

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
108TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. S-164)

COMMITTEE AMENDMENT "A " to S.P. 162, L.D. 438,
Bill, "AN ACT Relating to the Exemption of Financial
Institutions from the Unfair Trade Practices Act."

Amend the Bill by striking out all of the title and
inserting in its place the following: 'AN ACT Concerning
Unfair Trade Practices of Financial Institutions."

Further amend the Bill by striking out everything
after the enacting clause and inserting in its place the
following:

'9-B MRSA §241, sub-§1, ¶D is enacted to read:

D. Whenever the superintendent has reason to believe
that any financial institution authorized to do
business in this State or any credit union authorized
to do business in this State is using or is about to
use any method, act or practice in violation of
section 231 and that proceedings would be in the
public interest, he may bring an action in the name
of the State against such entity to restrain by
temporary or permanent injunction the use of such
method, act or practice and the court may make such
other orders or judgments as may be necessary to
restore to any person who has suffered any ascertainable
loss by reason of the use or employment of such unlawful

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method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice. At least 10 days prior to commencement of any action under this section, the superintendent shall notify the entity of his intended action, and give the entity the opportunity to confer with the superintendent in person or by counsel or other representative as to the proposed action. Notice shall be given the entity by mail, postage prepaid, sent to their usual place of business. The superintendent may proceed without notice as required by this section upon a showing of facts by affidavit of immediate irreparable harm to the consumers of the State. The action may be brought in the Superior Court of the county in which such entity is located or has its principal place of business or may be brought in the Superior Court of Kennebec County. The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this section. Any district attorney or law enforcement officer receiving notice of any alleged violation of this section shall immediately forward written notice of same with any other information that he may have to the office of the superintendent. Any person or entity, who violates the terms of an injunction issued under this section,

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shall forfeit and pay to the State to be applied to the General Fund a civil penalty of not more than \$10,000 for each violation. For the purposes of this section, the court issuing such injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the superintendent, acting in the name of the State, may petition for recovery of such civil penalty. In any action under this section where a permanent injunction is issued, the court may order the person or entity against whom the permanent injunction has been issued to pay to the State the costs of the investigation of that person or entity by the superintendent and the costs of suit, which fund shall be applied in the carrying out of the duties of the Bureau of Banking.

Statement of Fact

This amendment authorizes the Superintendent of the Bureau of Banking to bring an action seeking both damages which may have been suffered by the consumer and injunctive relief against any financial institution or credit union which violates the unfair trade practices section of the banking law. It essentially authorizes the bank superintendent to bring the same type of action which the Attorney General

is authorized to bring under the Unfair Trade Practices Act against financial institutions.