

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1385

S.P. 439

In Senate, March 5, 1997

**An Act to Promote Parity in the Regulation of Insurance Sales by
Federally and State-chartered Financial Institutions.**

(EMERGENCY)

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CAREY of Kennebec.
Cosponsored by Representative CAMPBELL of Holden and
Senators: ABROMSON of Cumberland, KIEFFER of Aroostook, Representatives: MAYO of
Bath, SAXL of Portland, VIGUE of Winslow.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, state law currently prohibits financial
6 institutions from selling most types of insurance; and

8 Whereas, this prohibition may not apply to federally
chartered financial institutions in light of the unanimous
10 decision of the United States Supreme Court in a March 1996 case
entitled Barnett Bank, N.A. v. Nelson; and

12 Whereas, if the State does not immediately permit
14 state-chartered financial institutions to sell insurance, these
banks will be encouraged to convert to federally chartered banks,
16 thereby lessening state oversight and revenues. The lack of
parity may also discourage financial institutions from benefiting
18 in the State's economy by locating in this State; and

20 Whereas, if banks are permitted to sell insurance in the
State, those sales should be in accordance with reasonable market
22 regulations in order to protect the consumer; and

24 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
26 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
28 safety; now, therefore,

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

32 **Sec. 1. 9-A MRSA §4-102, sub-§§1 and 2,** as enacted by PL 1973,
c. 762, §1, are amended to read:

34 1. Except as provided in subsection 2, Parts 1, 2 and 3 of
36 this Article ~~applies~~ apply to insurance provided or to be
provided in relation to a consumer credit transaction.

38 2. The provision on cancellation by a creditor, section
40 4-304, applies to loans, the primary purpose of which is the
financing of insurance. No other provision of Parts 1, 2 and 3 of
42 this Article applies to insurance so financed.

44 **Sec. 2. 9-A MRSA §4-104, sub-§§1 and 2,** as enacted by PL 1973,
c. 762, §1, are amended to read:

46 1. Except as otherwise provided in Parts 1, 2 and 3 of this
48 Article and subject to the provisions on additional charges,
section 2-501, and maximum finance charges, Parts 2 and 4 of
50 Article II, a creditor may agree to provide insurance, and may

2 contract for and receive a charge for insurance separate from and
3 in addition to other charges. A creditor need not make a separate
4 charge for insurance provided or required by ~~him~~ that creditor.
5 This Act does not authorize the issuance of any insurance
6 prohibited under any statute, or rule thereunder, governing the
business of insurance.

8 2. The excess amount of a charge for insurance provided for
9 in agreements in violation of Parts 1, 2 and 3 of this Article is
10 an excess charge for the purposes of the provisions of the
11 Article on Remedies and Penalties, Article V, as to effect of
12 violations on rights of parties, section 5-201, and of the
13 provisions of the Article on Administration, Article VI, as to
14 civil actions by the administrator, section 6-113.

16 **Sec. 3. 9-A MRSA §4-106, sub-§2**, as enacted by PL 1973, c.
17 762, §1, is amended to read:

18 2. If consumer credit insurance otherwise complies with
19 Parts 1, 2 and 3 of this Article and other applicable law,
20 neither the amount nor the term of the insurance nor the amount
21 of a charge therefor is in and of itself unconscionable in the
22 absence of other practices and circumstances.

24 **Sec. 4. 9-A MRSA §4-111**, as enacted by PL 1973, c. 762, §1,
25 is amended to read:

28 **§4-111. Cooperation between administrator and Superintendent of**
29 **Insurance**

30 The administrator and the Superintendent of Insurance are
31 authorized and directed to consult and assist one another in
32 maintaining compliance with Parts 1, 2 and 3 of this Article.
33 They may jointly pursue investigations, prosecute suits and take
34 other official action as may seem to them appropriate, if either
35 of them is otherwise empowered to take the action. If the
36 administrator is informed of a violation or suspected violation
37 by an insurer of Parts 1, 2 and 3 of this Article, or of the
38 insurance laws, rules and regulations of this State, he the
39 administrator shall advise the Superintendent of Insurance of the
40 circumstances.

42 **Sec. 5. 9-A MRSA §4-112, sub-§1**, as enacted by PL 1973, c.
43 762, §1, is amended to read:

44 1. To the extent ~~that his~~ of required responsibility under
45 Parts 1, 2 and 3 of this Article ~~requires~~, the Superintendent of
46 Insurance shall issue rules with respect to insurers, and with
47 respect to refunds, section 4-108 ~~4-108~~, forms, schedules of
48 premium rates and charges, section 4-203 ~~4-203~~, and ~~his~~ the

2 Superintendent of Insurance's approval or disapproval thereof
and, in case of violation, may make an order for compliance.

4 **Sec. 6. 9-A MRSA §4-301, first ¶** is enacted to read:

6 The following provisions apply to insurance provided or to
8 be provided in relation to a consumer credit transaction:

10 **Sec. 7. 9-A MRSA §4-303**, as amended by PL 1987, c. 129, §63,
is repealed.

12 **Sec. 8. 9-A MRSA Art. IV, Pt. 4** is enacted to read:

14 **PART 4**

16 **INSURANCE ACTIVITIES BY SUPERVISED LENDERS**

18 **§4-401. Scope**

20 This Part applies to supervised lenders who are not
22 supervised financial organizations.

24 **§4-402. Insurance agency activities**

26 A supervised lender and any affiliate may become licensed
28 under Title 24-A as an insurance agent or agency, broker or
30 consultant for the sale of insurance products in this State and
32 may act as an insurance agent, broker or consultant for the sale
34 of insurance products in this State.

