

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

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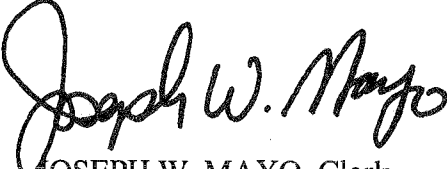
H.P. 618

House of Representatives, February 6, 1997

**An Act to Regulate Money Transmitters and Amend Consumer Credit
Laws.**

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Banking and Insurance suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative VIGUE of Winslow.

Cosponsored by Representative: MAYO of Bath, Senator: CAREY of Kennebec.

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

4 PART A

6 Sec. A-1. 32 MRSA c. 13, sub-c. VI, as amended, is repealed on
January 1, 1998.

8 Sec. A-2. 32 MRSA c. 80 is enacted to read:

10 CHAPTER 80

12 MONEY TRANSMITTERS AND CHECK CASHERS

14 SUBCHAPTER I

16 MONEY TRANSMITTERS

18 §6101. Short title

20 This subchapter may be known and cited as the "Money
22 Transmitters Act."

24 §6102. Definitions

26 As used in this subchapter, unless the context otherwise
indicates, the following terms have the following meanings.

28 1. Administrator. "Administrator" means the Director of
30 the Office of Consumer Credit Regulation within the Department of
Professional and Financial Regulation.

32 2. Applicant. "Applicant" means a person filing an
34 application for a license under this subchapter.

36 3. Authorized delegate. "Authorized delegate" means an
entity designated by the licensee under the provisions of this
38 subchapter to sell or issue payment instruments or engage in the
business of transmitting money on behalf of a licensee.

40 4. Control. "Control" means ownership of, or the power to
42 vote, 25% or more of the outstanding voting securities of a
licensee or controlling person. For purposes of determining the
44 percentage of a licensee controlled by any person, the person's
46 interest may be aggregated with the interest of any other person
controlled by the person or by any spouse, parent, or child of
the person.

48 5. Controlling person. "Controlling person" means any
person in control of a licensee.

2 6. Executive officer. "Executive officer" means a
4 licensee's president, senior officer responsible for the
 licensee's business, chief financial officer or any other person
 who performs similar functions.

6
8 7. Key shareholder. "Key shareholder" means a person or
 group of persons acting in concert that is the owner of 25% or
 more of any voting class of an applicant's stock.

10
12 8. Licensee. "Licensee" means a person licensed under this
 subchapter.

14 9. Material litigation. "Material litigation" means any
16 litigation that, according to generally accepted accounting
 principles, is considered significant to an applicant's or
 licensee's financial health and would be required to be
18 referenced in that entity's annual audited financial statements,
 report to shareholders or similar documents.

20
22 10. Money transmission. "Money transmission" means the
 sale or issuance of payment instruments or engaging in the
24 business of receiving money for transmission or transmitting
 money within the United States or to locations abroad by any
26 means, including, but not limited to, payment instrument, wire,
 facsimile or electronic transfer.

28 11. Outstanding payment instrument. "Outstanding payment
30 instrument" means a payment instrument issued by the licensee
 that has been sold in the United States directly by the licensee
 or a payment instrument issued by the licensee that has been sold
32 by an authorized delegate in the United States, and that has not
 yet been paid by or for the licensee.

34
36 12. Payment instrument. "Payment instrument" means a
 check, draft, money order, travelers check or other instrument or
38 written order for the transmission or payment of money, sold or
 issued to one or more persons, whether or not the instrument is
40 negotiable. The term does not include a credit card voucher, a
 letter of credit or any instrument that is redeemable by the
 issuer in goods or services.

42
44 13. Person. "Person" means an individual, partnership,
 association, joint-stock association, limited liability company,
46 trust or corporation.

48 14. Remit. "Remit" means either to make direct payment of
 the funds to the licensee or its representatives authorized to
50 receive those funds, or to deposit the funds in a bank, credit
 union or savings and loan association or other similar financial
 institution in an account specified by the licensee.

2 **§6103. License required**

4 1. License required. On or after January 1, 1998, a
6 person, except one exempt pursuant to section 6104, may not
8 engage in the business of money transmission without a license as
10 provided in this subchapter.

12 2. Single license; multiple locations. A licensee may
14 conduct business in this State at one or more locations, directly
16 or indirectly owned, or through one or more authorized delegates,
18 or both, pursuant to the single license granted to the licensee,
20 subject to the registration requirements of section 6109.

22 **§6104. Exemptions**

24 1. Exemptions. This subchapter does not apply to:

26 A. The United States or any department, agency, or
28 instrumentality of the United States;

30 B. The United States Post Office;

32 C. The State or any political subdivisions of the State;

34 D. Banks, bank holding companies, credit unions, building
36 and loan associations, savings and loan associations,
38 savings banks or mutual banks organized under the laws of
40 any state or the United States, provided that they do not
42 issue or sell payment instruments through authorized
44 delegates who are not banks, bank holding companies, credit
46 unions, building and loan associations, savings and loan
48 associations, savings banks or mutual banks; and

50 E. The provision of electronic transfer of government
benefits for any federal, state or county governmental
agency as defined in Federal Reserve Board Regulation E, by
a contractor for and on behalf of the United States or any
department, agency or instrumentality of the United States,
or any state or any political subdivisions of a State.

2. Delegates of a licensee. Authorized delegates of a
licensee, acting within the scope of authority conferred by a
written contract as described in section 6118, are not required
to obtain a license pursuant to this subchapter.

§6105. License qualifications

1. Net worth requirements. A licensee under this
subchapter must have at all times a net worth of not less than

2 \$100,000, calculated in accordance with generally accepted
4 accounting principles. Licensees engaging in money transmission
6 at more than one location or through authorized delegates must
8 have an additional net worth of \$50,000 per location or agent
10 located in the State, up to a maximum of \$500,000.

12 2. Corporate applicants. A corporate applicant, at the
14 time of filing an application for a license under this subchapter
16 and at all times after a license is issued, must be in good
18 standing in the state of its incorporation. A noncorporate
20 applicant, at the time of filing an application for a license
22 under this subchapter and at all times after a license is issued,
24 must be registered or qualified to do business in this State.

26 §6106. License application

28 An application for a license under this subchapter must be
30 in writing, under oath and in a form prescribed by the
32 administrator.

34 1. All applicants. For all applicants, the application
36 must include:

38 A. The exact name of the applicant, the applicant's
40 principal address, any fictitious or trade name used by the
42 applicant in the conduct of its business and the location of
44 the applicant's business records;

46 B. The history of the applicant's material litigation and
48 criminal convictions for the 5-year period prior to the date
of the application;

C. A description of the activities conducted by the
applicant and a history of operations;

D. A description of the business activities in which the
applicant seeks to be engaged in the State;

E. A list identifying the applicant's proposed authorized
delegates in the State, if any, at the time of the filing of
the license application;

F. A sample authorized delegate contract, if applicable;

G. A sample form of payment instrument, if applicable;

H. The locations at which the applicant and its authorized
delegates, if any, propose to conduct the licensed
activities in the State; and

2 I. The name and address of the clearing bank or banks on
4 which the applicant's payment instruments will be drawn or
 through which the payment instruments will be payable.

