

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1640

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S.P. 521

In Senate, March 13, 2001

**An Act to Conform the State's Financial Services Privacy Laws with  
Federal Law.**

(EMERGENCY)

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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.

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

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.  
Cosponsored by Representative O'NEIL of Saco and  
Senator ABROMSON of Cumberland, Representatives: GLYNN of South Portland,  
MARRACHE of Waterville, MAYO of Bath, SULLIVAN of Biddeford.

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

4  
6 **Whereas,** compliance with the federal Privacy of Consumer  
Financial Information Regulations adopted by the Office of the  
Comptroller of the Currency, the Office of Thrift Supervision,  
8 the Federal Reserve System, the Federal Deposit Insurance  
Corporation, the National Credit Union Administration, the  
10 Federal Trade Commission and the Securities and Exchange  
Commission, is required by July 1, 2001; and

12  
14 **Whereas,** this legislation seeks to ensure that state laws  
governing the privacy of consumer financial information are  
consistent with those established by the federal  
16 Gramm-Leach-Bliley Act and the implementing regulations; and

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

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

26 **PART A**

28 **Sec. A-1. 9-A MRSA §3-314** is enacted to read:

30 **§3-314. Privacy of consumer financial information**

32 A creditor shall comply with the provisions of the federal  
34 Gramm-Leach-Bliley Act, 15 United States Code, Sections 6801 et  
seq. (1999) and the implementing federal Privacy of Consumer  
36 Information Regulation, 16 Code of Federal Regulations, Part 313  
(2001) adopted by the Federal Trade Commission. This section  
38 does not apply to supervised financial organizations.

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

42 **§9-310. Privacy of consumer financial information**

44 A creditor shall comply with the provisions of the federal  
Gramm-Leach-Bliley Act, 15 United States Code, Sections 6801 et  
46 seq. (1999) and the implementing federal Privacy of Consumer  
Information Regulation, 16 Code of Federal Regulations, Part 313  
48 (2001) adopted by the Federal Trade Commission.

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

2 **§10-306. Privacy of consumer financial information**

4 A credit services organization shall comply with the  
6 provisions of the federal Gramm-Leach-Bliley Act, 15 United  
8 States Code, Sections 6801 et seq. (1999) and the implementing  
federal Privacy of Consumer Information Regulation, 16 Code of  
Federal Regulations, Part 313 (2001) adopted by the Federal Trade  
Commission.

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

12 **§11-122. Privacy of consumer financial information**

14 Merchants who enter into rental purchase agreements with  
16 consumers shall comply with the provisions of the federal  
18 Gramm-Leach-Bliley Act, 15 United States Code, Sections 6801 et  
20 seq. (1999) and the implementing federal Privacy of Consumer  
Information Regulation, 16 Code of Federal Regulations, Part 313  
(2001) adopted by the Federal Trade Commission.

22 **PART B**

24 **Sec. B-1. 9-B MRSA §161, sub-§1**, as amended by PL 1997, c.  
398, Pt. L, §6, is repealed.

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

28 **1-A. Definitions.** As used in this chapter, unless the  
30 context otherwise indicates, the following terms have the  
following meanings.

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

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

38 C. "Customer" means any person as that term "person" is  
40 defined in section 131, subsection 30 who utilized, attempts  
42 to utilize or is utilizing any service of a financial  
44 institution authorized to do business in this State or a  
credit union authorized to do business in this State or for  
whom a financial institution is acting or has acted as a  
46 fiduciary in relation to an account maintained in the  
person's name.

48 D. "Financial institution authorized to do business in this  
State" has the same meaning as in section 131, subsection  
50 17-A.

2           E. "Financial records" means the originals or copies of  
3           records held by a financial institution authorized to do  
4           business in this State, a credit union authorized to do  
5           business in this State or their affiliates pertaining to a  
6           customer's relationship with the financial institution,  
7           credit union or affiliate and includes information derived  
8           from such records.

10          F. "Nonpublic personal information" means:

12                   (1) Personally identifiable financial information; and

14                   (2) Any list, description or other grouping of  
15                   customers and publicly available information pertaining  
16                   to them that is derived using any personally  
17                   identifiable financial information that is not publicly  
18                   available.

20          G. "Personally identifiable financial information" means  
21          any information:

22                   (1) Provided by a customer to a financial institution  
23                   authorized to do business in this State or a credit  
24                   union authorized to do business in this State to obtain  
25                   a financial product or service;

26                   (2) Resulting from any transaction involving a  
27                   financial product or service between the financial  
28                   institution authorized to do business in this State or  
29                   a credit union authorized to do business in this State  
30                   and the customer; or

31                   (3) Otherwise obtained about a customer in connection  
32                   with providing a financial product or service to that  
33                   customer.

