

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

Sec. 1. 34-B MRSA §3861, sub-§2, as corrected by RR 1993, c. 2, §36, is amended to read:

2. State mental health institute. The chief administrative officer of a state mental health institute:

A. May receive for observation, diagnosis, care and treatment in the hospital any person whose admission is applied for under section 3831 or 3863; and

B. May receive for observation, diagnosis, care and treatment in the hospital any person whose admission is applied for under section 3864 or is ordered by a court.

~~Any business entity contracting with the department for psychiatric physician services or any person contracting with a state mental health institute when admitting, treating or discharging a patient, within the state institute, under the provisions of sections 3863 and 3864 under a contract with the department for purposes of civil liability is deemed to be an employee of a governmental entity under the Maine Tort Claims Act, Title 14, chapter 741 or the department to provide services pertaining to the admission, treatment or discharge of patients under sections 3863 and 3864 within a state institute or any person contracting with a business entity to provide those services within a state institute is deemed to be a governmental entity or an employee of a governmental entity for purposes of civil liability under the Maine Tort Claims Act, Title 14, chapter 741, with respect to the admission, treatment or discharge of patients within a state institute under sections 3863 and 3864.~~

See title page for effective date.

CHAPTER 155

H.P. 618 - L.D. 843

An Act to Regulate Money Transmitters and Amend Consumer Credit Laws

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

PART A

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 A-1. 32 MRSA c. 13, sub-c. VI, as amended, is repealed.

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

CHAPTER 80

MONEY TRANSMITTERS AND CHECK CASHERS

SUBCHAPTER I

MONEY TRANSMITTERS

§6101. Short title

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

§6102. Definitions

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

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

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

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

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

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

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

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

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

9. Material litigation. "Material litigation" means any litigation that, according to generally

accepted accounting principles, is considered significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders or similar documents.

10. Money transmission. "Money transmission" means the business of selling or issuing payment instruments or the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any means, including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

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

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

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

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

§6103. License required

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

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

§6104. Exemptions

1. Exemptions. This subchapter does not apply to:

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

B. The United States Post Office;

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

D. Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, provided that they do not engage in the business of issuing or selling payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks; and

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

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

§6105. License qualifications

1. Net worth requirements. A licensee under this subchapter must have at all times a net worth of not less than \$100,000, calculated in accordance with generally accepted accounting principles. Licensees engaging in money transmission at more than one location or through authorized delegates must have an additional net worth of \$50,000 per location or agent located in the State, up to a maximum of \$500,000.

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

§6106. License application

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

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

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

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

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

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

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

F. A sample authorized delegate contract, if applicable;

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

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

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

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

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

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

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

D. The name, business and residence addresses, and employment history for the past 5 years of the applicant's executive officers and the officers

or managers who will be in charge of the applicant's activities to be licensed;

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

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

G. A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position, and, if available, the applicant's audited financial statements for the immediately preceding 2-year period. With the approval of the administrator, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding 2-year period or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior 3 years in lieu of the applicant's financial statements. With the approval of the administrator, if the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision; and

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

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

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

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

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

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

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

§6107. Bond or other security device

1. Bond or other security device required.

Each application must be accompanied by a surety bond, irrevocable letter of credit or other similar security device, referred to in this section as a "security device," in the amount of \$100,000. The security device must be in a form satisfactory to the administrator and must run to the administrator for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission and payment of money in connection with the sale and issuance of payment instruments and transmission of money. In the case of a bond, the aggregate liability of the surety may not exceed the principal sum of the bond. Any claim against the bond or security device may be the subject of an administrative hearing and order pursuant to section 6121.

2. Deposit in lieu of security device. In lieu of a security device or of any portion of the principal of the security device, as required by this section, the licensee may deposit with the administrator, or with such banks in this State as the licensee may designate and the administrator may approve, cash, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality of the United States, or guaranteed by the United States, or of this State, or of a city, county, town, village, school district or instrumentality of this State, or guaranteed by this State, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion of the security device. The securities or cash must be deposited as and held to secure the same obligations as would the security device, but the depositor is entitled to receive all

interest and dividends on the security device, has the right, with the approval of the administrator, to substitute other securities for those deposited, and is required to do so on written order of the administrator made for good cause shown.

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

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

§6108. Application fee

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

§6109. Issuance of license

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

2. Timely review. The administrator shall approve or deny every application for an original license within 120 days from the date a complete application is submitted, unless the administrator extends the

period for good cause. The administrator shall notify the applicant of the date when the application is considered complete.

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

§6110. Renewal of license and annual report

1. Renewal fee. A renewal application must be accompanied by a nonrefundable application fee in the amount of \$250, plus a registration fee of \$50 for each authorized delegate designated by a licensee, up to a maximum of \$2,500.

