

MAINE STATE LEGISLATURE

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R. of S.

L.D. 1640

DATE: May 22, 2001

(Filing No. S-236)

BANKING AND INSURANCE

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**STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT **B** to S.P. 521, L.D. 1640, Bill, "An Act to Conform the State's Financial Services Privacy Laws with Federal Law"

Amend the bill by striking out all of the emergency preamble.

Further amend the bill by striking out all of Part A and inserting in its place the following:

PART A

Sec. A-1. 9-A MRS §3-314 is enacted to read:

§3-314. Privacy of consumer financial information

A creditor shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the creditor is a financial institution as defined in those regulations. This

COMMITTEE AMENDMENT

R. of S.

2 section is not intended to permit the release of health care
3 information except as permitted by Title 22, section 1711-C or
4 Title 24-A, chapter 24. This section does not apply to a
5 supervised financial organization.

6 **Sec. A-2. 9-A MRSA §9-310** is enacted to read:

8 **§9-310. Privacy of consumer financial information**

10 A creditor shall comply with the provisions of the federal
11 Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et
12 seq. (1999) and the applicable implementing federal Privacy of
13 Consumer Information regulations, as adopted by the Office of the
14 Comptroller of the Currency, 12 Code of Federal Regulations, Part
15 40 (2001); the Board of Governors of the Federal Reserve System,
16 12 Code of Federal Regulations, Part 216 (2001); the Federal
17 Deposit Insurance Corporation, 12 Code of Federal Regulations,
18 Part 332 (2001); the Office of Thrift Supervision, 12 Code of
19 Federal Regulations, Part 573 (2001); the National Credit Union
20 Administration, 12 Code of Federal Regulations, Part 716 (2001);
21 the Federal Trade Commission, 16 Code of Federal Regulations,
22 Part 313 (2001); or the Securities and Exchange Commission, 17
23 Code of Federal Regulations, Part 248 (2001), if the creditor is
24 a financial institution as defined in those regulations. This
25 section is not intended to permit the release of health care
26 information except as permitted by Title 22, section 1711-C or
27 Title 24-A, chapter 24.

28 **Sec. A-3. 9-A MRSA §10-306** is enacted to read:

30 **§10-306. Privacy of consumer financial information**

32 A credit services organization shall comply with the
33 provisions of the federal Gramm-Leach-Bliley Act, 15 United
34 States Code, Section 6801 et seq. (1999) and the applicable
35 implementing federal Privacy of Consumer Information regulations,
36 as adopted by the Office of the Comptroller of the Currency, 12
37 Code of Federal Regulations, Part 40 (2001); the Board of
38 Governors of the Federal Reserve System, 12 Code of Federal
39 Regulations, Part 216 (2001); the Federal Deposit Insurance
40 Corporation, 12 Code of Federal Regulations, Part 332 (2001); the
41 Office of Thrift Supervision, 12 Code of Federal Regulations,
42 Part 573 (2001); the National Credit Union Administration, 12
43 Code of Federal Regulations, Part 716 (2001); the Federal Trade
44 Commission, 16 Code of Federal Regulations, Part 313 (2001); or
45 the Securities and Exchange Commission, 17 Code of Federal
46 Regulations, Part 248 (2001), if the credit services organization
47 is a financial institution as defined in those regulations. This
48 section is not intended to permit the release of health care

R. of S.

2 information except as permitted by Title 22, section 1711-C or
Title 24-A, chapter 24.

4 **Sec. A-4. 9-A MRSA §11-122** is enacted to read:

6 **§11-122. Privacy of consumer financial information**

8 A merchant who enters into a rental-purchase agreement with
10 a consumer shall comply with the provisions of the federal
12 Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et
14 seq. (1999) and the applicable implementing federal Privacy of
16 Consumer Information regulations, as adopted by the Office of the
18 Comptroller of the Currency, 12 Code of Federal Regulations, Part
20 40 (2001); the Board of Governors of the Federal Reserve System,
22 12 Code of Federal Regulations, Part 216 (2001); the Federal
24 Deposit Insurance Corporation, 12 Code of Federal Regulations,
26 Part 332 (2001); the Office of Thrift Supervision, 12 Code of
28 Federal Regulations, Part 573 (2001); the National Credit Union
Administration, 12 Code of Federal Regulations, Part 716 (2001);
the Federal Trade Commission, 16 Code of Federal Regulations,
Part 313 (2001); or the Securities and Exchange Commission, 17
Code of Federal Regulations, Part 248 (2001), if the merchant is
a financial institution as defined in those regulations. This
section is not intended to permit the release of health care
information except as permitted by Title 22, section 1711-C or
Title 24-A, chapter 24. This section does not apply to a
supervised financial organization.'

30 Further amend the bill in Part B by striking out all of
section 2 and inserting in its place the following:

32 **Sec. B-2. 9-B MRSA §161, sub-§1-A** is enacted to read:

34 **1-A. Definitions.** As used in this chapter, unless the
36 context otherwise indicates, the following terms have the
following meanings.

38 A. "Affiliate" has the same meaning as in section 131,
subsection 1-A.

40 B. "Credit union authorized to do business in this State"
42 has the same meaning as in section 131, subsection 12-A.

44 C. "Customer" means any person as that term "person" is
46 defined in section 131, subsection 30 who utilized or is
48 utilizing any service of a financial institution authorized
to do business in this State or a credit union authorized to
do business in this State or for whom a financial
50 institution authorized to do business in this State or a
credit union authorized to do business in this State is

R. of S.

COMMITTEE AMENDMENT "B" to S.P. 521, L.D. 1640

2 acting or has acted as a fiduciary in relation to an account
3 maintained in the person's name. In addition, "customer"
4 means any person who provides information to a financial
5 institution authorized to do business in this State or a
6 credit union authorized to do business in this State in an
7 attempt to utilize any service of that financial institution
8 or credit union.

9
10 D. "Financial institution authorized to do business in this
11 State" has the same meaning as in section 131, subsection
12 17-A.

13
14 E. "Financial records" means the originals or copies of
15 records held by a financial institution authorized to do
16 business in this State or a credit union authorized to do
17 business in this State or their agents or affiliates
18 pertaining to a customer's relationship with the financial
19 institution or credit union and includes information derived
20 from such records.

21 F. "Supervisory agency" means:

- 22
23 (1) The Federal Deposit Insurance Corporation;
24
25 (2) The Office of Thrift Supervision;
26
27 (3) The Federal Home Loan Bank Board;
28
29 (4) The National Credit Union Administration;
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31 (5) The Federal Reserve Board;
32
33 (6) The Office of the Comptroller of the Currency;
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35 (7) The Bureau of Banking within the Department of
36 Professional and Financial Regulation;
37
38 (8) The Office of Consumer Credit Regulation within
39 the Department of Professional and Financial Regulation;
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41 (9) The Bureau of Insurance within the Department of
42 Professional and Financial Regulation;
43
44 (10) The Securities Division within the Department of
45 Professional and Financial Regulation; and
46
47 (11) The United States Securities and Exchange
48 Commission.

R. of S.

COMMITTEE AMENDMENT "B" to S.P. 521, L.D. 1640

Further amend the bill in Part B in section 3 in subsection 2 in paragraph L in the last line (page 5, line 41 in L.D.) by striking out the following: "or"

Further amend the bill in Part B in section 3 in subsection 2 by striking out all of paragraph M and inserting in its place the following:

'M. The sharing of information to the extent permitted by the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001). This paragraph is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24; or

N. The sharing of financial records with affiliates other than as permitted under paragraphs L and M.'

Further amend the bill in Part B by striking out all of sections 6 and 7 and inserting in their place the following:

'Sec. B-6. 9-B MRSA §164, as amended by PL 1991, c. 824, Pt. A, §11, is further amended to read:

§164. Penalties

1. Violation. Any officer or employee of a fiduciary financial institution authorized to do business in this State, credit union authorized to do business in this State, affiliate or consumer reporting agency who intentionally or knowingly furnishes financial records in violation of this chapter commits a civil violation and--shall--be--subject--to for which the superintendent may assess a civil penalty of not more than \$1,000 \$5,000 per violation. Any financial institution authorized to do business in this State or credit union authorized to do business in this State that intentionally or knowingly furnishes financial records in violation of this chapter or intentionally or