36 **§4-403. Definitions**

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

42 **1. Affiliate.** "Affiliate" means any of the following
44 entities:

46 **A. A subsidiary of a supervised lender;**

48 **B. An entity of which a supervised lender is a subsidiary;**

50 **C. An employee, officer other than a director or licensed**
3rd-party agent operating directly on behalf of a supervised
lender or any institution listed in paragraph A or B;

D. A person or entity possessing 5% or more of the
ownership interests of a supervised lender or any
institution listed in paragraph A or B; or

2 E. An insurer or insurance agent, broker or consultant
3 utilizing space in the retail area of a supervised lender,
4 or an institution listed in paragraph A or B in order to
5 engage in the transaction of insurance when payments for use
6 of such space are made to the supervised lender or other
7 such institution pursuant to a space-sharing agreement based
8 directly or indirectly on a percentage of the volume of
9 business conducted by the insurer, insurance agent, broker
10 or consultant.

11 2. Customer. "Customer" means a person or an authorized
12 representative who has been personally and directly offered or
13 presently maintains an investment security, trust, credit or an
14 insurance product with a supervised lender or its affiliate.

15 3. Insurance agent or agency. "Insurance agent or agency"
16 means a person engaged in the business of an insurance agent as
17 defined in Title 24-A, section 1502.

18 4. Insurance broker. "Insurance broker" means a person
19 engaged in the business of an insurance broker as defined in
20 Title 24-A, section 1506.

21 5. Insurance consultant. "Insurance consultant" means a
22 person engaged in the business of an insurance consultant as
23 defined in Title 24-A, section 1508.

24 6. Insurance product. "Insurance product" means a contract
25 of insurance that is offered for sale by a licensed agent or
26 broker employed by or affiliated with a supervised lender. It
27 does not include credit life insurance, credit health insurance,
28 forced placed property insurance, credit involuntary unemployment
29 insurance or any other consumer credit insurance, as defined in
30 section 4-103.

31 7. Ownership interest. "Ownership interest" includes
32 general partnership shares, limited partnership shares and shares
33 of stock that possess any voting rights.

34 8. Subsidiary. "Subsidiary" means any corporation,
35 partnership, association or other business entity in which either:

36 A. One or more supervised lenders or any of their officers,
37 employees, agents or representatives possess, directly or
38 indirectly, singly or in the aggregate, an ownership
39 interest of at least 25%; or

40 B. It is determined by the Superintendent of Banking after
41 notice and opportunity for hearing that one or more
42 supervised lenders or any of their officers, employees,
43 agents or representatives possess, directly or indirectly,
44 singly or in the aggregate, an ownership interest of at least
45 25%.

2 agents or representatives, singly or in the aggregate
3 exercise a controlling influence over the management and
4 policies of the entity.

6 **§4-404. Choice of insurance agent or broker**

8 A supervised lender or its affiliate that negotiates or
9 sells insurance products to purchasers or borrowers as authorized
10 under section 4-402 may not, in connection with the extension of
11 credit, interfere with a purchaser's or borrower's free choice of
12 an insurance agent or company under applicable provisions set
13 forth in Title 24-A.

14 **§4-405. Tie-in arrangements**

16 A supervised lender or its affiliate may not sell in any
17 manner an insurance product as authorized under section 4-402 or
18 fix or vary the consideration for that product on the condition,
19 agreement, requirement or understanding that the purchaser or
20 borrower obtain some additional or other credit, property or
21 other service from the supervised lender or its affiliate, or fix
22 or vary the consideration for such other services.

24 **§4-406. Distinguishing insurance products from loan products;**
25 **identification of insurance brokers and agents**

26 To the extent practicable, sales of insurance products
27 authorized by this Part must take place in a manner that
28 minimizes customer confusion between any noninsurance product
29 offered by the supervised lender or its affiliates and insurance
30 products. A supervised lender or its affiliates shall use signs
31 clearly visible to its customers that distinguish insurance
32 products of the supervised lender or its affiliates from its
33 noninsurance products and that adequately identify insurance
34 agents, brokers and consultants affiliated with the supervised
35 lender.

38 **§4-407. Rulemaking**

40 The Superintendent of Banking, the Superintendent of
41 Insurance and the Director of the Office of Consumer Credit
42 Regulation may undertake joint rulemaking, pursuant to this
43 section, Title 9-B, section 448, subsection 5 and Title 24-A,
44 section 1514-A, subsection 6 to carry out the purposes of section
45 4-406, including issues regarding signs, the physical location of
46 sales of insurance and identification of agents and brokers
47 affiliated with financial institutions, credit unions, financial
48 institution holding companies or supervised lenders. In adopting
49 rules pursuant to this Part, the Superintendent of Banking, the
50 Superintendent of Insurance and the Director of the Office of

2 Consumer Credit Regulation shall consider the possibility of
3 confusion and perception of coercion among the insurance
4 consuming public, the need for cost-effective delivery of
5 insurance products to insurance consumers and the importance of
6 parity among agents and brokers affiliated with federally
7 chartered and state-chartered financial institutions and credit
8 unions. Any rule adopted may not interfere significantly with
9 the ability of an agent or broker to solicit or negotiate the
10 sale of an insurance product, whether or not that agent or broker
11 is affiliated with a financial institution, credit union,
12 financial institution holding company or supervised lender,
13 except when no other reasonable alternative exists that protects
14 the insurance consuming public. Rules adopted under this Part
15 are routine technical rules pursuant to Title 5, chapter 375,
16 subchapter II-A. Nothing in this section is intended to restrict
17 or interfere with the ability of the Bureau of Insurance, the
18 Bureau of Banking or the Office of Consumer Credit Regulation to
19 adopt rules with respect to areas in which the respective
20 agencies have independent jurisdiction.