6 2. Corporate applicants. In addition to the information
 required by subsection 1, if the applicant is a corporation, the
8 applicant must provide:

10 A. The date of the applicant's incorporation and state of
 incorporation;

12 B. A certificate of good standing from the state in which
14 the applicant was incorporated;

16 C. A description of the corporate structure of the
 applicant, including the identity of any parent or
18 subsidiary of the applicant, and whether any parent or
 subsidiary is publicly traded on any stock exchange;

20 D. The name, business and residence addresses, and
 employment history for the past 5 years of the applicant's
22 executive officers and the officers or managers who will be
24 in charge of the applicant's activities to be licensed;

26 E. The name, business and residence addresses and employment
 history for the period 5 years prior to the date of the
28 application of any key shareholder of the applicant;

30 F. The history of material litigation and criminal
 convictions for the 5-year period prior to the date of the
32 application of every executive officer or key shareholder of
 the applicant;

34 G. A copy of the applicant's most recent audited financial
 statement, including balance sheet, statement of income or
36 loss, statement of changes in shareholder equity and
 statement of changes in financial position, and, if
38 available, the applicant's audited financial statements for
 the immediately preceding 2-year period. With the approval
40 of the administrator, if the applicant is a wholly owned
 subsidiary of another corporation, the applicant may submit
42 either the parent corporation's consolidated audited
44 financial statements for the current year and for the
 immediately preceding 2-year period or the parent
46 corporation's Form 10K reports filed with the United States
 Securities and Exchange Commission for the prior 3 years in
48 lieu of the applicant's financial statements. With the
 approval of the administrator, if the applicant is a wholly
50 owned subsidiary of a corporation having its principal place

2 of business outside the United States, similar documentation
4 filed with the parent corporation's non-United States
6 regulator may be submitted to satisfy this provision; and

8 H. Copies of all filings, if any, made by the applicant with
10 the United States Securities and Exchange Commission, or
12 with a similar regulator in a country other than the United
14 States within the year preceding the date of filing of the
16 application.

18 **3. Noncorporate applicants.** In addition to the information
20 required by subsection 1, if the applicant is not a corporation,
22 the applicant must provide:

24 A. The name, business and residence addresses, personal
26 financial statement and employment history for the past 5
28 years of each principal of the applicant and the name,
30 business and residence addresses and employment history for
32 the past 5 years of any other person or persons who will be
34 in charge of the applicant's activities to be licensed;

36 B. The place and date of the applicant's registration or
38 qualification to do business in this State;

40 C. The history of material litigation and criminal
42 convictions for the 5-year period prior to the date of the
44 application for each individual having an ownership interest
46 in the applicant and each individual who exercises
48 supervisory responsibility with respect to the applicant's
50 activities; and

D. Copies of the applicant's audited financial statements,
including balance sheet, statement of income or loss and
statement of changes in financial position for the current
year and, if available, for the immediately preceding 2-year
period.

The administrator is authorized, for good cause shown, to
waive any requirement of this section with respect to any license
application or to permit a license applicant to submit
substituted information in its license application in lieu of the
information required by this section.

§6107. Bond or other security device

1. Bond or other security device required. Each
application must be accompanied by a surety bond, irrevocable
letter of credit or other similar security device, referred to in
this section as a "security device," in the amount of \$100,000.
The security device must be in a form satisfactory to the

2 administrator and must run to the administrator for the benefit
4 of any claimants against the licensee to secure the faithful
6 performance of the obligations of the licensee with respect to
8 the receipt, handling, transmission and payment of money in
10 connection with the sale and issuance of payment instruments and
12 transmission of money. In the case of a bond, the aggregate
14 liability of the surety may not exceed the principal sum of the
16 bond. Any claim against the bond or security device may be the
18 subject of an administrative hearing and order pursuant to
20 section 6121.

22 2. Deposit in lieu of security device. In lieu of a
24 security device or of any portion of the principal of the
26 security device, as required by this section, the licensee may
28 deposit with the administrator, or with such banks in this State
30 as the licensee may designate and the administrator may approve,
32 cash, interest-bearing stocks and bonds, notes, debentures or
34 other obligations of the United States or any agency or
36 instrumentality of the United States, or guaranteed by the United
38 States, or of this State, or of a city, county, town, village,
40 school district or instrumentality of this State, or guaranteed
42 by this State, to an aggregate amount, based upon principal
44 amount or market value, whichever is lower, of not less than the
46 amount of the security device or portion of the security device.
48 The securities or cash must be deposited as and held to secure
the same obligations as would the security device, but the
depositor is entitled to receive all interest and dividends on
the security device, has the right, with the approval of the
administrator, to substitute other securities for those
deposited, and is required to do so on written order of the
administrator made for good cause shown.

32 3. Cancellation. The security device remains in effect
34 until cancellation, which may occur only after 30 days' written
36 notice to the administrator. Cancellation does not affect any
38 liability incurred or accrued during that period.

40 4. Five-year limit. The security device remains in place
42 for 5 years after the licensee ceases money transmission
44 operations in the State. Notwithstanding this provision, the
46 administrator may permit the security device to be reduced or
48 eliminated prior to that time to the extent that the amount of
the licensee's payment instruments outstanding in this State are
reduced. The administrator may also permit a licensee to
substitute a letter of credit or other form of security device
acceptable to the administrator for the security device in place
at the time the licensee ceases money transmission operations in
the State.

2 **§6108. Application fee**

4 Each application must be accompanied by a nonrefundable
6 application fee in the amount of \$500. The application fee also
8 constitutes the license fee for the applicant's first year of
10 activities if the license is granted. In addition, the
12 application must be accompanied by a registration fee of \$50 for
14 each authorized delegate designated by the licensee, up to a
16 maximum of \$2,500.

12 **§6109. Issuance of license**

14 1. Investigation. Upon the filing of a complete
16 application, the administrator shall investigate the financial
18 condition and responsibility, financial and business experience,
20 character and general fitness of the applicant. The
22 administrator may conduct an on-site investigation of the
24 applicant, the reasonable cost of which must be paid by the
26 applicant. If the administrator finds that the applicant's
28 business will be conducted honestly, fairly and in a manner
30 commanding the confidence and trust of the community, that the
32 applicant has fulfilled the requirements imposed by this
34 subchapter and that the applicant has paid the required license
36 fee, the administrator shall issue a license to the applicant
38 authorizing the applicant to engage in the licensed activities in
40 this State for a term of one year. If these requirements have
42 not been met, the administrator shall deny the application in
44 writing that states the reasons for the denial.

30 2. Timely review. The administrator shall approve or deny
32 every application for an original license within 120 days from
34 the date a complete application is submitted, unless the
36 administrator extends the period for good cause. The
38 administrator shall notify the applicant of the date when the
40 application is considered complete.

38 3. Appeal of license denial. An applicant aggrieved by a
40 denial issued by the administrator under this section may at any
42 time within 30 days from the date of receipt of written notice of
44 the denial contest the denial by serving a response on the
46 administrator. The administrator shall set a date for a hearing
48 not later than 60 days after service of the response, unless a
50 later date is set with the consent of the aggrieved applicant.