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

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

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

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

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

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

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

§6111. Extraordinary reporting requirements

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

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

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

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

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

§6112. Changes in control of a licensee

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

§6113. Examinations

1. On-site examination. The administrator may conduct an annual on-site examination of a licensee. The licensee shall pay all necessarily incurred costs of the examination. The on-site examination may be conducted in conjunction with examinations to be

performed by representatives of agencies of another state or states.

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

§6114. Maintenance of records

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

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

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

C. Settlement sheets received from authorized delegates;

D. Bank statements and bank reconciliation records;

E. Records of outstanding payment instruments;

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

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

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

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

§6115. Confidentiality of data submitted to the administrator

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

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

§6116. Suspension or revocation of licenses

After notice and hearing, the administrator may suspend or revoke a licensee's license if the administrator finds that:

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

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

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

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

5. Insolvency. The licensee is insolvent;

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

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

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

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

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

§6117. Authorized delegate contracts

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

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

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

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

§6118. Authorized delegate conduct

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

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

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

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

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

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

commingled proceeds and other property are impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

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

§6119. Revocation or suspension of authorized delegates

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

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

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

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

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

3. Judicial review. The right of a person to whom an order is issued under this section to petition for judicial review of an order is not affected by the

failure of the person to apply to the administrator to modify or rescind the order.

§6120. Licensee liability

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

§6121. Hearings; procedures

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

§6122. Civil penalties

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

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

§6123. Enforcement

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

2. Consent agreements. The administrator may enter into consent orders at any time with any person to resolve any matter arising under this subchapter. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must

indicate agreement to the terms contained in the order. A consent order is not required to constitute an admission by any person that any provision of this subchapter, or any rule or order issued under this subchapter has been violated, and is not required to constitute a finding by the administrator that the person has violated any provision of this subchapter or any rule or order or issued under this subchapter.

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

§6124. Criminal penalties

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

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

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

§6125. Adoption of rules

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

§6126. Designation of agent for service of process

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

§6127. Multiple licenses

A person licensed under this subchapter is not required to obtain a separate license to engage in either the cashing of checks or the exchange of foreign currency in the State.

§6128. Treatment of fees

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

§6129. Effective date

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

SUBCHAPTER II

CHECK CASHING AND FOREIGN CURRENCY EXCHANGE

§6131. Short title

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

§6132. Definitions

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

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

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

3. Capital adequacy. "Capital adequacy" means that an applicant is financially sound and has liquid assets useable in the business of at least \$10,000, computed according to generally accepted accounting principles, for the full term of the registration.

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

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

- A. A supervised financial organization;
- B. A supervised lender;

C. A licensee under the Money Transmitters Act; or

D. A person who is primarily engaged in the business of selling tangible personal property or services at retail and does not derive more than 5% of its income from check cashing.

6. Foreign currency exchange business.

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

A. A supervised financial organization;

B. A licensee under the Money Transmitters Act; or

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

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

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

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

§6133. Registration required

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

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

§6134. Application

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

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

2. Location. The location of the principal office of the applicant;

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

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

§6135. Registration standards

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

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

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

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

(2) Owns or controls the business; and

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

(1) Any criminal activity;

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

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

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

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

§6136. Registration term; renewal

1. Effective registrations. Registration pursuant to this subchapter remains effective through the

remainder of the calendar year of its date of issuance, unless sooner surrendered, suspended or revoked.

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

§6137. Fees

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

§6138. Limitations

1. Endorsement. Before a registrant may deposit, with any financial institution, a payment instrument that is cashed by a registrant, the item must be endorsed with the actual name under which the registrant is doing business.

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

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

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

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

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

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

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

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

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

G. Engage in any false or misleading advertising.

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

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

2. Location of records. The records required to be maintained may be maintained by the registrant at any location, so long as the registrant notifies the administrator, in writing, of the location of the records in its application or otherwise. The registrant shall make such records available to the administrator for examination and investigation in this State within 7 days after receipt of a written request.

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

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

§6140. Examinations

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

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

§6141. Reporting requirements

A registrant under this subchapter shall:

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

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

§6142. Suspension or revocation of registration

After notice and hearing, the administrator may suspend or revoke a registrant's registration if the administrator finds that:

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

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

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

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

5. Insolvency. The registrant is insolvent;

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

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

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

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

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

§6143. Penalties

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

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

§6144. Adoption of rules

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

§6145. Designation of agent for service of process

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

Sec. A-3. Effective date. That section of this Part that repeals the Maine Revised Statutes, Title 32, chapter 13, subchapter VI takes effect January 1, 1998.

PART B

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

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

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

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

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

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

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

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

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

(b) Adverse to the interests of the consumer.