21 **Sec. 9. 9-B MRSA §131, sub-§§22-B to 22-E are enacted to read:**

22 22-B. Insurance agent or agency. "Insurance agent or
23 agency" means a person engaged in the business of an insurance
24 agent as defined in Title 24-A, section 1502.

25 22-C. Insurance broker. "Insurance broker" means a person
26 engaged in the business of an insurance broker as defined in
27 Title 24-A, section 1506.

28 22-D. Insurance consultant. "Insurance consultant" means a
29 person engaged in the business of an insurance consultant as
30 defined in Title 24-A, section 1508.

31 22-E. Insurance product. "Insurance product" means a
32 contract of insurance that is offered for sale by a licensed
33 agent or broker. It does not include a contract of insurance
34 with respect to credit, as defined in Title 9-A, section 4-103,
35 including credit life and credit health insurance as authorized
36 by Title 24-A, chapter 37, credit involuntary unemployment
37 insurance and group health insurance as authorized by Title 24-A,
38 chapter 35 and group life insurance as authorized by Title 24-A,
39 chapter 31 when the insured is enrolled in such policies and the
40 person undertaking the enrolling activity does not receive any
41 commission other than what is permitted under Title 24-A as well
42 as forced placed property insurance policies.

43 **Sec. 10. 9-B MRSA §161, sub-§2, ¶J, as amended by PL 1989, c.**
44 **368, §2, is further amended to read:**

2 J. Any disclosure of records made under the Federal
3 Currency and Foreign Transactions Reporting Act, Public Law
4 91-508, 31 United States Code, section Section 5311, et
5 seq., as amended; ~~or~~

6 **Sec. 11. 9-B MRSA §161, sub-§2, ¶K**, as enacted by PL 1989, c.
7 368, §3, is amended to read:

10 K. The examination or furnishing of any financial records
11 by a fiduciary institution to any officer, employee or agent
12 of the Treasurer of State for use solely in the exercise of
13 that officer's, employee's or agent's duties under the
14 Unclaimed Property Act, Title 33, chapter 37; or

16 **Sec. 12. 9-B MRSA §161, sub-§2, ¶L** is enacted to read:

18 L. The exchange of financial records between a fiduciary
19 institution and a consumer reporting agency or between or
20 among a fiduciary institution and its subsidiaries,
21 employees, agents or affiliates as permitted under Title 10,
22 chapter 210 or 15 United States Code, Chapter 41.

24 **Sec. 13. 9-B MRSA §241, sub-§11** is enacted to read:

26 11. Choice of insurance agent or broker. A financial
27 institution or credit union authorized to do business in this
28 State, or a financial institution holding company or an affiliate
29 of a financial institution holding company that is authorized
30 under section 448 to negotiate or sell insurance products to
31 purchasers or borrowers may not, in connection with the extension
32 of credit, interfere with a purchaser's or borrower's free choice
33 of insurance agent or company under applicable provisions
34 contained in Title 24-A.

36 Any violation of this subsection is an anticompetitive or
37 deceptive practice under this chapter and is subject to the
38 remedies provided in this chapter in addition to those remedies
39 otherwise provided by law.

40 **Sec. 14. 9-B MRSA §242, sub-§4** is enacted to read:

42 4. Advertisement of insurance products. In any
43 advertisement of an insurance product offered pursuant to section
44 448, the institution or its affiliate shall include a statement
45 that the product is not insured by the Federal Deposit Insurance
46 Corporation or National Credit Union Administration.

48 **Sec. 15. 9-B MRSA §243, sub-§1**, as amended by PL 1979, c. 663,
49 §32, is further amended to read:

2 **1. Prohibition.** A financial institution authorized to do
business in this State shall may not in any manner extend credit,
4 lease or sell property, or furnish any service, or fix or vary
the consideration for any of the foregoing on the condition,
6 agreement, requirement or understanding:

8 A. That the customer shall obtain some additional or other
credit, property, or other service from such financial
10 institution other than a loan, discount, deposit or trust
service. This paragraph does not apply to insurance
12 products that are permitted under Title 24-A;

14 B. That the customer shall obtain some additional or other
credit, property, or service from a subsidiary of such
16 financial institution, a financial institution holding
company of such financial institution, or from any other
18 subsidiary of such financial institution holding ~~company~~
company;

20 C. That the customer provide some additional or other
22 credit, property, or service to such financial institution,
other than those related to and usually provided in
24 connection with a loan, discount, deposit, or trust service;

26 D. That the customer provide some additional or other
credit, property or service to a subsidiary of such
28 financial institution, a financial institution holding
company of such financial institution, or from any other
30 subsidiary of such financial institution holding company; or

32 E. That the customer shall may not obtain some additional
or other credit, property, or service from a competitor of
34 such financial institution, a subsidiary of a competitor
financial institution, a financial institution holding
36 company of a competitor financial institution, or any other
subsidiary of such competitor financial institution holding
38 company, other than a condition or requirement that such
financial institution shall reasonably impose in a credit
40 transaction to assure the soundness of the credit.

42 **Sec. 16. 9-B MRSA §443, sub-§11,** as enacted by PL 1993, c.
322, §1, is amended to read:

44 **11. Annuities.** A financial institution, credit union or
46 financial institution holding company, or a subsidiary or
employee of such an entity, authorized to do business in the
48 State may sell, or arrange for the sale of, through a licensed
3rd-party, annuities purchased from a licensed insurance company
50 and may share commissions in connection with the sale of

2 annuities pursuant to the provisions of Title 24-A. A financial
3 institution, a credit union or a financial institution holding
4 company or an employee or subsidiary of such an entity must be
5 licensed in accordance with Title 24-A, ~~see then sections 1512 or~~
6 1531, subsection 1, paragraph F before engaging in any of the
7 activities concerning the sale of annuities authorized by this
8 subsection. ~~If annuities are sold pursuant to the authorization~~
9 ~~under this subsection through an arrangement with a licensed~~
10 ~~3rd party agent, that 3rd party agent may not be licensed to sell~~
11 ~~general lines insurance or life and health insurance.~~ As used in
12 this subsection, the words "sell annuities" and "arrange for the
13 sale of annuities" do not include the underwriting of those
14 products.