46 **§6110. Renewal of license and annual report**

48 1. Renewal fee. A renewal application must be accompanied
50 by a nonrefundable application fee in the amount of \$250, plus a
52 registration fee of \$50 for each authorized delegate designated
54 by a licensee.

2 2. Annual report. The renewal fee must be accompanied by a
report in a form prescribed by the administrator. The form must
4 be sent by the administrator to each licensee no later than 3
months immediately preceding the date established by the
6 administrator for license renewal. The licensee must include the
following in its annual renewal report:

8
10 A. A copy of its most recent audited annual financial
statement, including balance sheet, statement of income or
12 loss, statement of changes in shareholder's equity and
statement of changes in financial position. With the
14 approval of the administrator, in the case of a licensee
that is a wholly owned subsidiary of another corporation,
16 the consolidated audited annual financial statement of the
parent corporation may be filed in lieu of the licensee's
audited annual financial statement;

18
20 B. For the most recent quarter for which data are available
prior to the date of the filing of the renewal application,
22 but in no event more than 120 days prior to the renewal
date, the number of payment instruments sold by the licensee
24 in the State, the dollar amount of those instruments and the
dollar amount of those instruments currently outstanding;

26 C. Any material changes to any of the information submitted
by the licensee on its original application that have not
28 previously been reported to the administrator on any other
report required to be filed under this subchapter; and

30
32 D. A list of the locations within this State at which
business regulated by this subchapter is being conducted by
34 either the licensee or its authorized delegate.

36 The administrator is authorized, for good cause shown, to waive
any requirement of this subsection with respect to any renewal
38 application or to permit a renewal applicant to submit
substituted information in its renewal application in lieu of the
40 information required by this subsection.

42 3. Suspension. A licensee that has not filed a renewal
report or paid its renewal fee by the renewal filing deadline and
44 has not been granted an extension of time to do so by the
administrator must be notified by the administrator, in writing,
46 that its license is suspended. At the licensee's request, the
suspension may be stayed, and a hearing will be scheduled, at
48 which time the licensee will be required to show cause why its
license should not be suspended pending compliance with these
requirements.

2 **§6111. Extraordinary reporting requirements**

4 **1. Written report.** Within 15 days of the occurrence of any
6 one of the events listed below, a licensee shall file a written
report with the administrator describing the event and its
8 expected impact on the licensee's activities in the State:

10 A. The filing for bankruptcy or reorganization by the
licensee;

12 B. The institution of revocation or suspension proceedings
14 against the licensee by any state or governmental authority
with regard to the licensee's money transmission activities;

16 C. A felony indictment of the licensee or any of its
18 executive officers or directors related to money
transmission activities; or

20 D. A felony conviction of the licensee or any of its
22 executive officers or directors related to money
transmission activities.

24 **§6112. Changes in control of a licensee**

26 Within 15 days of a change or acquisition of control of a
28 licensee, the licensee shall provide notice of the event to the
administrator in writing and in such form as the administrator
30 may prescribe, and with such information, data and records as the
administrator may require. The administrator may waive this
32 notification requirement if, in the administrator's discretion,
the change in control does not pose any risk to the interests of
34 the public.

36 **§6113. Examinations**

38 **1. On-site examination.** The administrator may conduct an
40 annual on-site examination of a licensee. The licensee shall pay
all necessarily incurred costs of the examination. The on-site
42 examination may be conducted in conjunction with examinations to
be performed by representatives of agencies of another state or
states.

44 **2. Financial data.** The administrator may request financial
46 data from a licensee in addition to the data required under
section 6110, subsection 2, or conduct an on-site examination of
48 any authorized delegate or location of a licensee within this
State. When the administrator examines an authorized delegate's
50 operations, the authorized delegate shall pay all necessarily
incurred costs of the examination. When the administrator

2 examines a licensee's location, the licensee shall pay all
3 necessarily incurred costs of the examination.

4 **§6114. Maintenance of records**

6 **1. Schedule.** Each licensee shall make, keep and preserve
7 the following books, accounts and other records for a period of 3
8 years:

10 A. A record or records of each payment instrument sold;

12 B. A general ledger posted at least monthly containing all
14 assets, liability, capital, income and expense accounts;

16 C. Settlement sheets received from authorized delegates;

18 D. Bank statements and bank reconciliation records;

20 E. Records of outstanding payment instruments;

22 F. Records of each payment instrument paid within the
24 3-year period; and

26 G. A list of the names and addresses of all of the
28 licensee's authorized delegates.

30 **2. Electronic form.** Maintenance of the documents as
32 required by this section in a photographic, electronic or other
34 similar form constitutes compliance with this section.

36 **3. Location.** With the approval of the administrator,
38 records may be maintained at a location outside this State so
40 long as they are made accessible to the administrator on 7 days'
42 written notice.

36 **§6115. Confidentiality of data submitted to the administrator**

38 **1. Financial information.** Financial information not
40 normally available to the public that is submitted in confidence
42 by an individual or organization to comply with licensing,
44 registration or other regulatory functions of the administrator
46 is confidential.

48 **2. Aggregate data.** Nothing in this section prohibits the
50 administrator from releasing to the public a list of persons
licensed under this subchapter or from releasing aggregated
financial data on such licensees.

50 **§6116. Suspension or revocation of licenses**

After notice and hearing, the administrator may suspend or

revoke a licensee's license if the administrator finds that:

2
4 1. Grounds for denial. A fact or condition exists that, if
it had existed at the time when the licensee applied for its
license, would have been grounds for denying the application;

6
8 2. Inadequate net worth. The licensee's net worth becomes
inadequate and the licensee, after 10 days' written notice from
the administrator, fails to take such steps as the administrator
10 determines necessary to remedy the deficiency;

12 3. Violations. The licensee knowingly violates any
material provision of this subchapter or any rule or order
14 validly promulgated by the administrator under authority of this
subchapter;

16
18 4. Safety and soundness. The licensee is conducting its
business in an unsafe or unsound manner;

20 5. Insolvency. The licensee is insolvent;

22 6. Failure to meet obligations. The licensee has suspended
payment of its obligations, has made an assignment for the
24 benefit of its creditors or has admitted in writing its inability
to pay its debts as they become due;

26
28 7. Bankruptcy. The licensee has applied for an
adjudication of bankruptcy, reorganization, arrangement or other
relief under any bankruptcy;

30
32 8. Refusal of examination. The licensee refuses to permit
the administrator to make an examination authorized by this
subchapter;

34
36 9. Failure to respond. The licensee fails to promptly and
adequately respond to communications from the administrator; or

38 10. Failure to file report. The licensee willfully fails
to make a report required by this subchapter.

40 **§6117. Authorized delegate contracts**

42
44 A licensee desiring to conduct licensed activities through
authorized delegates shall authorize each delegate to operate
pursuant to an express written contract. Contracts entered into
46 after the effective date of this subchapter must provide the
following:

48
50 1. Appointment. That the licensee appoints the person as
its delegate with authority to engage in money transmission on
behalf of the licensee;

2 **2. Authorization for subdelegates.** That neither a licensee
nor an authorized delegate may authorize subdelegates without the
4 written consent of the administrator; and

6 **3. Regulation.** That licensees are subject to supervision
and regulation by the administrator.