34          H. "Supervisory agency" means:

35                   (1) The Federal Deposit Insurance Corporation;

36                   (2) The Office of Thrift Supervision;

37                   (3) The Federal Home Loan Bank Board;

38                   (4) The National Credit Union Administration;

39                   (5) The Federal Reserve Board;

40                   (6) The Office of the Comptroller of the Currency;

2           (7) The Bureau of Banking within the Department of  
3           Professional and Financial Regulation;

4  
5           (8) The Office of Consumer Credit Regulation within  
6           the Department of Professional and Financial Regulation;

7  
8           (9) The Bureau of Insurance within the Department of  
9           Professional and Financial Regulation;

10  
11           (10) The Securities Division within the Department of  
12           Professional and Financial Regulation; and

13  
14           (11) The United States Securities and Exchange  
15           Commission.

16           **Sec. B-3. 9-B MRSA §161, sub-§2**, as amended by PL 1999, c.  
17 127, Pt. A, §21 and c. 218, §1, is further amended to read:

18  
19           **2. Exemptions.** This chapter does not prohibit:

20  
21           A. The preparation, examination, handling or maintenance of  
22 any financial records by any officer, employee or agent of a  
23 fiduciary financial institution authorized to do business in  
24 this State or credit union authorized to do business in this  
25 State having custody of such records or the examination of  
26 such records by a certified public accountant engaged by the  
27 fiduciary financial institution or credit union to perform  
28 an independent audit;

29  
30           B. The examination of any financial records by, or the  
31 furnishing of financial records by a fiduciary financial  
32 institution authorized to do business in this State or  
33 credit union authorized to do business in this State to, any  
34 officer, employee or agent of a supervisory agency for use  
35 solely in the exercise of his the duties as--an of the  
36 officer, employee or agent;

37  
38           C. The publication of data furnished from financial records  
39 relating to customers ~~where~~ when the data ~~cannot~~ can not be  
40 identified to any particular customer or account;

41  
42           D. The making of reports or returns required under the  
43 United States Internal Revenue Code, ~~chapter~~ Chapter 61,  
44 including the submission of information concerning interest  
45 earned on accounts, investigatory activity authorized by the  
46 United States Internal Revenue Code and any use to which the  
47 reports or returns would be subjected once submitted;

48  
49           E. Furnishing information permitted to be disclosed under  
50

- 2 the Uniform Commercial Code concerning the dishonor of any negotiable instrument;
- 4 F. The exchange in the regular course of business of credit  
6 information between a fiduciary financial institution  
8 authorized to do business in this State or credit union  
10 authorized to do business in this State and other fiduciary  
12 financial institutions or credit unions or commercial  
14 enterprises, directly or through a consumer reporting agency;
- 16 G. Any disclosure of financial records made pursuant to  
18 section 226;
- 20 H. The examination of the financial records authorized by  
22 Title 36, section 112 or section 176-A, subsection 4;
- 24 I. Any disclosure of financial records made pursuant to  
26 Title 22, section 16, 17 or 4314;
- 28 J. Any disclosure of financial records made under the  
30 Federal Currency and Foreign Transactions Reporting Act,  
32 Public Law 91-508, 31 United States Code, Section 5311, et  
34 seq., as amended;
- 36 K. The examination or furnishing of any financial records  
38 by a fiduciary financial institution authorized to do  
40 business in this State or credit union authorized to do  
42 business in this State to any officer, employee or agent of  
the Treasurer of State for use solely in the exercise of  
that officer's, employee's or agent's duties under Title 33,  
chapter 41; ~~or~~
- 44 L. The exchange of financial records between a fiduciary  
46 financial institution authorized to do business in this  
48 State or credit union authorized to do business in this  
50 State and a consumer reporting agency or between or among a  
fiduciary financial institution authorized to do business in  
this State or credit union authorized to do business in this  
State and its subsidiaries, employees, agents or affiliates  
as, including those permitted under Title 10, chapter 210 or  
15 United States Code, Chapter 41.; or
- M. The sharing of customer financial records, including  
nonpublic personal information to the extent permitted by  
the federal Gramm-Leach-Bliley Act, 15 United States Code,  
Sections 6801 et seq. (1999) and the applicable implementing  
federal Privacy of Consumer Financial Information Regulation  
adopted by the Office of the Comptroller of the Currency, 12  
Code of Federal Regulations, Part 40; the Office of Thrift  
Supervision, 12 Code of Federal Regulations, Part 573; the

2 Federal Reserve System, 12 Code of Federal Regulations, Part  
4 216; the Federal Deposit Insurance Corporation, 12 Code of  
6 Federal Regulations, Part 332; the National Credit Union  
8 Administration, 12 Code of Federal Regulations, Part 716;  
10 the Securities and Exchange Commission, 12 Code of Federal  
12 Regulations, Part 248; or the Federal Trade Commission, 16  
14 Code of Federal Regulations, Part 313 (2001).