15 A financial institution, credit union or financial institution
16 holding company that sells or arranges for the sale of annuities
17 on the premises of that entity:

18 A. Shall post conspicuously a notice that is clearly
19 visible to all customers that may purchase annuities. The
20 notice must state in clearly understandable language that
21 the annuities are not insured by the Federal Deposit
22 Insurance Corporation;

23 B. Shall orally inform a prospective purchaser of annuities
24 that the annuities are not insured by the Federal Deposit
25 Insurance Corporation; and b! 1993, c. 322, @1 (new). ?b

26 C. Before a sale of annuities is completed, must obtain a
27 written statement signed by the purchaser of the annuities
28 stating that the purchaser received the oral notice required
29 by paragraph B.

30 Sec. 17. 9-B MRSA §448 is enacted to read:

31 **§448. Insurance agency activities**

32 **1. Authorization.** A financial institution or credit union
33 authorized to do business in this State, or financial institution
34 holding company, or an affiliate of either, other than a licensed
35 supervised lender regulated under Title 9-A, Article IV, Part 4,
36 may act as an agent, broker or consultant for any insurance
37 product sold or negotiated within the State and may employ,
38 affiliate with or hire as a 3rd party agent an insurance agent or
39 agency, broker or consultant for any insurance product sold or
40 negotiated within this State, if the agent, agency, broker or
41 consultant is duly licensed under Title 24-A. The institution
42 may exercise the authority given by this subsection in addition
43 to and without limiting any authority the institution has under
44 section 443, subsection 11 regarding annuity sales or any
45

2 authority it may have under Title 24-A, chapters 31, 35 and 37 to
3 enroll customers in credit life and health, group life and group
4 health policies. Any sales or negotiation of insurance products
5 authorized under this section must comply with the limitations
6 contained in Title 24-A, section 1514-A including any limitations
7 regarding the location of insurance agency and brokerage
8 activities.

9
10 2. Definitions. As used in this section, unless the
11 context otherwise indicates, the following terms have the
12 following meanings.

13
14 A. "Affiliate" has the same meaning as defined in Title
15 24-A, section 1514-A, subsection 1.

16 B. "Customer" means a person or business entity or an
17 authorized representative of either who has been personally
18 and directly offered, or presently maintains, an investment
19 security, trust, credit or an insurance product with a
20 financial institution or financial institution holding
21 company authorized to do business in this State.

22
23 3. Customer notice that insurance is not federally
24 guaranteed. An institution that engages in insurance agency or
25 brokerage activities authorized under subsection 1 must provide
26 customer notice regarding insurance products in the following
27 manner.

28
29 A. The institution shall post conspicuously a notice that
30 is clearly visible to all customers that may purchase
31 insurance products from the institution. The notice must
32 state in clearly understandable language that the insurance
33 is not insured by the Federal Deposit Insurance Corporation
34 or National Credit Union Administration;

35
36 B. The institution shall orally inform a prospective
37 purchaser of insurance that the insurance product is not
38 insured by the Federal Deposit Insurance Corporation or
39 National Credit Union Administration; and

40
41 C. Before the sale of an insurance product is completed the
42 institution must obtain a written statement signed by the
43 purchaser of insurance that the purchaser received the oral
44 notice required by paragraph B.

45
46 4. Minimizing customer confusion between insurance sales
47 and deposit or loan products. To the extent practicable, sales
48 of insurance products authorized by this section must take place
49 in a manner that minimizes customer confusion between the
50 deposit, share or loan products offered by the institution and

2 those insurance products. An institution authorized under
3 subsection 1 is in compliance with this subsection if it utilizes
4 signs clearly visible to its customers that distinguish its
5 insurance products from its deposit or loan products and that
6 adequately identify insurance agents, brokers and consultants
7 affiliated with the institution.

8 **5. Rulemaking.** The superintendent, Superintendent of
9 Insurance and the Director of the Office of Consumer Credit
10 Regulation are authorized, pursuant to this subsection, Title
11 9-A, section 4-407 and Title 24-A, section 1514-A, subsection 6
12 to undertake joint rulemaking to carry out the purpose of
13 subsection 4, including issues regarding signs, the physical
14 location of sales of insurance and identification of agents and
15 brokers affiliated with financial institutions, credit unions,
16 financial institution holding companies or supervised lenders.
17 In adopting rules pursuant to this section, the superintendent,
18 the Superintendent of Insurance and the Director of the Office of
19 Consumer Credit Regulation shall consider the possibility of
20 confusion and perception of coercion among the insurance
21 consuming public, the need for cost-effective delivery of
22 insurance products to insurance consumers and the importance of
23 parity among agents and brokers affiliated with federally
24 chartered and state-chartered financial institutions and credit
25 unions. Any rule adopted may not interfere significantly with
26 the ability of an agent or broker to solicit or negotiate the
27 sale of an insurance product, whether or not that agent or broker
28 is affiliated with a financial institution, credit union,
29 financial institution holding company or supervised lender,
30 except when no other reasonable alternative exists to protect the
31 insurance consuming public. Rules adopted under this section are
32 routine technical rules pursuant to Title 5, chapter 375,
33 subchapter II-A. Nothing in this section is intended to restrict
34 or interfere with the ability of the bureau, the Bureau of
35 Insurance and the Office of Consumer Credit Regulation to adopt
36 rules with respect to areas in which the respective agencies have
37 independent jurisdiction.