8
10 **§6118. Authorized delegate conduct**

12 **1. Misrepresentation.** An authorized delegate may not make
any fraudulent or false statement or misrepresentation to a
licensee or to the administrator.

14 **2. Written procedures.** All money transmission or sale or
16 issuance of payment instrument activities conducted by authorized
delegates must be strictly in accordance with the licensee's
18 written procedures provided to the authorized delegate.

20 **3. Remittance.** An authorized delegate shall remit all
money owing to the licensee in accordance with the terms of the
22 contract between the licensee and the authorized delegate. The
failure of an authorized delegate to remit all money owing to a
24 licensee within the time presented results in liability of the
authorized delegate to the licensee for 3 times the licensee's
26 actual damages. The administrator may set, by rule, the maximum
remittance time.

28 **4. Inspection.** An authorized delegate is deemed to consent
30 to the administrator's inspection, with or without prior notice
to the licensee or authorized delegate, of the books and records
32 of the authorized delegate when the administrator has a
reasonable basis to believe that the licensee or authorized
34 delegate is in noncompliance with this subchapter.

36 **5. Duty to act.** An authorized delegate is under a duty to
act only as authorized under the contract with the licensee and
38 an authorized delegate that exceeds its authority is subject to
cancellation of its contract and further disciplinary action by
40 the administrator.

42 **6. Commingling funds.** All funds, less fees, received by an
authorized delegate from the sale or delivery of a payment
44 instrument issued by a licensee or received by an authorized
delegate for transmission must, from the time the funds are
46 received by the authorized delegate until the funds or an
equivalent amount are remitted by the authorized delegate to the
48 licensee, constitute trust funds owned by and belonging to the
licensee. If an authorized delegate commingles any such funds
50 with any other funds or property owned or controlled by the

2 authorized delegate, all commingled proceeds and other property
3 are impressed with a trust in favor of the licensee in an amount
4 equal to the amount of the proceeds due the licensee.

5 7. Theft or loss of payment instruments. An authorized
6 delegate shall report to the licensee the theft or loss of
7 payment instruments within 24 hours from the time the licensee
8 knew or should have known of the theft or loss.

10 §6119. Revocation or suspension of authorized delegates

12 1. Suspension. The administrator may issue an order
13 suspending or barring an authorized delegate from continuing to
14 be or barring a person from becoming an authorized delegate of
15 any licensee during the period for which the order is in effect.
16 Upon issuance of the order, the licensee shall terminate its
17 relationship with the authorized delegate according to the terms
18 of the order. Orders may be issued if, after notice and a
19 hearing, the administrator finds that any authorized delegate of
20 a licensee or any administrator, officer, employee or controlling
21 person of the authorized delegate:

22 A. Has violated a provision of this subchapter or of any
23 rule or order issued under this subchapter;

24 B. Has engaged in or participated in an unsafe or unsound
25 act with respect to the business of selling or issuing
26 payment instruments of the licensee or the business of money
27 transmission; or

28 C. Has made or caused to be made in any application or
29 report filed with the administrator or in any proceeding
30 before the administrator, a statement that was, at the time
31 and in the circumstances under which it was made, false or
32 misleading with respect to any material fact, or has omitted
33 to state in any such application or report any material fact
34 that is required to be stated in an application or report.

35 2. Modification of order. An authorized delegate to whom
36 an order is issued under this section may apply to the
37 administrator to modify or rescind the order. The administrator
38 may not grant the application unless the administrator finds that
39 it is in the public interest to do so and that it is reasonable
40 to believe that the person will, if and when such person is
41 permitted to resume being or to become an authorized delegate,
42 comply with all applicable provisions of this subchapter and of
43 any rule and order issued under this subchapter.

44 3. Judicial review. The right of a person to whom an order
45 is issued under this section to petition for judicial review of
46 is issued under this section to petition for judicial review of
47 is issued under this section to petition for judicial review of
48 is issued under this section to petition for judicial review of
49 is issued under this section to petition for judicial review of
50 is issued under this section to petition for judicial review of

2 an order is not be affected by the failure of the person to apply
3 to the administrator to modify or rescind the order.

4 **§6120. Licensee liability**

6 Except in cases of gross negligence or intentional acts that
7 result in harm to a person, a licensee's responsibility to a
8 person for a money transmission conducted on that person's behalf
9 by the licensee or the licensee's authorized delegate is limited
10 to the amount of money transmitted or the face amount of the
11 payment instrument purchased.

12 **§6121. Hearings; procedures**

14 The provisions of the Maine Administrative Procedure Act
15 apply to any hearing conducted pursuant to this subchapter.

16 **§6122. Civil penalties**

18 **1. Civil penalty.** If, after notice and hearing, the
19 administrator finds that a person has intentionally violated this
20 subchapter or a rule adopted under this subchapter, the
21 administrator may order the person to pay to the administrator a
22 civil penalty in an amount specified by the administrator, not to
23 exceed \$1,000 for each violation or, in the case of a continuing
24 violation, \$1,000 for each day that the violation continues. A
25 proceeding may not be initiated and a penalty may not be assessed
26 pursuant to this section until after the person has been notified
27 in writing of the nature of the violation, has been afforded a
28 reasonable period of time, as set forth in the notice, to correct
29 the violation and has failed to do so.

30 **2. Settlement.** The administrator, in the exercise of the
31 administrator's reasonable judgment, is authorized to compromise
32 or settle with and collect civil penalties and other costs from
33 any person for violations of any provision of this subchapter, or
34 of any rule or order issued pursuant to this subchapter.

35 **§6123. Enforcement**

36 **1. Court order.** If it appears to the administrator that
37 any person has committed or is about to commit a violation of any
38 provision of this subchapter or of any rule or order of the
39 administrator, the administrator may, after notice and hearing,
40 issue a cease and desist order, and may apply to the Superior
41 Court or Administrative Court for an order enjoining that person
42 from violating or continuing to violate this subchapter or any
43 rule or order and for injunctive or such other relief as the
44 nature of the case may require.

2 2. Consent agreements. The administrator may enter into
4 consent orders at any time with any person to resolve any matter
6 arising under this subchapter. A consent order must be signed by
8 the person to whom it is issued or a duly authorized
10 representative, and must indicate agreement to the terms
12 contained in the order. A consent order is not required to
constitute an admission by any person that any provision of this
subchapter, or any rule or order issued under this subchapter has
been violated, and is not required to constitute a finding by the
administrator that the person has violated any provision of this
subchapter or any rule or order or issued under this subchapter.

14 3. Civil or criminal penalties. Notwithstanding the
16 issuance of a consent order, the administrator may seek civil or
18 criminal penalties or compromise civil penalties concerning
20 matters encompassed by the consent order, unless the consent
22 order by its terms expressly precludes the administrator from
doing so.

24 §6124. Criminal penalties

26 1. Willful violation. A person who knowingly and willfully
28 violates any provision of this subchapter for which a penalty is
30 not specifically provided is guilty of a civil infraction.

32 2. False statements. A person who knowingly and willfully
34 makes a material, false statement in any document filed or
36 required to be filed under this subchapter with the intent to
deceive the recipient of the document is guilty of a Class E
crime.

38 3. Unlicensed persons. A person who knowingly and
willfully engages in the business of money transmission without a
license as provided in this subchapter is guilty of a Class E
crime.