16 **Sec. B-4. 9-B MRSA §162, first ¶**, as amended by PL 1997, c.  
18 537, §1 and affected by §62, is further amended to read:

20 A fiduciary financial institution authorized to do business  
22 in this State or credit union authorized to do business in this  
24 State or its affiliates may not disclose to any person, except to  
26 the customer or the customer's duly authorized agent, any  
28 financial records relating to that customer of that fiduciary  
30 financial institution or credit union unless:

32 **Sec. B-5. 9-B MRSA §163**, as amended by PL 1999, c. 197, §1,  
34 is further amended to read:

36 **§163. Subpoena, summons, warrant or court order**

38 **1. Service.** A fiduciary financial institution authorized  
40 to do business in this State or credit union authorized to do  
42 business in this State shall disclose financial records under  
44 section 162 pursuant to a subpoena, summons, warrant or court  
46 order that on its face appears to have been issued upon lawful  
48 authority only if the subpoena, summons, warrant or court order  
is served upon the customer prior to disclosure by the fiduciary  
financial institution or credit union. The agency or person  
requesting the disclosure of financial records shall certify in  
writing to the fiduciary financial institution or credit union  
the fact that the subpoena, summons, warrant or court order has  
been served upon the customer. The court for good cause shown  
may delay or dispense with service of the subpoena, summons,  
warrant or court order upon the customer. The court shall delay  
or dispense with service of the subpoena, summons, warrant or  
court order upon the customer upon notice by the Attorney  
General, the Attorney General's designee or the District Attorney  
that service upon the customer would not be in the public  
interest. A subpoena, summons or warrant issued in connection  
with a criminal proceeding or state or federal grand jury  
proceeding, a request for information by the Department of Human  
Services for purposes related to establishing, modifying or  
enforcing a child support order or a trustee process lawfully  
issued need not be served upon the customer.

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



2       **§164. Penalties**

4           **1. Violation.** Any officer or employee of a fiduciary  
6       financial institution authorized to do business in this State,  
8       credit union authorized to do business in this State, affiliate,  
10       or consumer reporting agency who intentionally or knowingly  
12       furnishes financial records in violation of this chapter commits  
14       a civil violation and shall be is subject to a civil penalty of  
16       not more than \$1,000 \$5,000 per violation. Any financial  
18       institution authorized to do business in this State or credit  
20       union authorized to do business in this State that intentionally  
22       or knowingly furnishes financial records in violation of this  
24       chapter or intentionally or knowingly allows an affiliate to  
26       furnish financial records in violation of this chapter commits a  
      civil violation and is subject to a civil penalty of not more  
      than \$10,000 per violation. Any fiduciary financial institution  
      authorized to do business in this State or credit union  
      authorized to do business in this State or any agent or employee  
      of a fiduciary financial institution or credit union making a  
      disclosure of financial records in good-faith reliance upon the  
      certificate of agency or person requesting the disclosure, that  
      the provisions of section 163 requiring prior notice to the  
      customer have been complied with, shall is not be liable to the  
      customer for the disclosures and shall is not be liable for any  
      civil penalties under this section.

28           **2. Inducing violation.** Any person who intentionally or  
30       knowingly induces or attempts to induce any officer or employee  
32       of a fiduciary financial institution authorized to do business in  
34       this State, credit union authorized to do business in this State  
36       or consumer reporting agency to disclose financial records in  
      violation of this chapter commits a civil violation and is  
      subject to a civil penalty of not more than \$1,000 \$10,000 per  
      violation.

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

40           **12. Privacy of consumer information.** A financial  
42       institution authorized to do business in this State or a credit  
44       union authorized to do business in this State must comply with  
46       the provisions of the federal Gramm-Leach-Bliley Act, 15 United  
48       States Code, Sections 6801 et seq. (1999) and the applicable  
50       implementing federal Privacy of Consumer Financial Information  
      Regulation adopted by the Office of the Comptroller of the  
      Currency, 12 Code of Federal Regulations, Part 40; the Office of  
      Thrift Supervision, 12 Code of Federal Regulations, Part 573; the  
      Federal Reserve System, 12 Code of Federal Regulations, Part 216;  
      the Federal Deposit Insurance Corporation, 12 Code of Federal  
      Regulations, Part 332; the National Credit Union Administration,

12 Code of Federal Regulations, Part 716; the Securities and  
2 Exchange Commission, 12 Code of Federal Regulations, Part 248; or  
4 the Federal Trade Commission, 16 Code of Federal Regulations,  
Part 313 (2001).