COMMITTEE AMENDMENT

R. of S.

COMMITTEE AMENDMENT "B" to S.P. 521, L.D. 1640

2 knowingly allows an affiliate to furnish financial records in
3 violation of this chapter commits a civil violation for which the
4 superintendent may assess a civil penalty of not more than
5 \$10,000 per violation. Any fiduciary financial institution
6 authorized to do business in this State or credit union
7 authorized to do business in this State or any agent or employee
8 of a fiduciary financial institution or credit union making a
9 disclosure of financial records in good-faith reliance upon the
10 certificate of agency or person requesting the disclosure, that
11 the provisions of section 163 requiring prior notice to the
12 customer have been complied with, shall is not be liable to the
13 customer for the disclosures and shall is not be liable for any
14 civil penalties under this section.

15 **2. Inducing violation.** Any person who intentionally or
16 knowingly induces or attempts to induce any officer or employee
17 of a fiduciary financial institution authorized to do business in
18 this State, credit union authorized to do business in this State
19 or consumer reporting agency to disclose financial records in
20 violation of this chapter commits a civil violation and--is
21 subject--to for which the superintendent may assess a civil
22 penalty of not more than \$1,000 \$10,000 per violation.

23 **Sec. B-7. 9-B MRSA §241, sub-§12** is enacted to read:

24 **12. Privacy of consumer information.** A financial
25 institution authorized to do business in this State or a credit
26 union authorized to do business in this State shall comply with
27 the provisions of the federal Gramm-Leach-Bliley Act, 15 United
28 States Code, Section 6801 et seq. (1999) and the applicable
29 implementing federal Privacy of Consumer Information regulations,
30 as adopted by the Office of the Comptroller of the Currency, 12
31 Code of Federal Regulations, Part 40 (2001); the Board of
32 Governors of the Federal Reserve System, 12 Code of Federal
33 Regulations, Part 216 (2001); the Federal Deposit Insurance
34 Corporation, 12 Code of Federal Regulations, Part 332 (2001); the
35 Office of Thrift Supervision, 12 Code of Federal Regulations,
36 Part 573 (2001); or the National Credit Union Administration, 12
37 Code of Federal Regulations, Part 716 (2001). This subsection is
38 not intended to permit the release of health care information
39 except as permitted by Title 22, section 1711-C or Title 24-A,
40 chapter 24.

41 Any violation of this subsection is an anticompetitive or
42 deceptive practice for the purposes of this chapter and is
43 subject to the remedies provided in this chapter in addition to
44 remedies otherwise provided by law.'

45 Further amend the bill in Part D by striking out all of
46 section 3 and inserting in its place the following:
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48
49
50

R.o.f.s.

40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the check cashing business or foreign currency exchange business is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24.

16 Sec. E-3. 32 MRSA §6162 is enacted to read:

18 **§6162. Privacy of consumer financial information**

20 A cash-dispensing machine operator shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the cash-dispensing machine operator is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24.

40 Sec. E-4. 32 MRSA §11018 is enacted to read:

42 **§11018. Privacy of consumer financial information**

44 A collection agency or repossession company shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of

2 Federal Regulations, Part 216 (2001); the Federal Deposit
 3 Insurance Corporation, 12 Code of Federal Regulations, Part 332
 4 (2001); the Office of Thrift Supervision, 12 Code of Federal
 5 Regulations, Part 573 (2001); the National Credit Union
 6 Administration, 12 Code of Federal Regulations, Part 716 (2001);
 7 the Federal Trade Commission, 16 Code of Federal Regulations,
 8 Part 313 (2001); or the Securities and Exchange Commission, 17
 9 Code of Federal Regulations, Part 248 (2001), if the collection
 10 agency or repossession company is a financial institution as
 11 defined in those regulations. This section is not intended to
 12 permit the release of health care information except as permitted
 13 by Title 22, section 1711-C or Title 24-A, chapter 24.