40 §6125. Adoption of rules

42 Rules adopted by the administrator pursuant to this
subchapter are routine technical rules, pursuant to Title 5,
chapter 375, subchapter II-A.

44 §6126. Designation of agent for service of process

46 An applicant shall designate and maintain an agent in this
48 State for service of process.

50 §6127. Multiple licenses

A person licensed under this subchapter is not required to

2 obtain a separate license to engage in either the cashing of
3 checks or the exchange of foreign currency in the State.

4 **§6128. Treatment of fees**

6 The aggregate of fees, examination expense reimbursements
7 and other payments made under this subchapter is appropriated for
8 the use of the administrator. Any balances of funds do not lapse
9 but must be carried forward to be expended for the same purposes
10 in the following fiscal year.

12 **§6129. Effective date**

14 This subchapter is effective on January 1, 1998. Every
15 person engaged in activities within this State encompassed by
16 this subchapter at the time of the subchapter's adoption, except
17 those persons already licensed under former section 891 in this
18 State, shall file an application in accordance with the
19 provisions of this subchapter within 3 months after the date this
20 subchapter becomes effective. Those persons already licensed
21 under former section 891 in this State must file an application
22 for a renewal license pursuant to this subchapter within 3 months
23 after the date this subchapter becomes effective. A person is
24 not deemed to be in violation of this subchapter for operating
25 without a license if the person files an application within the
26 3-month period, until the application is denied.

28 **SUBCHAPTER II**

30 **CHECK CASHING AND FOREIGN CURRENCY EXCHANGE**

32 **§6131. Short title**

34 This subchapter may be known and cited as the "Check Cashing
35 and Foreign Currency Exchange Act."

36 **§6132. Definitions**

38 As used in this subchapter, unless the context otherwise
39 indicates, the following terms have the following meanings.

42 1. Administrator. "Administrator" means the Director of
43 the Office of Consumer Credit Regulation.

44 2. Applicant. "Applicant" means a person filing an
45 application for a license under this subchapter.

48 3. Capital adequacy. "Capital adequacy" means that an
49 applicant is financially sound and has liquid assets useable in
50 the business of at least \$10,000, computed according to generally

2 accepted accounting principles, for the full term of the
3 registration.

4 4. Check. "Check" means any check, draft, money order or
5 other instrument for the transmission or payment of money.
6 "Check" does not include a travelers check.

8 5. Check cashing business. "Check cashing business" means
9 any person who engages in the business of cashing checks for a
10 fee. "Check cashing business" does not include any of the
11 following:

12 A. A supervised financial organization;

14 B. A licensee under the Money Transmitters Act; or

16 C. Persons who are primarily engaged in the business of
18 selling tangible personal property or services at retail and
19 do not derive more than 5% of their income from check
20 cashing.

22 6. Foreign currency exchange business. "Foreign currency
23 exchange business" means a person who engages in the business of
24 exchanging foreign currency for a fee. "Foreign currency
25 exchange business" does not include any of the following:

26 A. A supervised financial organization;

28 B. A licensee under the Money Transmitters Act; or

30 C. A person who is primarily engaged in the business of
32 selling tangible personal property or services at retail and
33 does not derive more than 5% of that person's income from
34 foreign currency exchange.

36 7. Identification. "Identification" means, and is limited
37 to, an unexpired and otherwise valid drivers license; a state
38 identification card issued by any state of the United States or
39 its territories or the District of Columbia showing a photograph
40 and signature; a United States government resident alien
41 identification card; a United States passport; or a United States
42 military identification card.

44 8. Person. "Person" means an individual, partnership,
45 association, joint-stock association, limited liability company,
46 trust or corporation.

48 9. Registrant. "Registrant" means a person registered
under this subchapter.

2 **§6133. Registration required**

4 **1. Registration.** On or after January 1, 1998, a person
6 except one exempt pursuant to section 6132, subsection 5 or 6,
8 may not engage in the business of check cashing or foreign
 currency exchange without registering as provided in this
 subchapter.

10 **2. Additional locations.** A registrant may conduct its
12 business in this State at one or more locations, directly or
14 indirectly owned, or through one or more authorized delegates,
 subject to the additional requirements set forth in section 6137.

16 **§6134. Application**

18 An application for registration must be in writing and under
20 oath to the administrator, in such form as the administrator may
 prescribe. The application must include the following
 information:

22 **1. Name and residence.** The legal name and residence and
24 business addresses of the applicant, if the applicant is a
26 natural person, or, if the applicant is a partnership,
 association, or corporation, the name of every partner, officer,
 or administrator of the applicant;

28 **2. Location.** The location of the principal office of the
30 applicant;

32 **3. Other locations.** The complete address of any other
34 locations at which the applicant proposes to engage in the
 activities regulated by this subchapter; and

36 **4. Other information.** Such other information as the
38 administrator may reasonably require with respect to the
 applicant.

40 **§6135. Registration standards**

42 **1. Investigation.** Upon the filing of an application for
44 registration, the administrator shall investigate the applicant
 with respect to:

46 **A. The business records and the capital adequacy of the**
 person seeking the registration;

48 **B. The competence, experience, integrity and financial**
 ability of any individual who:

2 (1) Is a director, officer or supervisory employee of
3 the business; or

4 (2) Owns or controls the business; and

5 C. The record of the applicant or of any person referenced
6 in paragraph B with respect to:

7 (1) Any criminal activity;

8 (2) Any fraud or other act of personal dishonesty;

9 (3) Any act, omission or practice that constitutes a
10 breach of a fiduciary duty; or

11 (4) Any suspension or removal, by any agency or
12 department of the United States or any state, from
13 participation in the conduct of any federally or
14 state-licensed or regulated business.

15 2. Grounds for denial. If the investigation under
16 subsection 1 results in findings that the applicant is not
17 properly qualified to conduct business under this subchapter,
18 those findings are grounds for denial of the application.

19 §6136. Registration term; renewal

20 1. Effective registrations. Registration pursuant to this
21 subchapter remains effective through the remainder of the
22 calendar year of its date of issuance, unless sooner surrendered,
23 suspended or revoked.

24 2. Annual renewal. Registrations must be renewed annually,
25 in such form as the administrator may prescribe.

26 §6137. Fees

27 The application and each renewal application must be filed
28 with a nonrefundable fee of \$250, together with a fee of \$100 for
29 each additional business location of the applicant. The
30 aggregate of all fees, including those provided for by this
31 section and in section 6140, is appropriated for the use of the
32 administrator. Any balance of the funds does not lapse but must
33 be carried forward to be expended for the same purposes in the
34 following fiscal year.

35 §6138. Limitations

36 1. Endorsement. Before a registrant may deposit, with any

2 financial institution, a payment instrument that is cashed by a
3 registrant, the item must be endorsed with the actual name under
4 which the registrant is doing business.

5 2. Compliance with state and federal law. Registrants must
6 comply with all the laws of this State and any federal laws.

7 3. Display of certificate of registration. The
8 administrator may require each check cashing business and foreign
9 currency exchange business to display its registration
10 certificate in its place of business.