38 **Sec. 18. 24-A MRS §1514, sub-§4, ¶C,** as enacted by PL 1969,
39 c. 132, §1, is amended to read:

40
41
42 C. Credit life and credit health insurance written by any
43 agent or broker or any other insurance or annuity product
44 written by an agent or broker affiliated with a lender or
45 creditor. "Affiliate" has the same meaning as defined in
46 section 1514-A, subsection 1 with respect to financial
47 institutions, credit unions and holding companies or in
48 Title 9-A, section 4-403 with respect to supervised lenders.

2 B. "Financial institution holding company" has the same
3 meaning ~~set-forth~~ as defined in Title 9-B, section 1011 and
4 includes a mutual holding company as defined in Title 9-B,
5 section 1052.

6 C. "Ownership interest" includes general partnership
7 shares, limited partnership shares and shares of stock which
8 that possess any voting rights.

9 ~~D. "Retail area" means all space occupied by a financial~~
10 ~~institution where the "business of banking," as defined in~~
11 ~~Title 9-B, section 131, subsection 5, may occur.~~

12 E. "Subsidiary" means any corporation, partnership,
13 association or other business entity in which either:

14 (1) One or more financial institutions or credit
15 unions authorized to do business in this State,
16 financial institution holding companies or any
17 officers, employees, agents or representatives of the
18 financial institutions or credit unions authorized to
19 do business in this State or financial institution
20 holding companies possess directly or indirectly,
21 singly or in the aggregate, an ownership interest of at
22 least 25%; or

23 (2) It is determined by the superintendent after
24 notice and opportunity for hearing that one or more
25 financial institutions or credit unions authorized to
26 do business in this State, financial institution
27 holding companies or any officers, employees, agents or
28 representatives of financial institutions or credit
29 unions authorized to do business in this State or
30 financial institution holding companies, singly or in
31 the aggregate, exercise a controlling influence over
32 the management and policies of the entity.

33 **2. Prohibition on licensing.** A financial institution or
34 credit union authorized to do business in this State, financial
35 institution holding company or the subsidiary or affiliate
36 ~~either or an officer, employee, agent or representative of a~~
37 ~~financial institution, financial institution holding company or~~
38 ~~the subsidiary of either~~ any of those entities may not be
39 licensed as an insurance agent, broker or consultant in this
40 State or may not act as an insurance agent, broker or consultant
41 in this State. Nothing in this section limits the activity of
42 these organizations with respect to credit life and credit health
43 insurance to the extent authorized by chapter 37, group health
44 insurance to the extent authorized by chapter 35 and group life

2 insurance to the extent authorized by chapter 31. Nothing in
3 this section prohibits a financial institution, credit union,
4 financial institution holding company or a subsidiary or employee
5 of any such entity from selling annuities, arranging for the sale
6 of annuities or sharing commissions in connection with the sale
7 of annuities to the extent authorized by Title 9-B, section 443,
8 subsection 11, provided that such entity has been licensed
9 pursuant to section 1531, subsection 1, paragraph F and if that
10 activity includes the sale of variable annuity contracts, the
11 National Association of Securities Dealers registration form has
12 been submitted to the superintendent as required by the
13 provisions of section 1520, subsection 3.

14 ~~2-A.--Notwithstanding the provisions of subsections 1 and 2,~~
15 ~~an individual may not be affiliated pursuant to section 1518,~~
16 ~~subsection 5, with a financial institution, credit union, holding~~
17 ~~company or subsidiary of a financial institution, credit union,~~
18 ~~holding company or subsidiary of which the individual is a~~
19 ~~director or trustee nor may an individual, through a 3rd party~~
20 ~~arrangement, otherwise sell annuities for or share commissions~~
21 ~~with an institution. This prohibition applies to an organization~~
22 ~~licensed as an agent or broker in which the director or trustee~~
23 ~~has an ownership interest or otherwise controls the organization.~~

24 ~~3.---Limitations on leasing activities.---Any arrangement~~
25 ~~involving a financial institution or financial institution~~
26 ~~holding company and an insurer or insurance agent, broker or~~
27 ~~consultant pursuant to which an insurer, insurance agent, broker~~
28 ~~or consultant utilizes space in the retail area of a financial~~
29 ~~institution in order to engage in the transaction of insurance is~~
30 ~~subject to the following conditions.~~

31 ~~A.---The financial institution, financial institution holding~~
32 ~~company or subsidiary of either may not own, in whole or in~~
33 ~~part, the insurer, insurance agent, broker or consultant.~~

34 ~~B.---No officer, employee, agent or representative of the~~
35 ~~financial institution, financial institution holding company~~
36 ~~or a subsidiary of either may act as an officer, employee,~~
37 ~~agent or representative of the insurer, insurance agent,~~
38 ~~broker or consultant.~~

39 ~~C.---The payments to be made to the financial institution or~~
40 ~~financial institution holding company pursuant to a~~
41 ~~space sharing agreement may not be based, directly or~~
42 ~~indirectly, upon a percentage of the volume of business~~
43 ~~conducted by the insurer, insurance agent, broker or~~
44 ~~consultant.~~

2 D.---The--financial--institution--or--financial--institution
holding--company--may--not--engage--in--any--joint--advertising--or
4 solicitation--with--the--insurer,--insurance--agent,--broker--or
consultant.

