

MAINE STATE LEGISLATURE

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BANKING AND INSURANCE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 843, Bill, "An Act to Regulate Money Transmitters and Amend Consumer Credit Laws"

Amend the bill in Part A in section 2 in that part designated "§6102." in subsection 3 in the 3rd line (page 1, line 37 in L.D.) by striking out the following: "sell or issue payment instruments or" and inserting in its place the following: 'engage in the business of selling or issuing payment instruments or to'

Further amend the bill in Part A in section 2 in that part designated "§6102." in subsection 10 in the 2nd line (page 2, line 22 in L.D.) by striking out the following: "sale or issuance of payment instruments or engaging in" and inserting in its place the following: 'business of selling or issuing payment instruments or'

Further amend the bill in Part A in section 2 in that part designated "§6102." in subsection 11 in the 5th line (page 2, line 32 in L.D.) by inserting after the following: 'United States,' the following: 'and has been reported to the licensee as having been sold.'

Further amend the bill in Part A in section 2 in that part designated "§6104." in subsection 1 in paragraph D in the 5th line (page 3, line 30 in L.D.) by striking out the following: "issue or sell payment instruments" and inserting in its place the following: 'engage in the business of issuing or selling payment instruments'

Further amend the bill in Part A in section 2 in that part designated "§6110." in subsection 1 in the last line (page 8,

COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "A" to H.P. 618, L.D. 843

2 line 51 in L.D.) by inserting after the following: "a licensee"
the following: ', up to a maximum of \$2,500'

4 Further amend the bill in Part A in section 2 in that part
designated "\$6119." in subsection 1 in paragraph C in the 3rd
6 line (page 14, line 33 in L.D.) by striking out the following:
"administrator," and inserting in its place the following:
8 'administrator'

10 Further amend the bill in Part A in section 2 in that part
designated "\$6132." in subsection 5 by striking out all of
12 paragraphs A to C (page 18, lines 13 to 20 in L.D.) and inserting
their place the following:

- 14 'A. A supervised financial organization;
- 16 B. A supervised lender;
- 18 C. A licensee under the Money Transmitters Act; or
- 20 D. A person who is primarily engaged in the business of
- 22 selling tangible personal property or services at retail and
- 24 does not derive more than 5% of its income from check
cashing.'

26 Further amend the bill in Part B by inserting before section
1 the following:

28 'Sec. B-1. 10 MRSA §1312, sub-§1-B is enacted to read:

30 1-B. Adverse action. "Adverse action" has the following
32 meaning.

34 A. "Adverse action" has the same meaning as in Section
36 701(d)(6) of the federal Equal Credit Opportunity Act,
Public Law 94-239, Section 2, 90 Stat. 252 (1976).

38 B. In addition to the meaning under paragraph A, "adverse
action" means:

40 (1) A denial or cancellation of, an increase in any
42 charge for or a reduction or other adverse or
44 unfavorable change in the terms of coverage or amount
of any insurance, existing or applied for, in
46 connection with the underwriting of insurance;

48 (2) A denial of employment or any other decision for
employment purposes that adversely affects any current
50 or prospective employee;

COMMITTEE AMENDMENT

2 (3) A denial or cancellation of, an increase in any
4 charge for or any other adverse or unfavorable change
6 in the terms of any license or benefit described in
8 section 1313-A, subsection 1, paragraph C, subparagraph
10 4; or

12 (4) An action taken or determination made that is:

14 (a) In connection with an application that was
16 made by, or a transaction that was initiated by,
18 any consumer or in connection with a review of an
20 account under section 1313-A, subsection 1,
22 paragraph C, subparagraph (6), division (b); and

24 (b) Adverse to the interests of the consumer.

26 **Sec. B-2. 10 MRSA §1312, sub-§3,** as repealed and replaced by
28 PL 1981, c. 610, §3, is repealed and the following enacted in its
30 place:

32 **3. Consumer report.** "Consumer report" has the following
34 meaning.

36 A. "Consumer report" means any written, oral or other
38 communication of any information by a consumer reporting
40 agency bearing on a consumer's creditworthiness, credit
42 standing, credit capacity, debts, check-writing experience,
44 insurability, character, general reputation, personal
46 characteristics, including, but not limited to, information
48 regarding the consumer's medical history or condition, that
50 is used or expected to be used or collected in whole or in
part for the purpose of serving as a factor in establishing
the consumer's eligibility for:

(1) Credit or insurance to be used primarily for
personal, family or household purposes;

(2) Employment purposes; or

(3) Other purposes authorized under section 1313-A.

