

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1123

6
7 H.P. 793

House of Representatives, March 26, 1985

8 Reference to the Committee on Business and Commerce suggested and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

11 Cosponsored by Representative Murray of Bangor, Representative Rydell
of Brunswick and Representative Stevens of Bangor.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Require Full Disclosure by
18 Financial Planners.
19

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

22 32 MRSA c. 99 is enacted to read:

23 CHAPTER 99

24 FINANCIAL PLANNERS

25 §9751. Declaration of purpose

26 It is the purpose of this chapter to assure that
27 when a financial planner makes a recommendation to a
28 consumer on investment of financial resources, the
29 planner makes full disclosure of any financial inter-
30 est he may have in recommending certain investments.
31 A consumer can make truly informed investment deci-
32 sions only if he has full information on the
33 planner's biases and interests.

1 §9752. Definitions

2 As used in this chapter, unless the context indi-
3 icates otherwise, the following terms have the follow-
4 ing meanings.

5 1. Consumer. "Consumer" means an individual.

6 2. Financial planner. "Financial planner" means
7 a person who provides a variety of services, princi-
8 pally advisory in nature, to consumers with respect
9 to management of financial resources based upon an
10 analysis of individual consumer needs.

11 "Financial planner" includes, but is not limited to,
12 those persons who designate themselves financial ana-
13 lysts, advisors, consultants or planners, financial
14 management advisors, securities or investment ana-
15 lysts, estate planners or other such terms.

16 3. Person. "Person" means any individual, part-
17 nership, unincorporated organization, corporation or
18 any employee or agent of a partnership, unincorpor-
19 ated organization or corporation.

20 §9753. Disclosure required

21 If a person offering his services as a financial
22 planner recommends that a consumer invest financial
23 resources in an investment and the financial planner
24 has any direct or indirect interest in that invest-
25 ment or has any potential of direct or indirect fi-
26 nancial gain if the consumer invests his resources in
27 that investment, then the financial planner shall
28 fully disclose to the consumer the existence of that
29 interest or potential gain. This duty to disclose
30 extends to commissions, fees, referral fees or other
31 compensation the financial planner may receive if the
32 consumer makes the investment.

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STATEMENT OF FACT

2 Historically, institutional and traditional bar-
3 riers have forced providers of financial services to
4 specialize; consequently, people obtained advice
5 knowing the inherent bias of the advisor. For exam-
6 ple, an insurance agent is more likely to advise a
7 person to invest his money in an insurance annuity
8 than is a stockbroker who probably emphasizes stock
9 investments. The financial services revolution and
10 the resulting new array of products and providers has
11 led to confusion for many consumers. As a result, a
12 new breed of advisors has sprung up, calling them-
13 selves by various names such as financial planners,
14 advisors, analysts or consultants. Their advice is
15 heavily relied on by consumers who wish to obtain
16 neutral, unbiased advice.

17 This field is so new that there is not yet any
18 federal or state regulation as there is with securi-
19 ties dealers. Nor is there a uniformly recognized
20 educational degree, professional certificate or evi-
21 dence of a planner's competence. The North American
22 Securities Administration Association has recently
23 formed a study committee, but it will probably be
24 several years before any uniform act is proposed.

25 Due to the newness of the area and the consequent
26 lack of standard qualifications, this bill does not
27 require licensing or any minimal education or train-
28 ing requirements. Instead it follows the disclosure
29 of information philosophy of the original federal se-
30 curities laws. The definition of a financial planner
31 is based on Securities Exchange Commission Investment
32 Advisor Act Release No. IA-770. If a person offering
33 his services as a financial planner recommends that a
34 consumer invest his financial resources in an invest-
35 ment and the planner has any interest in that invest-
36 ment or otherwise has any potential of gain if the
37 consumer makes the investment, then the planner must
38 fully disclose the existence of that interest or po-
39 tential gain. This will cover situations where the
40 planner may receive commissions, fees, referral fees
41 for referring the consumer elsewhere or other compen-
42 sation, if the consumer makes the investment.

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