6 E.---The--space--occupied--by--the--insurer,--insurance--agent,
broker--or--consultant--shall--be--sufficiently--separate--and
8 distinct--from--areas--occupied--by--officers--or--employees--of--the
financial--institution--and--the--respective--parties--shall--act
10 in--a--manner--so--that:

12 (1)--A--consumer--would--not--have--reason--to--believe--that
there--is--any--affiliation--between--the--financial
14 institution--and--the--insurer,--insurance--agent,--broker--or
consultant;--and

16 (2)--The--right--of--the--consumer--to--consider--insurance
18 transactions--in--a--confidential--and--nonsensitive
environment--is--assured.

20 **4. Rule-making authority.** The superintendent may promulgate
22 rules to implement and support this section, including reasonable
rules to implement the general conditions set forth in subsection
24 3, concerning space sharing arrangements. The rules may limit or
prohibit activities which evade or circumvent the provisions of
26 this section.

28 **5. Exception.** Notwithstanding subsection 2, a financial
institution or credit union authorized to do business in this
30 State, financial institution holding company or the subsidiary or
affiliate of any of those entities may be licensed and may act as
32 an insurance agent, broker or consultant in this State to the
extent permitted under Title 9-B or applicable federal law if the
34 insurance agent, broker or consultant is or is affiliated with a
financial institution or credit union authorized to do business
36 in this State or a financial institution holding company located
and doing business from a place, the population of which does not
38 exceed 5,000 inhabitants, as shown by the last preceding
decennial census, or as otherwise permitted pursuant to Title
40 9-B, sections 416 and 828.

42 **6. Rulemaking.** The superintendent, the Superintendent of
Banking and the Director of the Office of Consumer Credit
44 Regulation may, pursuant to this subsection, Title 9-A, section
4-407 and Title 9-B, section 448, subsection 5, undertake joint
46 rulemaking to carry out the purpose of this section, including
issues regarding signs, the physical location of sales of
48 insurance and identification of agents and brokers affiliated
with financial institutions, credit unions, financial institution
50 holding companies or supervised lenders. In adopting rules

2 pursuant to this section, the superintendent, the Superintendent
4 of Banking and the Director of the Office of Consumer Credit
6 Regulation shall consider the possibility of confusion and
8 perception of coercion among the insurance consuming public, the
10 need for cost-effective delivery of insurance products to
12 insurance consumers and the importance of parity among agents and
14 brokers affiliated with federally chartered and state-chartered
16 financial institutions and credit unions. Any rule adopted may
18 not interfere significantly with the ability of an agent or
20 broker to solicit or negotiate the sale of an insurance product,
whether or not that agent or broker is affiliated with a
financial institution, credit union, financial institution
holding company or supervised lender, except when no other
reasonable alternative exists to protect the insurance consuming
public. Rules adopted under this section are routine technical
rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing
in this section is intended to restrict or interfere with the
ability of the bureau, the Bureau of Banking or the Office of
Consumer Credit Regulation to adopt rules with respect to areas
in which the respective agencies have independent jurisdiction.

22 **Sec. 20. 24-A MRSA §1531, sub-§1, ¶F,** as enacted by PL 1993,
24 c. 322, §6, is amended to read:

26 ~~F. Covering only annuities. An individual who is licensed~~
28 ~~to sell annuities as well as other kinds of insurance under~~
30 ~~the Maine Insurance Code who is or becomes an employee of a~~
32 ~~financial institution, credit union, financial institution~~
34 ~~holding company or a subsidiary of such an entity that~~
~~becomes licensed pursuant to this subsection, must promptly~~
~~deliver the license to the superintendent for reissuance~~
~~without fee or charge as a limited license for the sale of~~
~~annuities only.~~

36 **Sec. 21. 24-A MRSA §2168, sub-§1,** as amended by PL 1983, c.
38 394, §4, is further amended to read:

40 **1. Prohibition against certain requirements.** No A person
42 engaged in the business of financing the purchase of real or
44 personal property or of lending money on the security of real or
46 personal property may not require, as a condition to the
48 financing or lending, or as a condition to the renewal or
50 extension of any such loan or to the performance of any other act
in connection with the financing or lending, that the purchaser
or borrower, or his the successors,--shall of the purchaser or
borrower negotiate through a particular insurer or insurers,
insurance agent or agents, broker or brokers, type of insurer or
types of insurers, any policy of insurance or renewal thereof
insuring that property issued in connection with the extension of
credit. For purposes of this section, the term "policy"

includes, but is not limited to, any temporary contract or binder, by whatever name known, under the terms of which insurance coverage commences at a specified time, and continues until a finished policy is issued or the risk is declined and coverage is terminated.

Sec. 22. 24-A MRSA §2168, sub-§1-A is enacted to read:

1-A. Prohibition against unreasonable burdens. A creditor or lender may not, in connection with the extension of credit, interfere with the free choice of a borrower or purchaser under subsection 1 by imposing any unreasonable time or burden on an insurance agent or broker not affiliated with the lender or creditor that is not also imposed on an insurance agent or broker who is affiliated with the lender or creditor. "Affiliate" has the same meaning as set forth in section 1514-A, subsection 1 with respect to financial institutions, credit unions and holding companies and in Title 9-A, section 4-403, with respect to supervised lenders.

Sec. 23. 24-A MRSA §2168, sub-§2, as enacted by PL 1969, c. 132, §1, is amended to read:

2. Approval of insurer; written criteria. This section shall does not prevent the exercise by any mortgagee lender or creditor of his its right to approve the insurer selected by the borrower on a reasonable nondiscriminatory basis related to the solvency and assessment policies of the insurer and its ability to service the policy. A lender or creditor who exercises its rights under this subsection shall establish written criteria for approving the insurer selected by the borrower and in the event the creditor or lender actually denies an insurer under that criteria the lender or creditor must provide verbal notice to the customer within 3 business days and written notice within 10 business days. Upon request by a licensed insurer, agent, broker or consultant or a customer, a lender or creditor must within 10 business days of receiving the request provide a copy of its written criteria for approving an insurer.