B. "Consumer report" does not include:

(1) Any report containing information solely as to
transactions or experiences between the consumer and
the person making the report, but the term does include
a report containing information obtained:

(a) By covert physical surveillance of the
consumer, other than through observation or

2 supervision in the ordinary course of the
3 relationship; or

4 (b) Through examination of the consumer using a
5 polygraph or other truth verification device;

6
7 (2) Any communication of information exempt under
8 subparagraph (3) among persons related by common
9 ownership or affiliated by corporate control;

10
11 (3) Any communication of other information among
12 persons related by common ownership or affiliated by
13 corporate control, if it is clearly and conspicuously
14 disclosed to the consumer that the information may be
15 communicated among such persons and the consumer is
16 given the opportunity before the time that the
17 information is initially communicated to direct that
18 the information not be communicated among such persons;

19
20 (4) Any authorization or approval of a specific
21 extension of credit directly or indirectly by the
22 issuer of a credit card or similar device;

23
24 (5) Any report in which a person who has been requested
25 by a 3rd party to make a specific extension of credit
26 directly or indirectly to a consumer conveys the
27 person's decision with respect to the request, if the
28 3rd party advises the consumer of the name and address
29 of the person to whom the request was made and the
30 person makes the disclosures to the consumer required
31 under section 1320;

32
33 (6) Any transfer of information to the guarantor,
34 insurer or other similar person participating in the
35 same transaction, if the transmitting party advises the
36 consumer of the name and address of the other person
37 and that other person makes any disclosure required by
38 section 1320;

39
40 (7) Any transfer of information collected by a
41 creditor in connection with a consumer's credit
42 application to a subsequent purchaser of the
43 transaction, if the purchaser agrees to use the
44 information only in connection with the purchased
45 transaction; or

46
47 (8) Any transfer of information collected by an insurer
48 in connection with a consumer's insurance application
49 or claim to a reinsurer or an insurer with potential
50 liability under the same claim, if the recipient agrees

to use the information only in connection with the insurance transaction.

C. "Consumer report" includes a communication of information of the type described by this subsection, notwithstanding the fact that:

(1) The information is used other than for a purpose referred to in paragraph A, if the information was in whole or in part collected, used or expected to be used for a purpose referred to in paragraph A; or

(2) The information is maintained, collected and used only to alert the user to the need for further investigation, but is not intended to be used in whole or in part to deny or increase the charge for credit, insurance, employment or other benefit.

Sec. B-3. 10 MRSA §1312, sub-§4-A is enacted to read:

4-A. Credit or insurance transaction that is not initiated by the consumer. "Credit or insurance transaction that is not initiated by the consumer" does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of either:

A. Reviewing the account or insurance policy; or

B. Collecting the account.

Sec. B-4. 10 MRSA §1312, sub-§6-A is enacted to read:

6-A. Firm offer of credit or insurance. "Firm offer of credit or insurance" means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

A. The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on creditworthiness or insurability, as applicable, that are established:

(1) Before selection of the consumer for the offer; and

(2) For the purpose of determining whether to extend credit or insurance pursuant to the offer;

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B. Verification:

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(1) That the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance or other information bearing on the creditworthiness or insurability of the consumer; or

(2) Of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on creditworthiness or insurability; or

C. The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was:

(1) Established before selection of the consumer for the offer of credit or insurance; and

(2) Disclosed to the consumer in the offer of credit or insurance.

Sec. B-5. 10 MRSA §1313, as repealed and replaced by PL 1981, c. 610, §5, is repealed.