11 4. Prohibited activities. A check cashing business may not:

12 A. Charge fees, except as otherwise provided by this
13 subchapter, in excess of 5% of the face amount of the
14 payment instrument, or 6% without the provision of
15 identification, or \$5, whichever is greater;

16 B. Charge fees in excess of 3% of the face amount of the
17 payment instrument, or 4% without the provision of
18 identification, or \$5, whichever is greater, if the payment
19 instrument is the payment of any kind of state public
20 assistance or federal social security benefit payable to the
21 bearer of the payment instrument;

22 C. Charge fees for personal checks or money orders in excess
23 of 10% of the face amount of those payment instruments, or
24 \$5, whichever is greater;

25 D. Cash or advance any money on a postdated check;

26 E. Agree to hold a check or draft for later deposit;

27 F. Issue any check or draft without concurrently receiving
28 the full principal amount in cash or its equivalent; or

29 G. Engage in any false or misleading advertising.

30 §6139. Records of check cashing and foreign currency exchange
31 business

32 1. Maintenance of records. A registrant shall maintain all
33 books, accounts, records and documents necessary to determine the
34 registrant's compliance with the provisions of this subchapter.
35 Books, accounts, records and documents must be retained for a
36 period of at least 3 years.

37 2. Location of records. The records required to be
38 maintained may be maintained by the registrant at any location.

2 so long as the registrant notifies the administrator, in writing,
3 of the location of the records in its application or otherwise.
4 The registrant shall make such records available to the
5 administrator for examination and investigation in this State
6 within 7 days after receipt of a written request.

7 3. Expiration of retention period. Registrants and
8 authorized vendors are not required to preserve or retain any of
9 the records required by this section or copies of those records
10 for a period longer than 3 years unless a longer period is
11 expressly required by the laws of this State or any federal law.
12 A registrant or authorized vendor may destroy any of its records
13 or copies after the expiration of the retention period required
14 by this section.

15 4. Electronic storage. The original of any record of a
16 registrant includes the data or other information comprising a
17 record stored or transmitted in or by means of any electronic,
18 computerized, mechanized or other information storage or
19 retrieval or transmission system or device that can upon request
20 generate, regenerate or transmit the precise data or other
21 information comprising the records. An original also includes
22 the visible data or other information so generated, regenerated,
23 or transmitted if it is legible or can be made legible by
24 enlargement or other process.

25 §6140. Examinations

26
27 1. Examination. The administrator may examine the books,
28 accounts and records of an applicant or registrant and make
29 investigations to determine compliance with this subchapter.

30
31 2. Expenses. The expenses of the administrator necessarily
32 incurred in the examination or investigation of any applicant or
33 registrant are chargeable to that person.

34 §6141. Reporting requirements

35 A registrant under this subchapter shall:

36
37 1. Disclose to administrator. Disclose to the
38 administrator the fees charged to consumers for services
39 regulated by this subchapter; and

40
41 2. Disclose to public. Conspicuously disclose to the
42 public, at each business location, the fees charged to consumers
43 for its services.

44 §6142. Suspension or revocation of registration

45
46 After notice and hearing, the administrator may suspend or
47
48
49
50

2 revoke a registrant's registration if the administrator finds
3 that:

4 1. Grounds for denial. A fact or condition exists that, if
5 it had existed at the time when the registrant applied for its
6 registration, would have been grounds for denying the application;

8 2. Inadequate net worth. The registrant's net worth
9 becomes inadequate and the registrant, after 10 days' written
10 notice from the administrator, fails to take such steps as the
11 administrator determines necessary to remedy the deficiency;

12 3. Violation. The registrant knowingly violates a material
13 provision of this subchapter or a rule or order validly adopted
14 by the administrator under authority of this subchapter;

15 4. Safety and soundness. The registrant is conducting its
16 business in an unsafe or unsound manner;

17 5. Insolvency. The registrant is insolvent;

18 6. Failure to meet obligations. The registrant has
19 suspended payment of its obligations, made an assignment for the
20 benefit of its creditors, or admitted in writing its inability to
21 pay its debts as they become due;

22 7. Bankruptcy. The registrant has applied for an
23 adjudication of bankruptcy, reorganization, arrangement or other
24 relief under any bankruptcy;

25 8. Refusal of examination. The registrant refuses to
26 permit the administrator to make an examination authorized by
27 this subchapter;

28 9. Failure to respond. The registrant fails to promptly
29 and adequately respond to communications from the administrator;
30 or

31 10. Failure to report. The registrant willfully fails to
32 make a report required by this subchapter.

33 **§6143. Penalties**

34 1. Criminal penalty. A person who carries on a business
35 regulated by this subchapter without a valid registration is
36 guilty of a Class E crime.

37 2. Civil penalty. A registrant who fails to comply with a
38 provision of this subchapter is subject to a civil action in
39 which a court may assess a penalty not to exceed \$5,000 or actual
40 damages, whichever is greater.

2 §6144. Adoption of rules

4 Rules adopted under this subchapter are routine technical
6 rules as defined in Title 5, chapter 375, subchapter II-A.

8 §6145. Designation of agent for service of process

10 An applicant must designate and maintain an agent in this
12 State for service of process.

14 **PART B**

16 **Sec. B-1. 10 MRSA §1316, sub-§2, as amended by PL 1991, c.**
18 **453, §1 and affected by §10, is further amended to read:**

20 **2. Methods.** The disclosures required under section 1315
22 must be made to the consumer by one or more of the following
24 methods:

26 A. In person, if the consumer appears in person and
28 furnishes proper identification, and, in any such case, the
30 consumer must be permitted a personal visual inspection of
32 the consumer's file and, upon the consumer's request, must
34 be furnished copies of any report at a charge not to exceed
36 the agency's actual costs for photocopying or otherwise
38 producing the report;

40 B. By telephone, if the consumer presents proper
42 identification, and the toll charge, if any, for the
44 telephone call is prepaid by or charged directly to the
46 consumer; or

48 C. By promptly mailing a copy of the consumer's file to the
50 consumer, if the consumer has made a written request by
 ordinary mail with proper identification, at a charge not to
 exceed the agency's actual costs for photocopying or
 otherwise producing the report and mailing it.

 In the event that the request for a copy of a consumer's file is
 made within 60 days after an adverse credit determination, the
 cost of the disclosure must be paid by the consumer reporting
 agency. The agency may not be held responsible for improper
 disclosure of a consumer's file resulting from improper delivery
 by the United States Postal Service when the agency properly
 mailed the file, correctly addressed, to the consumer who is the
 subject of the file nor may the agency be held responsible for
 improper telephone disclosures under paragraph B when the agency
 used reasonable procedures to ensure proper identification of the
 consumer who called for the disclosure.

2 Upon the request of the consumer, a consumer reporting agency
4 shall make all disclosures pursuant to section 1315 once during
6 any 12-month period without charge to that consumer if the
8 consumer certifies in writing that the consumer is unemployed and
10 intends to apply for employment in the 60-day period beginning on
12 the date on which the certification is made, is a recipient of
14 public welfare assistance or has reason to believe that the file
16 on the consumer at the agency contains inaccurate information due
18 to fraud.