Sec. 24. 24-A MRSA §2168, sub-§2-B is enacted to read:

2-B. Change of insurance carrier. A purchaser or borrower may change insurance carriers in connection with the extension of credit by a lender or creditor if the change does not violate a condition of the extension of credit regarding adequacy of coverage or other proper basis under subsection 2 or is otherwise prohibited by law.

Sec. 25. 24-A MRSA §2168-B is enacted to read:

2 **§2168-B. Solicitation or negotiation involving purchasers or**
3 **borrowers**

4 A licensed agent or broker affiliated with a lender or
5 creditor may not solicit an application for an insurance contract
6 in connection with the extension of credit or negotiate such a
7 contract from a purchaser or borrower whom the agent or broker
8 knows, or should have known, has applied to receive an extension
9 of credit from that lender or creditor until such time as the
10 creditor or lender has sent written notice to the purchaser or
11 borrower of its action on the application or has documented in
12 writing in the lender's or creditor's records its action on the
13 application. This section does not limit the ability of a lender
14 or creditor to do any of the following:

15 1. **Marketing activities.** To engage at any time in
16 marketing activities and solicitations for the sale of insurance,
17 including through the mail or by telephone, that are not
18 specifically directed toward purchasers or borrowers who have
19 applied to receive an extension of credit; or

20 2. **Enrollment in consumer credit insurance product.** To
21 enroll purchasers or borrowers in any consumer credit insurance
22 product as defined in Title 9-A, section 4-103, including life
23 and health, group life and group health policies under chapters
24 31, 35 and 37 or credit involuntary unemployment insurance, or to
25 forced placed property insurance.

26 "Affiliate" has the same meaning as set forth in section
27 1514-A, subsection 1 with respect to financial institutions,
28 credit unions and holding companies and in Title 9-A, section
29 4-403 with respect to supervised lenders.

30 **Sec. 26. 24-A MRS §2169**, as amended by PL 1993, c. 208, §1,
31 is further amended to read:

32 **§2169. Notice of free choice of agent or insurer**

33 Every ~~debtor, borrower or purchaser of property with respect~~
34 ~~to which insurance of any kind on the property is required in~~
35 ~~connection with a debt or loan secured by that property or in~~
36 ~~connection with the sale of that property must be informed by the~~
37 The creditor or lender at the time of application for the loan or
38 at the outset of negotiations regarding the loan or sale shall
39 inform the purchaser or borrower of that person's right of free
40 choice in the selection of the agent and insurer through or by
41 which the insurance in connection with the loan is to be placed,
42 including the right to choose an agent or broker whether or not
43 that agent or broker is affiliated with a creditor or lender.
44 For purposes of this section, "affiliated" has the same meaning

2 as set forth in section 1514-A, subsection 1, with respect to
3 financial institutions, credit unions and holding companies or in
4 Title 9-A, section 1-403 with respect to supervised lenders. In
5 conjunction with this notice, a creditor or lender shall inform
6 its purchasers or borrowers that obtaining insurance products
7 from a particular agent or broker does not affect credit
8 decisions by the creditor or lender regarding the purchaser or
9 borrower, unless the insurance product selected violates the
10 terms of the extension of credit regarding adequacy of coverage
11 or is otherwise prohibited under section 2168, subsection 2.
12 Another person may not interfere either directly or indirectly
13 with the borrower's, debtor's or purchaser's free choice of an
14 agent and of an insurer that complies with the requirements set
15 out in section 2168, and the creditor or lender may not refuse an
16 adequate policy so tendered by the borrower, debtor or
17 purchaser. A creditor or lender may not reject an insurance
18 product selected by a purchaser or borrower because the product
19 was not obtained from or through an insurance agent or broker
20 affiliated with the institution. For purposes of this section,
21 the term "policy" includes, but is not limited to, any temporary
22 contract or binder, by whatever name known, under the terms of
23 which insurance coverage commences at a specified time, and
24 continues until a finished policy is issued or the risk is
25 declined and coverage is terminated. Upon notice of any refusal
26 of this tendered policy, the superintendent shall order the
27 creditor or lender to accept the tendered policy, if the
28 superintendent determines that the refusal is not in accordance
29 with the requirements set out in section 2168. Failure to comply
30 with such an order of the superintendent is a violation of this
31 section.

32 **Sec. 27. 24-A MRS §2169-A is enacted to read:**

34 **§2169-A. Confidentiality of insurance information obtained by**
35 **lenders**

36 **1. Prohibited use of information.** If a lender or creditor
37 requires a purchaser or borrower to provide insurance information
38 in connection with the extension of credit, an insurance agent or
39 broker affiliated with that lender or creditor may not use the
40 information obtained to solicit or offer insurance directly to
41 the purchaser or borrower. "Insurance information" means copies
42 of insurance policies, binders, rates and expiration dates not
43 otherwise in the possession of the agent or broker. "Affiliate"
44 has the same meaning as set forth in section 1514-A, subsection 1
45 with respect to financial institutions, credit unions and holding
46 companies or in Title 9-A, section 4-403 with respect to
47 supervised lenders.
48

2 **2. Use of information with consent.** Notwithstanding
3 subsection 1, an insurance agent or broker affiliated with a
4 lender or creditor may use the insurance information obtained
5 from the purchaser or borrower to solicit or offer insurance to
6 the customer if the customer consents in writing to the use of
7 the information. This consent may not be a condition of the
8 extension of credit to the customer.