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

3. Consumer report. "Consumer report" has the following meaning.

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

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

(2) Employment purposes; or

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

B. "Consumer report" does not include:

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

(a) By covert physical surveillance of the consumer, other than through observation or supervision in the ordinary course of the relationship; or

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

(2) Any communication of information exempt under subparagraph (3) among per-

sons related by common ownership or affiliated by corporate control;

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

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

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

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

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

(8) Any transfer of information collected by an insurer in connection with a consumer's insurance application or claim to a reinsurer or an insurer with potential liability under the same claim, if the recipient agrees to use the information only in connection with the insurance transaction.

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

(1) The information is used other than for a purpose referred to in paragraph A, if the

information was in whole or in part collected, used or expected to be used for a purpose referred to in paragraph A; or

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

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

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

A. Reviewing the account or insurance policy; or

B. Collecting the account.

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

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

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

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

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

B. Verification:

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

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

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

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

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

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

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

§1313-A. Permissible purposes of credit reports

1. Permissible purposes of credit reports.

Subject to subsection 3, a consumer reporting agency may furnish a consumer report under the following circumstances only:

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

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

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

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

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

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

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

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

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

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

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

D. To the administrator pursuant to section 1328.

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

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

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

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

(b) Information from the consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation; and

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

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

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

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

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

(1) A copy of the report; and

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

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

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

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

(2) The transaction consists of a firm offer of credit or insurance; the consumer reporting agency has complied with Section 604(e) of the federal Fair Credit Reporting Act; and there is not in effect an election by the consumer, made in accordance with Section 604(e) of the federal Fair Credit Reporting Act, to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph.

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

(1) The name and address of a consumer;

(2) An identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and

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

Sec. B-7. 10 MRSA §1316, sub-§2, as amended by PL 1991, c. 453, §1 and affected by §10, is further amended to read:

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

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

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

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

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

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

Sec. B-8. 10 MRSA §1320, sub-§1, as amended by PL 1981, c. 610, §§9 and 10, is repealed.

Sec. B-9. 10 MRSA §1320, sub-§1-B is enacted to read:

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

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

B. Provide to the consumer in writing or electronically:

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

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

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

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

(2) To dispute, under section 1317, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

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

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

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

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

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

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

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

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

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

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

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

3. Duty to provide notice of dispute. If the completeness or accuracy of information furnished by a person to a consumer reporting agency is disputed to the person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that the information is disputed by the consumer.

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

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

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

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

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

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

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

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

Sec. B-11. 10 MRSA §1321, sub-§1, as repealed and replaced by PL 1981, c. 610, §12, is amended to read:

1. Procedures to avoid violations. Every consumer reporting agency shall maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section ~~4343~~ 1313-A. These procedures shall must require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section ~~4343~~ 1313-A.

Sec. B-12. 10 MRSA §1326, as amended by PL 1977, c. 677, §14, is further amended to read:

§1326. Unauthorized disclosures by officers or employees

Notwithstanding the provisions of Title 17-A, section 4-A, any officer or employee of a consumer reporting agency who knowingly and intentionally provides information concerning an individual from

the agency's files to a person not authorized, within the meaning of ~~sections 1313~~ section 1313-A and section 1314, subsection 1, to receive that information shall must be fined not more than \$5,000 or imprisoned for not more than one year, or both.

Sec. B-13. Effective date. This Part takes effect September 30, 1997. Any person or other entity that is subject to the requirements of this Part may, at its option, comply with any provision of this Part prior to September 30, 1997, in which case each of the corresponding provisions of this Part are fully applicable to that person or entity.

PART C

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

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

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

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

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

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

C. The status of the borrowers, including:

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

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

(3) The importance to the borrowers of the credit, related supporting property and cov-

erage under this Title, as determined by the administrator;

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

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

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

A. The transaction involves a consumer:

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

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

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

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

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

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

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

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

M. A statement that the consumer should refer to the appropriate contract document for any information such document provides about non-payment, default, the right to accelerate the maturity of the debt and prepayment rebates and penalties; ~~and~~

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

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

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

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

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

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

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

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

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

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

B. The form of written notice used by the creditor to inform the obligor of the rights of the obli-

gor under section 8-204 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the administrator or a comparable written notice and otherwise complied with all the requirements of this section regarding notice; or

C. Any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed:

- (i) Is deemed accurate for purposes of this Title and if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$200;
- (ii) May, under section 8-105, subsection 6, paragraph B, be deemed accurate for purposes of section 8-204; or
- (iii) Is greater than the amount or percentage required to be disclosed under this Title.

PART D

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

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

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

PART E

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

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

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

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

PART F

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

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

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

PART G

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

	1997-98	1998-99
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Office of Consumer Credit Regulation		
All Other	\$2,500	\$10,000
Allocates funds to cover the additional costs of regulating money transmitters.		
See title page for effective date, unless otherwise indicated.		