20 **Sec. B-2. 10 MRSA §1320, sub-§1, as amended by PL 1981, c.**
22 **610, §§9 and 10, is repealed.**

24 **Sec. B-3. 10 MRSA §1320, sub-§1-B is enacted to read:**

26 **1-B. Duties of users taking adverse actions on the basis of**
28 **information contained in consumer reports. If a person takes an**
30 **adverse action with respect to a consumer that is based in whole**
32 **or in part on any information contained in a consumer report, the**
34 **person shall:**

36 **A. Provide written or electronic notice of the adverse**
38 **action to the consumer;**

40 **B. Provide to the consumer in writing or electronically:**

42 **(1) The name, address and telephone number of the**
44 **consumer reporting agency, including a toll-free**
46 **telephone number established by the agency that**
48 **furnished the report to the person if the agency**
50 **compiles and maintains files on consumers on a**
nationwide basis; and

(2) A statement that the consumer reporting agency did
not make the decision to take the adverse action and is
unable to provide the consumer the specific reasons why
the adverse action was taken; and

C. Provide to the consumer a written or electronic notice of
the consumer's right:

(1) To obtain under section 1316 a free copy of a
consumer report on the consumer from the consumer
reporting agency. The notice must include an
indication of the 60-day period under section 1316 for
obtaining the copy; and

(2) To dispute, under section 1317, with a consumer
reporting agency the accuracy or completeness of any

2 information in a consumer report furnished by the
3 agency.

4 **Sec. B-4. 10 MRSA §1320-A** is enacted to read:

6 **§1320-A. Responsibilities of persons who furnish information to**
7 **consumer reporting agencies**

8 **1. Duty of furnishers of information to provide accurate**
9 **information.** A person who furnishes information to consumer
10 reporting agencies has the following duties.

11 A. A person may not furnish any information relating to a
12 consumer to any consumer reporting agency if the person
13 knows or has reason to know that the information is
14 inaccurate.

15 B. A person may not furnish information relating to a
16 consumer to any consumer reporting agency if:

17 (1) The person has been notified by the consumer, at
18 the address specified by the person for such notices,
19 that specific information is inaccurate; and

20 (2) The information is, in fact, inaccurate.

21 C. A person who clearly and conspicuously specifies to the
22 consumer an address for notices referred to in paragraph B
23 is not subject to paragraph A, however, nothing in paragraph
24 B requires a person to specify such an address.

25 **2. Duty to correct and update information.** A person who
26 regularly and in the ordinary course of business furnishes
27 information to one or more consumer reporting agencies about the
28 person's transactions or experiences with any consumer and who
29 has furnished to a consumer reporting agency information that the
30 person determines is not complete or accurate has a duty to:

31 A. Promptly notify the consumer reporting agency of that
32 determination and provide to the agency any corrections to
33 that information, or any additional information, that is
34 necessary to make the information provided by the person to
35 the agency complete and accurate; and

36 B. May not thereafter furnish to the agency any of the
37 information that remains incomplete and inaccurate.

38 **3. Duty to provide notice of dispute.** If the completeness
39 or accuracy of information furnished by a person to a consumer
40 reporting agency is disputed to the person by a consumer, the

2 person may not furnish the information to any consumer reporting
3 agency without notice that the information is disputed by the
4 consumer.

6 4. Duty to provide notice of closed accounts. A person who
7 regularly and in the ordinary course of business furnishes
8 information to a consumer reporting agency regarding a consumer
9 who has a credit account with that person shall notify the agency
10 of the voluntary closure of the account by the consumer, in
11 information regularly furnished for the period in which the
12 account is closed.

14 5. Duty to provide notice of delinquency of accounts. A
15 person who furnishes information to a consumer reporting agency
16 regarding a delinquent account being placed for collection,
17 charged to profit or loss or subjected to any similar action
18 shall, not later than 90 days after furnishing the information,
19 notify the agency of the month and year of the commencement of
20 the delinquency that immediately preceded the action.

22 6. Duties of furnishers of information upon notice of
23 dispute. After receiving notice of a dispute with regard to the
24 completeness or accuracy of information provided by a person to a
25 consumer reporting agency, the person shall:

26 A. Conduct an investigation with respect to the disputed
27 information; and

28 B. Review all relevant information provided by the consumer
29 reporting agency.

32 7. Deadline. A person shall complete all investigations,
33 reviews and reports required under subsection 6 regarding
34 information provided by the person to a consumer reporting agency
35 before the expiration of the period under section 1317 within
36 which the consumer reporting agency is required to complete
37 actions required by that section regarding that information.

38 8. Limitation on liability. Sections 1322 and 1323 do not
39 apply to any failure to comply with this section, except as
40 provided in section 1328.

42 9. Limitation on enforcement. This section must be
43 enforced exclusively under section 1328 by the administrator.

46 **Sec. B-5. Effective date.** Part B of this Act takes effect
47 September 30, 1997.

PART C

50 **Sec. C-1. 9-A MRSA §1-202, sub-§1-A is enacted to read:**

2 1-A. Transactions for which the administrator, by rule,
4 determines that coverage under this Title is not necessary to
carry out the purposes of this Title;

6 **Sec. C-2. 9-A MRSA §8-104, sub-§§4 and 5** are enacted to read:

8 4. The administrator may exempt, by rule, from all or part
10 of this Title any class of transactions, other than transactions
12 involving a mortgage described in section 8-103, subsection 1,
14 paragraph F-1, for which, in the determination of the
16 administrator, coverage under all or part of this Title does not
provide a meaningful benefit to consumers in the form of useful
information or protection. In determining which classes of
transactions to exempt in whole or in part under this subsection,
the administrator shall consider the following factors:

18 A. The amount of the loans and whether the disclosures,
20 right of rescission and other provisions provide a benefit
to the consumers who are parties to such transactions, as
determined by the administrator;

22 B. The extent to which the requirements of this Title
24 complicate, hinder or make more expensive the credit process
for the class of transactions;

26 C. The status of the borrowers, including:

28 (1) Any related financial arrangements of the
30 borrowers, as determined by the administrator;

32 (2) The financial sophistication of the borrowers
34 relative to the type of transaction; and

36 (3) The importance to the borrowers of the credit,
38 related supporting property and coverage under this
Title, as determined by the administrator;

40 D. Whether a loan is secured by the principal residence of
the consumer; and

42 E. Whether the goal of consumer protection would be
44 undermined by such an exemption.

46 5. The administrator, by rule, may exempt from the
requirements of this Title certain credit transactions if:

48 A. The transaction involves a consumer:

2 (1) With an annual earned income of more than
3 \$200,000; or

4
5 (2) Having net assets in excess of \$1,000,000 at the
6 time of the transaction; and

7 B. A waiver that is handwritten, signed, and dated by the
8 consumer is first obtained from the consumer.

9
10 The administrator, at the administrator's discretion, may adjust
11 the annual earned income and net asset requirements of this
12 subsection for inflation.