## PART C

8 **Sec. C-1. 24-A MRSA §212**, as amended by PL 1991, c. 885, Pt.  
E, §23 and affected §47, is further amended to read:

### §212. Rules and regulations

12 Subject to the applicable requirements and procedures of the  
14 Maine Administrative Procedure Act, Title 5, chapter 375,  
16 subchapter II, the superintendent may ~~make,--promulgate~~ adopt,  
18 amend and rescind reasonable rules ~~and--regulations~~ to aid the  
20 administration or effectuation of any provisions of this Title or  
of ~~the--following~~ any other state or federal statutes to the  
extent administered or enforced by the superintendent. ~~Title-5,~~  
~~chapter-501;--Title-32,--section-13773;--and--Title-39-A,--sections~~  
~~357,--403--and-404.~~

22 **Sec. C-2. 24-A MRSA §2203, sub-§3**, as enacted by PL 1997, c.  
24 677, §3 and affected by §5, is amended to read:

26 **3. Exception.** This Except to the extent expressly provided  
28 in rules adopted by the superintendent pursuant to section 2220,  
this chapter does not apply to insurance transactions arising out  
of workers' compensation, medical malpractice, fidelity,  
30 suretyship, or boiler and machinery, ~~property--or--casualty~~  
insurance or information collected from public records for the  
32 purpose of title insurance.

34 **Sec. C-3. 24-A MRSA §2220**, as enacted by PL 1997, c. 677, §3  
and affected by §5, is amended to read:

### §2220. Rulemaking

38 The superintendent may adopt rules to carry out the purposes  
40 of this chapter and the privacy protection provisions of the  
federal Gramm-Leach-Bliley Act, 15 United States Code, Sections  
42 6801 et seq. (1999). Rules adopted pursuant to this chapter are  
~~major-substantive~~ routine technical rules as defined by Title 5,  
44 chapter 375, subchapter II-A.

## PART D

46 **Sec. D-1. 32 MRSA §10313, sub-§1, ¶J**, as enacted by PL 1985, c.  
48 400, §2, is amended to read:

2 J. Has failed reasonably to supervise sales representatives  
if a broker-dealer, or employees if an investment adviser; or

4  
6 **Sec. D-2. 32 MRSA §10313, sub-§1, ¶K,** as amended by PL 1989,  
c. 542, §25, is further amended to read:

8 K. Has failed to pay the proper filing fee, but the  
administrator shall vacate any order under this paragraph  
10 when the deficiency has been corrected; or

12 **Sec. D-3. 32 MRSA §10313, sub-§1, ¶L** is enacted to read:

14 L. Has failed to comply with the privacy provisions of the  
federal Gramm-Leach-Bliley Act, 15 United States Code,  
Sections 6801 et seq. (1999) and the implementing Regulation  
S-P, federal Privacy of Consumer Financial Information  
Regulation, 17 Code of Federal Regulations, 248 (2000)  
adopted by the United States Securities and Exchange  
Commission.

22 **PART E**

24 **Sec. E-1. 30-A MRSA §3964-A, sub-§4** is enacted to read:

26 **4. Privacy of consumer financial information.** A pawnbroker  
that is a financial institution as defined by 16 Code of Federal  
28 Regulations, Part 313.3(k)(1) (2001) must comply with the  
provisions of the federal Gramm-Leach-Bliley Act, 15 United  
30 States Code, Sections 6801 et seq. (1999) and the implementing  
federal Privacy of Consumer Information Regulation, 16 Code of  
32 Federal Regulations, Part 313 (2001) adopted by the Federal Trade  
Commission.

34 **Sec. E-2. 32 MRSA §6146** is enacted to read:

36 **§6146. Privacy of consumer financial information**

38  
40 A check cashing business or foreign currency exchange  
business shall comply with the provisions of the federal  
Gramm-Leach-Bliley Act, 15 United States Code, Sections 6801 et  
seq. (1999) and the implementing federal Privacy of Consumer  
Information Regulation, 16 Code of Federal Regulations, Part 313  
(2001) adopted by the Federal Trade Commission.