9
10 **Sec. 28. Commencement of rulemaking.** Within 90 days of the
11 effective date of this Act, the Bureau of Banking, the Bureau of
12 Insurance and the Office of Consumer Credit Regulation shall
13 commence rulemaking regarding signs, the physical location of
14 sales of insurance and identification of agents and brokers
15 affiliated with financial institutions, credit unions, financial
16 institution holding companies or supervised lenders, pursuant to
17 the Maine Revised Statutes, Title 9-A, section 4-407, Title 9-B,
18 section 448, subsection 5 and Title 24-A, section 1514-A,
19 subsection 6.

20 **Emergency clause.** In view of the emergency cited in the
21 preamble, this Act takes effect when approved.
22

23 SUMMARY

24
25 This bill authorizes state-chartered financial institutions
26 to engage in the sale and negotiation of insurance products to
27 the same extent as federally chartered financial institutions by
28 making the following changes.
29

30 It authorizes supervised lenders to engage in insurance
31 agency activities, subject to the same restrictions placed on
32 agents affiliated with financial institutions and credit unions.
33 Agents affiliated with supervised lenders are regulated by the
34 Office of Consumer Credit Regulation and the Superintendent of
35 Insurance.
36

37 It adds definitions of insurance agent, broker and
38 consultant and product that relate to definitions contained
39 within the Maine Insurance Code. An insurance product does not
40 include the enrollment of consumers into group credit-related
41 insurance policies, the sale of which are regulated elsewhere
42 under state law.
43

44 It makes clear that fiduciary institutions may disclose
45 financial records as permitted under Maine's Fair Credit
46 Reporting Act and the federal Fair Credit Reporting Act.
47

48 It makes clear that a financial institution, credit union or
49 holding company authorized to do business in this State who sells
50

2 an insurance product in connection with a loan must provide
3 advance notice to the borrower of the borrower's right to choose
4 the borrower's own agent or insurer. Violation of this section
5 is an anticompetitive practice under the Banking Code for which
6 the Superintendent of Banking may issue cease and desist orders,
7 initiate injunction proceedings in Superior Court or remove an
8 office or director of a financial institution.

10 It clarifies that financial institutions and credit unions
11 engaged in the sale or negotiation of an insurance product must
12 include in any advertisement of such a product that it is not a
13 federally insured deposit. Violation of this section is
14 considered a deceptive advertising practice under the Banking
15 Code.

16 It clarifies the antitake-in rules regarding financial
17 institutions and credit unions. In particular, the bill
18 clarifies that financial institutions authorized to do business
19 in the State may not provide discounts or otherwise condition the
20 extension of credit or other services on the purchase of an
21 insurance product authorized to be purchased from the institution.

22 It removes the current prohibition on the sale of insurance
23 products by 3rd-party agents selling annuities under an
24 arrangement with a financial institution or credit union.

26 It contains the general authority for banks and credit
27 unions to sell insurance on terms similar to those available to
28 federally-chartered financial institutions. This authority
29 carries with it the responsibility to provide posted notification
30 that those insurance products are not a federally guaranteed
31 deposit and the requirement of providing clear visible notice or
32 signs separating insurance products from other financial
33 institution products or services.

34 It clarifies that the sale of insurance by affiliates of
35 creditors or lenders to debtors of such businesses is not a
36 controlled business arrangement.

38 It clarifies ambiguities within and initially limits to
39 towns over 5,000, the scope of the so-called "anti-affiliation
40 statute" that currently prevents financial institutions, their
41 affiliates and their subsidiaries from being licensed to sell
42 insurance products under the Maine Insurance Code.

44 It repeals the prohibition on the ability of an agent
45 affiliated with a financial institution to hold an annuities
46 license and a license to act as agent regarding other lines of
47 insurance.

50

2 It expands the current right-to-choose laws to require
3 lenders to give borrowers the right to purchase, from any agent
4 or company, any insurance in connection with the loan. Current
5 law gives borrowers the right to choose an insurer or agent only
6 with respect to insurance directly insuring the secured property.

7 It prevents creditors from interfering with the free choice
8 of an insurance agent by using unreasonable red tape or delay
9 tactics.

10 It requires lenders to maintain written criteria for
11 approving an insurer selected by a borrower in connection with a
12 loan, to make this criteria available to consumers and to provide
13 timely notice if a consumer's selected insurer is rejected using
14 this criteria.

15 It clarifies that a purchaser or borrower may change
16 insurance carriers related to an extension of credit, except when
17 the change violates a condition of the loan or another provision
18 of law.

19 It limits the ability of lenders to directly solicit or
20 negotiate certain insurance contracts from borrowers until the
21 creditor has notified the borrower of its action on the
22 application for credit.

23 It requires lenders to notify borrowers of their right to
24 choose any insurance agent or carrier in connection with a loan,
25 not simply with respect to insurance otherwise required on a loan
26 as provided under current law. The current notice is also
27 expanded to make clear to borrowers that selecting a particular
28 agent will not affect credit decisions of the lender, unless the
29 insurance product selected violates the terms of the loan or
30 other statutory provisions. It also provides that a lender may
31 not reject an insurance product selected by the borrower solely
32 because the product was not obtained by or through an agent or
33 broker affiliated with the lender.

34 It places certain limits on the ability of lenders to use in
35 solicitations any insurance information required to be disclosed
36 by a borrower in connection with a loan.

37 Finally, the bill authorizes joint rulemaking by the
38 Superintendent of Banking, the Superintendent of Insurance and
39 the Director of the Office of Consumer Credit Regulation to
40 implement this Act.