13 **Sec. C-3. 9-A MRSA §8-108, sub-§3,** as enacted by PL 1981, c.
14 243, §25, is amended to read:

15 **3. Reimbursement.** The administrator shall ~~have~~ the
16 ~~authority to~~ may adopt, by rule, a reimbursement program such
17 that creditors subject to an administrative order under section
18 6-108 may be ordered to make whatever adjustments are necessary
19 to insure that any person will not be required to pay a finance
20 charge in excess of the finance charge actually disclosed or the
21 dollar equivalent of the annual percentage rate actually
22 disclosed, whichever is lower. In determining any readjustment,
23 the administrator shall apply, with respect to the annual
24 percentage rate, a tolerance allowed under section 8-106 and,
25 with respect to the finance charge, a corresponding numerical
26 tolerance as generated by the tolerance allowed by section 8-106
27 for the annual percentage rate.

28 The administrator may order partial adjustment or partial
29 payments over an extended period if the administrator determines
30 that a partial adjustment or making partial payments over an
31 extended period is necessary to avoid causing the creditor to
32 become undercapitalized pursuant to the Federal Deposit Insurance
33 Act.

34 **Sec. C-4. 9-A MRSA §8-206, sub-§1, ¶¶M and N,** as enacted by PL
35 1981, c. 243, §25, is amended to read:

36 **M.** A statement that the consumer should refer to the
37 appropriate contract document for any information such
38 document provides about nonpayment, default, the right to
39 accelerate the maturity of the debt and prepayment rebates
40 and penalties; and

41 **N.** In any residential mortgage transaction, a statement
42 indicating whether a subsequent purchaser or assignee of the
43 consumer may assume the debt obligation on its original
44 terms and conditions; and

2 **Sec. C-5. 9-A MRSA §8-206, sub-§1, ¶O** is enacted to read:

4 O. In the case of a variable interest rate residential
6 mortgage transaction, in disclosures provided at application
8 as prescribed by the administrator for a variable rate
10 transaction secured by the consumer's principal dwelling, at
12 the option of the creditor, a statement that the periodic
14 payments may increase or decrease substantially, and the
16 maximum interest rate and payment for a \$10,000 loan
 originated at a recent interest rate, as determined by the
 administrator, assuming the maximum periodic increases in
 rates and payments under the program, or a historical
 example illustrating the effects of interest rates changes
 implemented according to the loan program.

18 **Sec. C-6. 9-A MRSA §8-208-A, sub-§1**, as enacted by PL 1995, c.
 614, Pt. A, §13, is amended to read:

20 1. For any closed-end consumer credit transaction subject
22 to this Title that is secured by real property or a dwelling and
24 that is consummated before September 30, 1995, a creditor or any
26 assignee of a creditor does not have civil, administrative or
 criminal liability under this Title for, and a consumer does not
 have extended rescission rights under section 8-204, subsection 6
 with respect to:

28 A. The creditor's treatment, for disclosure purposes, of:

30 (i) Taxes described in section 8-105, subsection 4,
32 paragraph C;

34 (ii) Fees described in section 8-105, subsection 5,
 paragraphs B and E;

36 (iii) Fees and amounts described in section 8-105,
38 subsection 1-A; or

40 (iv) Borrower-paid mortgage broker fees referred to in
 section 8-105, subsection 1, paragraph F;

42 B. The form of written notice used by the creditor to
44 inform the obligor of the rights of the obligor under
46 section 8-204 if the creditor provided the obligor with a
48 properly dated form of written notice published and adopted
 by the administrator or a comparable written notice and
 otherwise complied with all the requirements of this section
 regarding notice; or

50 C. Any disclosure relating to the finance charge imposed

2 with respect to the transaction if the amount or percentage
3 actually disclosed:

4 (i) Is deemed accurate for purposes of this Title and
5 if the amount disclosed as the finance charge does not
6 vary from the actual finance charge by more than \$200;

8 (ii) May, under section 8-105, subsection 6, paragraph
9 B, be deemed accurate for purposes of section 8-204; or

10 (iii) Is greater than the amount or percentage required
11 to be disclosed under this Title.

14 PART D

16 **Sec. D-1. 32 MRSA §11013, sub-§2, ¶K,** as enacted by PL 1985, c.
18 702, §2, is repealed.

20 **Sec. D-2. 32 MRSA §11013, sub-§2, ¶K-1** is enacted to read:

22 K-1. The failure to disclose in the initial written
23 communication with the consumer and, if the initial
24 communication with the consumer is oral, in that initial
25 oral communication, that the debt collector is attempting to
26 collect a debt and that any information obtained will be
27 used for that purpose, and the failure to disclose in
28 subsequent communications that the communication is from a
29 debt collector, except that this paragraph does not apply to
30 a formal pleading made in connection with a legal action;

32 PART E

34 **Sec. E-1. 30-A MRSA §3960, sub-§1,** as enacted by PL 1993, c.
36 59, §1, is amended to read:

38 **1. Pawn transaction.** "Pawn transaction" means the lending
39 of money on the security of pledged tangible personal property
40 that is delivered to a pawnbroker and held by the pawnbroker.
41 The term also includes the purchase of tangible personal property
42 on the condition that it may be repurchased by the seller for a
43 fixed price within a fixed period of time.

44 **Sec. F-2. 30-A MRSA §3960, sub-§3** is enacted to read:

46 **3. Tangible personal property.** "Tangible personal
47 property" includes motor vehicles, but does not include documents
48 evidencing title to motor vehicles. The term also does not
49 include checks, drafts or similar instruments or real estate.

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SUMMARY

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This bill proposes to do the following.

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Title IV of the federal Reigle Community Development Act, titled the "Money Laundering Suppression Act of 1994," calls upon states to adopt uniform laws for licensing and regulating money transmitters and money order issuers. The language in Part A is adopted from a model money transmitter law, developed jointly by the Money Transmitter Regulators Association and the money transmitter industry. It is designed to protect consumers by ensuring the solvency of money transmitters and money order issuers.

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Title IV of the federal Reigle Community Development Act calls upon states to adopt uniform laws for licensing and regulating check cashers and currency exchangers, "for purposes of preventing money laundering and protecting the payment system from fraud and abuse." Following the lead of most other states, this bill requires the registration of those businesses and ensures appropriate disclosures of costs to consumers.

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The omnibus budget bill signed by the President on September 30, 1996 contained major revisions to the Federal Fair Credit Reporting Act, upon which Maine's credit reporting laws are based. The language in Part B is derived from language in the new federal law. Incorporating the changes into Maine law will assist businesses that operate across state lines, because the requirements will be consistent among states. Enacting the changes will also bring several consumer protections adopted by Congress to Maine citizens, including the right of poor or unemployed individuals to obtain a copy of the their credit report without charge.

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The omnibus budget bill passed by Congress on September 30, 1996 contained several amendments to the federal Truth-in-Lending Act. The State maintains an exemption to the federal Truth-in-Lending Act by incorporating federal changes into state law. This provides consistency for Maine businesses, but also allows responsiveness on a state level to consumer issues. The language in Part C is derived exactly from that adopted at the federal level.

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The federal budget bill enacted by Congress on September 30, 1996 contained an important clarification of the Federal Fair Debt Collection Practices Act, upon which Maine collection law is based. The federal law provides regulatory relief to attorneys and debt collectors concerning the technical written notices that

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2 must be contained in each collection letter, and clarifies a
related notice issue that has led to expensive litigation in
4 other parts of the country. Part D clarifies Maine law on this
issue.

6 Part E clarifies that a pawnbroker must have physical
possession of the substantive collateral in order to effect a
8 pawn transaction.