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

48 **§6162. Privacy of consumer financial information**

50 A cash-dispensing machine operator shall comply with the

2 provisions of the federal Gramm-Leach-Bliley Act, 15 United  
3 States Code, Sections 6801 et seq. (1999) and the implementing  
4 federal Privacy of Consumer Information Regulation, 16 Code of  
5 Federal Regulations, Part 313 (2001) adopted by the Federal Trade  
6 Commission.

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

8 **§11018. Privacy of consumer financial information**

9  
10 A collection agency or repossession company that is a  
11 financial institution as defined by 16 Code of Federal  
12 Regulations, Part 313.3(k)(1) (2001) shall comply with the  
13 provisions of the federal Gramm-Leach-Bliley Act, 15 United  
14 States Code, Sections 6801 et seq. (1999) and the implementing  
15 federal Privacy of Consumer Information Regulation, 16 Code of  
16 Federal Regulations, Part 313 (2001) adopted by the Federal Trade  
17 Commission.

18  
19 **Sec. E-5. 33 MRSA §528** is enacted to read:

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

21  
22 A settlement agent shall comply with the provisions of the  
23 federal Gramm-Leach-Bliley Act, 15 United States Code, Sections  
24 6801 et seq. (1999) and the implementing federal Privacy of  
25 Consumer Information Regulation, 16 Code of Federal Regulations,  
26 Part 313 (2001) adopted by the Federal Trade Commission.

27  
28 **Emergency clause.** In view of the emergency cited in the  
29 preamble, Part C of this Act takes effect when approved and Parts  
30 A, B, D and E of this Act take effect on July 1, 2001.

31  
32  
33 **SUMMARY**

34  
35  
36 This bill amends the laws governing the various providers of  
37 financial services regulated by the Department of Professional  
38 and Financial Regulation to ensure that the laws governing the  
39 privacy of personal information furnished to those individuals or  
40 entities are consistent with the provisions of the federal  
41 Gramm-Leach-Bliley Act and the implementing regulations adopted  
42 by the Office of the Comptroller of the Currency, the Office of  
43 Thrift Supervision, the Federal Reserve System, the Federal  
44 Deposit Insurance Corporation, the National Credit Union  
45 Administration, the Federal Trade Commission and the Securities  
46 and Exchange Commission. The bill further provides that if an  
47 entity is required under federal law to comply with the  
48 Gramm-Leach-Bliley Act and the implementing federal regulations  
49 and it fails to do so, that failure to comply is also a violation

2 of state law, which the agencies within the Department of  
Professional and Financial Regulation may enforce.

4 Part A amends the Maine Consumer Credit Code to require  
creditors other than financial institutions or credit unions to  
6 comply with the privacy provisions of the federal  
Gramm-Leach-Bliley Act and the implementing regulations adopted  
8 by the Federal Trade Commission. Failure to do so is a violation  
of the Maine Consumer Credit Code.

10 Part B amends the banking laws of the State to permit the  
12 sharing of information by financial institutions and credit  
unions authorized to do business in this State to the same extent  
14 permitted under the federal Gramm-Leach-Bliley Act. It also  
clarifies the law with respect to sharing consumer or commercial  
16 financial records between financial institutions, and with their  
subsidiaries and affiliates, as is the existing practice within  
18 the industry. It further provides that the failure to comply  
with the privacy provisions of the federal Gramm-Leach-Bliley Act  
20 and the applicable implementing federal regulations adopted by  
the federal banking regulators constitutes an anti-competitive or  
22 unfair practice. Part B also increases the penalties for  
intentional and knowing violations of the confidentiality  
24 provisions of Chapter 16 of the banking laws of the State and  
imposes liability upon the institution itself for such violations.

26 Part C amends the Maine Insurance Code to parallel the model  
28 privacy law adopted by the National Association of Insurance  
Commissioners and to authorize the Superintendent of Insurance to  
30 adopt rules governing the privacy of consumer information as is  
required by the federal Gramm-Leach-Bliley Act and provides that  
32 such rules are routine technical rules.

34 Part D amends the Revised Maine Securities Act to provide  
that the failure of a licensed broker-dealer, sales  
36 representative or investment adviser to comply with the privacy  
provisions of the federal Gramm-Leach-Bliley Act and the  
38 implementing regulations adopted by the United States Securities  
and Exchange Commission constitutes grounds for disciplinary  
40 action including license suspension or revocation.

42 Part E amends the statutes governing various other types of  
financial service providers such as check cashers and foreign  
44 currency exchangers, collection agencies and repossession  
companies, operators of cash dispensing machines, pawnbrokers and  
46 mortgage settlement agents to require these businesses to comply  
with the privacy requirements of the federal Gramm-Leach-Bliley  
48 Act when they meet the definition of "financial institution"  
under the regulations promulgated by the Federal Trade Commission.