financial institution terminates automatically upon issuance of the federal charter or certificate. Upon receipt of a copy of the charter or certificate showing the organization of the institution as a federal institution, the superintendent shall notify the Secretary of State that the conversion has been effected.

C. The rights of dissenting investors of a financial institution converting to a federal charter are those specified in section 352, subsection 5.

D. The financial institution must notify and provide the superintendent with a copy of the application filed with the appropriate federal regulator within 3 days of filing with the federal regulator.

**7. Out of state to State charter.** A financial institution organized under the laws of another state may convert to a financial institution organized under the laws of this State in the manner set out in this section.

A. The financial institution organized under the laws of another state must comply with the conditions and limitations imposed by the laws of that state governing the conversion.

B. The converting financial institution may apply for a state charter by filing with the superintendent an application signed by its president and by a majority of its governing body setting forth the corporate action taken in compliance with the laws of the state under which it is organized and affixing to the application the organizational documents governing the bank as a financial institution.

C. Upon approval of the superintendent and evidence that the converting institution has complied with all applicable state and federal laws, rules and regulations, the superintendent shall issue to the resulting institution a certificate specifying the name of the converting institution and shall file a

copy of the certificate with the Secretary of State. This certificate, once filed, is conclusive evidence of the conversion and of the correctness of all proceedings related to the conversion in all courts and places. Unless a later date is specified in the certificate, the conversion is effective upon issuance of the certificate.

The rights of dissenting investors of a converting financial institution organized under another state are governed by the laws of that state.

**Sec. 5. 9-B MRSA §363-A, sub-§9-A** is enacted to read:

**9-A. Directors not liable.** The members of the board of directors of a financial institution may not be liable to the financial institution's shareholders or creditors for acquiescing in or consenting in good faith to the appointment of a conservator for that financial institution or requiring the financial institution to be acquired by a financial institution holding company or to combine with another financial institution, if grounds exist for appointing a conservator for the financial institution.

**Sec. 6. 9-B MRSA §365, sub-§12** is enacted to read:

**12. Directors not liable.** The members of the board of directors of a financial institution may not be liable to the financial institution's shareholders or creditors for acquiescing in or consenting in good faith to the appointment of a receiver for that financial institution or requiring the financial institution to be acquired by a financial institution holding company or to combine with another financial institution, if grounds exist for appointing a receiver for the financial institution.

**Sec. 7. 9-B MRSA §369**, as enacted by PL 1991, c. 34, §8, is repealed and the following enacted in its place:

### **§ 369. Judicial review**

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

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

**2. Action by person adversely affected.** Except when the Federal Deposit Insurance Corporation is appointed receiver and conducts a receivership under federal law, a person affected adversely by an act or omission of the superintendent or receiver under this section and sections 365, 367-A and 368 may bring an action in the Superior Court of Kennebec County seeking an order to annul, alter or modify the act or to enjoin the performance of the act or to require that action be taken under any provision of this section.

A. Any proceedings under this section 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.

B. The person must bring the action under this subsection 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 superintendent or receiver 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 determining that the business affairs of the receivership are substantially complete and that the receivership is terminated. Upon termination of the receivership, the superintendent is under no obligation to reopen the receivership.

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

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

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 §844, sub-§5**, as enacted by PL 2003, c. 322, §33, is amended to read:

**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 in accordance with section 453.

**Sec. 9. 9-B MRSA §873**, as amended by PL 1997, c. 398, Pt. L, §13, is further amended to read:

### **§ 873. Conversion: federal to State charter; out of state to State charter**

**1. Eligibility.** A credit union ~~now or hereafter authorized to do business in this State and organized pursuant to provisions of Federal~~federal law ~~or organized under the laws of another state~~ may become subject to this Part and receive a charter as a state-chartered credit union by making application in writing to the superintendent for such conversion. The superintendent may approve or disapprove such conversion in accordance with the criteria set forth in section 253; ~~provided that as long as~~, as a condition precedent to such approval, the credit union ~~shall show~~shows compliance with all applicable ~~Federal~~federal laws and regulations ~~and laws and regulations of the state under which it is organized~~ relating to such conversion.

**2. Issuance of charter.** Upon receiving approval from the superintendent, the credit union ~~shall~~must be issued a charter under this Part, which fact ~~shall~~must be certified by the superintendent to the Secretary of State; and, from and after the issuance of such charter, ~~said~~the credit union ~~shall~~must be subject to the provisions of this Part and all ~~regulations~~rules issued hereunderunder this Part.

**3. Applicability of other sections.** A credit union converting to a state charter pursuant to this section is subject to the provisions contained in sections 357 and 358 governing resulting institutions.

**Sec. 10. 9-B MRSA §1052, sub-§3,** as amended by PL 1993, c. 257, §4, is further amended to read:

**3. Subsidiary universal bank.** "~~Subsidiary savings institution~~" "Subsidiary universal bank" means any ~~savings~~universal bank or ~~savings and loan association~~ organized under the laws of this State, at least 51% of the voting stock of which is wholly owned by a mutual holding company.