Sec. B-6. 10 MRSA §1313-A is enacted to read:

§1313-A. Permissible purposes of credit reports

1. Permissible purposes of credit reports. Subject to subsection 3, a consumer reporting agency may furnish a consumer report under the following circumstances only:

A. In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a grand jury;

B. In accordance with the written instructions of the consumer to whom the consumer report relates;

C. To a person that the consumer reporting agency has reason to believe:

(1) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

2 (2) Intends to use the information for employment
3 purposes;

4
5 (3) Intends to use the information in connection with
6 the underwriting of insurance involving the consumer;

7
8 (4) Intends to use the information in connection with
9 a determination of the consumer's eligibility for a
10 license or other benefit granted by a governmental
11 instrumentality required by law to consider an
12 applicant's financial responsibility or status;

13
14 (5) Intends to use the information, as a potential
15 investor or service or as a current insurer, in
16 connection with a valuation of or an assessment of the
17 credit or prepayment risks associated with an existing
18 credit obligation; or

19
20 (6) Otherwise has a legitimate business need for the
21 information:

22 (a) In connection with a business transaction
23 that is initiated by the consumer; or

24
25 (b) To review an account to determine whether the
26 consumer continues to meet the terms of the
27 account; or

28
29 D. To the administrator pursuant to section 1328.

30
31 **2. Conditions for furnishing and using consumer reports for**
32 **employment purposes.** This subsection applies to the furnishing
33 and use of a consumer report for employment purposes.

34
35 A. A consumer reporting agency may furnish a consumer
36 report for employment purposes only if:

37
38 (1) The person who obtains the report from the agency
39 certifies to the agency that:

40 (a) The person has complied with paragraph B with
41 respect to the consumer report, and the person
42 will comply with section 1320 with respect to the
43 consumer report if section 1320 becomes
44 applicable; and

45
46 (b) Information from the consumer report will not
47 be used in violation of any applicable federal or
48 state law.

R. S.

2 state equal employment opportunity law or
regulation; and

4 (2) The consumer reporting agency provides with the
report a summary of the consumer's rights under this
6 Act.

8 B. A person may not procure a consumer report or cause a
consumer report to be procured for employment purposes with
10 respect to any consumer, unless:

12 (1) A clear and conspicuous disclosure has been made
in writing to the consumer before the report is
14 procured or caused to be procured, in a document that
consists solely of the disclosure, that a consumer
16 report may be obtained for employment purposes; and

18 (2) The consumer has authorized in writing the
procurement of the report by that person.

20 C. In using a consumer report for employment purposes,
22 before taking any adverse action based in whole or in part
on the report, the person intending to take the adverse
24 action shall provide to the consumer to whom the report
relates:

26 (1) A copy of the report; and

28 (2) A description in writing of the rights of the
30 consumer under this Act.

32 3. Furnishing consumer reports in connection with credit or
insurance transactions that are not initiated by the consumer.
34 The furnishing of a consumer report in connection with a credit
or insurance transaction that is not initiated by the consumer
36 must be in accordance with this subsection.

38 A. A consumer reporting agency may furnish a consumer
report relating to any consumer pursuant to subsection 1,
40 paragraph C, subparagraph (1) or (3) in connection with any
credit or insurance transaction that is not initiated by the
42 consumer only if:

44 (1) The consumer authorizes the agency to provide the
report to the person requesting the report; or

46 (2) The transaction consists of a firm offer of credit
48 or insurance; the consumer reporting agency has
complied with Section 604(e) of the federal Fair Credit
50 Reporting Act; and there is not in effect an election

2 by the consumer, made in accordance with Section 604(e)
3 of the federal Fair Credit Reporting Act, to have the
4 consumer's name and address excluded from lists of
5 names provided by the agency pursuant to this paragraph.

6 B. A person may receive pursuant to paragraph A,
7 subparagraph (2) only:

8
9 (1) The name and address of a consumer;

10
11 (2) An identifier that is not unique to the consumer
12 and that is used by the person solely for the purpose
13 of verifying the identify of the consumer; and

14
15 (3) Other information pertaining to a consumer that
16 does not identify the relationship or experience of the
17 consumer with respect to a particular creditor or other
18 entity.'

19
20 Further amend the bill in Part B by striking out all of
21 section 5 and inserting in its place the following:

22
23 **'Sec. B-5. 10 MRSA §1321, sub-§1,** as repealed and replaced by
24 PL 1981, c. 610, §12, is amended to read:

25
26 **1. Procedures to avoid violations.** Every consumer
27 reporting agency shall maintain reasonable procedures designed to
28 limit the furnishing of consumer reports to the purposes listed
29 under section ~~1313~~ 1313-A. These procedures shall must require
30 that prospective users of the information identify themselves,
31 certify the purposes for which the information is sought, and
32 certify that the information will be used for no other purpose.
33 Every consumer reporting agency shall make a reasonable effort to
34 verify the identity of a new prospective user and the uses
35 certified by such prospective user prior to furnishing such user
36 a consumer report. No consumer reporting agency may furnish a
37 consumer report to any person if it has reasonable grounds for
38 believing that the consumer report will not be used for a purpose
39 listed in section ~~1313~~ 1313-A.