14 **Sec. E-5. 33 MRS §528** is enacted to read:

15 **§528. Privacy duties of settlement agents**

16 A settlement agent shall comply with the provisions of the
 17 federal Gramm-Leach-Bliley Act, 15 United States Code, Section
 18 6801 et seq. (1999) and the applicable implementing federal
 19 Privacy of Consumer Information regulations, as adopted by the
 20 Office of the Comptroller of the Currency, 12 Code of Federal
 21 Regulations, Part 40 (2001); the Board of Governors of the
 22 Federal Reserve System, 12 Code of Federal Regulations, Part 216
 23 (2001); the Federal Deposit Insurance Corporation, 12 Code of
 24 Federal Regulations, Part 332 (2001); the Office of Thrift
 25 Supervision, 12 Code of Federal Regulations, Part 573 (2001); the
 26 National Credit Union Administration, 12 Code of Federal
 27 Regulations, Part 716 (2001); the Federal Trade Commission, 16
 28 Code of Federal Regulations, Part 313 (2001); or the Securities
 29 and Exchange Commission, 17 Code of Federal Regulations, Part 248
 30 (2001), if the settlement agent is a financial institution as
 31 defined in those regulations. This section is not intended to
 32 permit the release of health care information except as permitted
 33 by Title 22, section 1711-C or Title 24-A, chapter 24.

34 **PART F**

35 **Sec. F-1. Department of Professional and Financial Regulation**
 36 **report.** By January 15, 2002, the Department of Professional and
 37 Financial Regulation shall report to the Joint Standing Committee
 38 on Banking and Insurance on the following issues related to the
 39 federal Gramm-Leach-Bliley Act, 15 United States Code, Section
 40 6801 et seq. (1999) and the applicable implementing federal
 41 regulations:

42 1. The legislative actions taken by the 50 states prior to
 43 January 1, 2002 or the status of any legislative actions in other
 44 states, including whether any states have enacted laws or rules
 45 more protective of consumer privacy;

R of S.

COMMITTEE AMENDMENT "B" to S.P. 521, L.D. 1640

2 2. Decisions by the Federal Trade Commission on the
4 enforcement of state privacy laws that differ from the federal
6 law and regulations against federally chartered financial
institutions or credit unions authorized to do business in this
State; and

8 3. The extent to which complaints have been made by
10 consumers related to the sharing of personal information and any
12 enforcement actions taken by agencies within the Department of
Professional and Financial Regulation.'

14 Further amend the bill by striking out all of the emergency
clause.

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

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

22

24

FISCAL NOTE

26

The Department of Professional and Financial Regulation will
28 incur some minor additional costs to adopt rules to carry out the
federal Gramm-Leach-Bliley Act and to prepare the required
report. These costs can be absorbed within the department's
30 existing budgeted resources.

32

Increasing the penalties for intentionally or knowingly
34 violating the confidentiality provisions of the banking laws of
the State will result in insignificant increases of General Fund
revenue. The amount can not be determined at this time and will
36 depend on the number of penalties assessed.'

38

40

SUMMARY

This amendment is the minority report of the committee. The
42 amendment differs from the majority report because it retains the
opt out provisions of the federal Gramm-Leach-Bliley Act. The
44 amendment also does the following.

46

1. It uses consistent terms and cross-references to the
48 various privacy regulations adopted by federal regulators and
clarifies that such regulations are applicable under state law
only to the extent applicable under federal law.

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. R of S.

COMMITTEE AMENDMENT "b" to S.P. 521, L.D. 1640

2 2. It clarifies that the privacy regulations are not
intended to permit the release of health care information except
as permitted under current state law.

4

6 3. It requires the Department of Professional and Financial
Regulation to submit a report to the Joint Standing Committee on
Banking and Insurance by January 15, 2002 on the status of
8 privacy legislation and rules in other states in response to the
federal Gramm-Leach-Bliley Act.

10

12 4. It removes the emergency preamble and emergency clause.

5. It also adds a fiscal note to the bill.