**Sec. 11. 9-B MRSA §1053, sub-§1,** as amended by PL 1993, c. 257, §5, is further amended to read:

**1. Reorganization.** Notwithstanding any other provision of law, a mutual financial institution may reorganize so as to become a mutual holding company by:

A. Chartering, pursuant to chapter 31, a subsidiary ~~savings institution~~universal bank; and

B. Transferring a substantial part of its assets and liabilities, including all of its insured liabilities to the subsidiary ~~savings institution~~universal bank. The subsidiary ~~savings institution~~universal bank must meet or exceed minimum capital requirements prescribed by federal law or regulations or state law or rules. Persons having liquidation rights with respect to the mutual financial institution pursuant to chapter 36, at the time of the formation of the subsidiary ~~savings institution~~universal bank, have those rights with respect to the mutual holding company.

**Sec. 12. 9-B MRSA §1053, sub-§4,** as amended by PL 2005, c. 65, Pt. C, §5, is further amended to read:

**4. Issuance of stock and securities.** A subsidiary ~~savings institution~~universal bank has the power to issue to persons other than the mutual holding company of which it is a subsidiary an amount of common stock and securities convertible into common stock that in the aggregate does not exceed 49% of the issued and outstanding common stock of that subsidiary ~~savings institution~~universal bank. For purposes of the 49% limitation, any issued and outstanding securities that are convertible into common stock, including warrants, options and rights to purchase common stock, are considered issued and outstanding common stock of the subsidiary. Each time common stock of the subsidiary ~~savings institution~~universal bank is offered by the institution to the general public for a price payable in cash, each eligible account holder of the subsidiary ~~savings institution~~universal bank of the mutual holding company must receive, without payment, nontransferable subscription rights to purchase that common stock at the same price and in accordance with guidelines or rules as may be adopted by the superintendent. For purposes of this chapter, an "offer to the general public" means an offer by means of public advertising or general solicitation and does not include:

A. Issuances to the mutual holding company; or

B. Offers or sales that are exempt from registration by virtue of Title 32, section 16202, ~~subsection~~subsection 16, 19 or 26.

**Sec. 13. 9-B MRSA §1053, sub-§5**, as enacted by PL 1993, c. 257, §6, is amended to read:

**5. Reporting.** A subsidiary ~~savings institution~~universal bank that issues, or has issued and outstanding, any common stock or securities convertible into common stock to persons other than the mutual holding company of which it is a subsidiary shall file consolidated financial statements, reports or proxy materials as required under federal law. If the consolidated financial statements, reports or proxy materials are not required to be filed with any federal authority or agency, copies of the consolidated financial statements, reports or proxy materials must be filed with the superintendent and must be public records.

**Sec. 14. 9-B MRSA §1053, sub-§6**, as enacted by PL 1993, c. 257, §6, is amended to read:

**6. Powers of subsidiary universal banks.** A subsidiary ~~savings institution~~universal bank may continue to exercise its powers, rights and privileges and is subject to limitations not inconsistent with this chapter and applicable to a savings bank or savings and loan association organized under the laws of the State, including, but not limited to, the powers of a stock financial institution organized under chapter 31.

**Sec. 15. 9-B MRSA §1054, sub-§3**, as amended by PL 1993, c. 257, §8, is further amended to read:

**3. Powers.** A mutual holding company may:

- A. Invest in the stock of a financial institution, subject to section 1013;
- B. Acquire a mutual financial institution through merger into a subsidiary ~~savings institution~~universal bank or an interim subsidiary ~~savings institution~~universal bank of the mutual holding company;
- C. Merge with or acquire a mutual holding company, one of whose subsidiaries is a savings bank or savings and loan association;
- D. Exercise any power, right or privilege, with the exception of deposit taking, granted to mutual financial institutions under the laws of the State, and, unless specifically noted otherwise, any reference to "savings bank" or "savings and loan association" in any other law of this State also applies to a subsidiary ~~savings institution~~universal bank chartered pursuant to this chapter;
- E. Invest in the capital stock of a company, which is a legal investment for a savings bank under the laws of the State;
- F. Exercise any power or engage in any activity authorized for a bank holding company or savings and loan holding company under federal law or rule or chapter 101; and
- G. Exercise any other power or engage in any other activity authorized by the superintendent.

**Sec. 16. 9-B MRSA §1055**, as amended by PL 1993, c. 257, §9, is further amended to read:

## § 1055. Rules



The superintendent shall adopt such rules as necessary to effectuate the purposes of this chapter and to ensure that the reorganization of a mutual financial institution is conducted in a fair and equitable manner to ensure the safety and soundness of the subsidiary ~~savings institution~~universal bank and the protection of the subsidiary ~~savings institution~~'universal bank's net worth.

Effective September 12, 2009