40
41 **Sec. B-6. 10 MRSA §1326,** as amended by PL 1977, c. 677, §14,
42 is further amended to read:

43
44 **§1326. Unauthorized disclosures by officers or employees**

45
46 Notwithstanding the provisions of Title 17-A, section 4-A,
47 any officer or employee of a consumer reporting agency who
48 knowingly and intentionally provides information concerning an
49 individual from the agency's files to a person not authorized,
50 within the meaning of sections ~~1313~~ section 1313-A and section

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1314, subsection 1, to receive that information shall must be
2 fined not more than \$5,000 or imprisoned for not more than one
year, or both.

4 **Sec. B-7. Effective date.** This Part takes effect September 30,
6 1997. Any person or other entity that is subject to the
requirements of this Part may, at its option, comply with any
8 provision of this Part prior to September 30, 1997, in which case
each of the corresponding provisions of this Part are fully
10 applicable to that person or entity.'

12 Further amend the bill in Part E in section 2 in the first
line (page 31, line 45 in L.D.) by striking out the following:
14 "Sec. F-2." and inserting in its place the following: 'Sec. E-2.'

16 Further amend the bill by inserting at the end before the
summary the following:

18 **PART F**

20 **Sec. F-1. 9-A MRSA §6-203, sub-§6** is enacted to read:

22 6. Volume fees. Volume fees paid with respect to consumer
24 credit transactions that are originated by a seller, lessor or
lender, other than a supervised financial organization, and that
26 are subsequently assigned to a financial institution, as defined
in Title 9-B, section 131, subsection 17, or to a credit union,
28 as defined in Title 9-B, section 131, subsection 12, within 30
days after the inception of the consumer credit transaction must
30 be allocated between the Department of Professional and Financial
Regulation, Office of Consumer Credit Regulation and Bureau of
32 Banking in proportion to the reasonable costs of regulation of
all aspects of such transactions. The agreement for allocation
34 must be established by the Commissioner of Professional and
Financial Regulation, in consultation with the Director of the
36 Office of Consumer Credit Regulation and the Superintendent of
Banking, not more frequently than every 24 months.

38 **Sec. F-2. Applicability.** This Part applies to volume fees paid
40 on or after January 1, 1997.

42 **PART G**

44 **Sec. G-1. Allocation.** The following funds are allocated from
Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
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48		
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	PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF	

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Office of Consumer Credit Regulation

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All Other \$2,500 \$10,000
Allocates funds to cover the additional costs of regulating money transmitters.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

1997-98 1998-99

APPROPRIATIONS/ALLOCATIONS

Other Funds \$2,500 \$10,000

REVENUES

Other Funds \$2,500 \$10,000

The Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation will require additional Other Special Revenue allocations of \$2,500 in fiscal year 1997-98 and \$10,000 annually beginning in fiscal year 1998-99 for additional administrative and reimbursement costs. Increases in the numbers of registration, examination and licensure fees collected will increase dedicated revenue to the Office of Consumer Credit Regulation by \$2,500 in fiscal year 1997-98 and \$11,250 annually beginning in fiscal year 1998-99.

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.78 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial

Department. The collection of additional fines may increase
General Fund revenue by minor amounts.'

SUMMARY

This amendment adds statutory provisions that conform
Maine's credit reporting laws to revisions in the federal Fair
Credit Reporting Act.

The amendment clarifies the distribution of volume fees
between the Department of Professional and Financial Regulation,
Office of Consumer Credit Regulation and Bureau of Banking with
respect to consumer credit transactions that are originated by
supervised lenders subject to regulation by the Office of
Consumer Credit Regulation and subsequently assigned to financial
institutions subject to regulation by the Bureau of Banking.

The amendment also makes some technical changes and
corrections and adds an allocation section and a fiscal note to
the bill.