

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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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

pursuant to Title 5, chapter 375, subchapter II-A no later than January 1, 1998.

See title page for effective date.

CHAPTER 315

S.P. 439 - L.D. 1385

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

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

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

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

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

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

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

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

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

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

2. The provision on cancellation by a creditor, section 4-304, applies to loans, the primary purpose of

which is the financing of insurance. No other provision of Parts 1, 2 and 3 of this Article applies to insurance so financed.

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

1. Except as otherwise provided in Parts 1, 2 and 3 of this Article and subject to the provisions on additional charges, section 2-501, and maximum finance charges, Parts 2 and 4 of Article II, a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by ~~him~~ that creditor. This Act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

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

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

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

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

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

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

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

1. To the extent ~~that his~~ of required responsibility under Parts 1, 2 and 3 of this Article requires, the Superintendent of Insurance shall issue rules with respect to insurers, and with respect to refunds, section ~~4-108~~ 4-108, forms, schedules of premium rates and charges, section ~~4-203~~ 4-203, and ~~his~~ the Superintendent of Insurance's approval or disapproval thereof and, in case of violation, may make an order for compliance.

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

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

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

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

PART 4

INSURANCE ACTIVITIES BY SUPERVISED LENDERS

§4-401. Scope

1. Scope. This Part applies to supervised lenders who are not supervised financial organizations.

2. Exceptions. Except for sections 4-402 and 4-405, this Part does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

§4-402. Insurance agency activities

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

§4-403. Definitions

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

1. Affiliate. "Affiliate" means any of the following entities:

A. A subsidiary of a supervised lender;

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

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

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

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

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

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

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

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

6. Insurance product. "Insurance product" means a contract of insurance that is offered for sale by a licensed agent or broker employed by or affiliated with a supervised lender.

7. Licensed 3rd-party agent. "Licensed 3rd-party agent" means a licensed insurance agent, broker or consultant who engages in authorized insurance activities related to insurance products directly on behalf of a specified licensed insurance entity through an independent contractor relationship.

8. Ownership interest. "Ownership interest" includes general partnership shares, limited partner-

ship shares and shares of stock that possess any voting rights.

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

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

B. It is determined by the Director of the Office of Consumer Credit Regulation after notice and opportunity for hearing that one or more supervised lenders or any of their officers, employees, agents or representatives, singly or in the aggregate exercise a controlling influence over the management and policies of the entity.

§4-404. Choice of insurance agent or broker

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

§4-405. Tie-in arrangements

A supervised lender, a subsidiary of a supervised lender or an entity of which a supervised lender is a subsidiary may not sell in any manner an insurance product as authorized under section 4-402 or fix or vary the consideration for that product on the condition, agreement, requirement or understanding that the purchaser or borrower obtain additional or other credit, property or other service from the supervised lender, a subsidiary of a supervised lender or an entity of which a supervised lender is a subsidiary. This section does not prohibit a tie-in involving insurance products that is permitted under Title 24-A.

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

To the extent practicable, sales of insurance products authorized by this Part must take place in a manner that minimizes customer confusion between any noninsurance product offered by the supervised lender or its affiliates and those insurance products. A supervised lender, or its affiliates, is in compliance with this section if it utilizes signs clearly visible to its customers that distinguish insurance products of the supervised lender, or its affiliates, from its noninsurance products and that adequately identify insurance

agents, brokers and consultants affiliated with the supervised lender.

§4-407. Rulemaking

The Superintendent of Banking, the Superintendent of Insurance and the Director of the Office of Consumer Credit Regulation may undertake joint rulemaking, pursuant to this section, Title 9-B, section 448, subsection 5 and Title 24-A, section 1514-A, subsection 5 to carry out the purposes of section 4-406, including issues regarding signs, the physical location of sales of insurance and identification of agents and brokers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders. In adopting rules pursuant to this Part, the Superintendent of Banking, the Superintendent of Insurance and the Director of the Office of Consumer Credit Regulation shall consider the possibility of confusion and perception of coercion among the insurance consuming public, the need for cost-effective delivery of insurance products to insurance consumers and the importance of parity among agents and brokers affiliated with federally chartered and state-chartered financial institutions and credit unions. Any rule adopted may not interfere significantly with the ability of an agent or broker to solicit or negotiate the sale of an insurance product, whether or not that agent or broker is affiliated with a financial institution, credit union, financial institution holding company or supervised lender, except when no other reasonable alternative exists that protects the insurance consuming public. Rules adopted under this Part are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing in this section is intended to restrict or interfere with the ability of the Bureau of Insurance, the Bureau of Banking or the Office of Consumer Credit Regulation to adopt rules with respect to areas in which the respective agencies have independent jurisdiction.

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

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

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

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

22-E. Insurance product. "Insurance product" means a contract of insurance that is offered for sale by a licensed agent or broker.

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

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

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

K. The examination or furnishing of any financial records by a fiduciary institution 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 the Unclaimed Property Act, Title 33, chapter 37; ~~or~~

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

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

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

11. Choice of insurance agent or broker. A financial institution or credit union authorized to do business in this State, or a financial institution holding company or an affiliate of a financial institution holding company that is authorized to do business in this State as insurance agent or broker under section 448, or pursuant to applicable federal law, and Title 24-A to negotiate or sell insurance products to purchasers or borrowers may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of insurance agent or company under applicable provisions contained in Title 24-A.

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

This subsection does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unem-

ployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

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

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

This subsection does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

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

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

A. That the customer ~~shall~~ obtain some additional or other credit, property, or other service from such financial institution other than a loan, discount, deposit or trust service. This paragraph does not prohibit a tie-in involving insurance products that is permitted under Title 24-A;

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

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

D. That the customer provide some additional or other credit, property or service to a subsidiary of

such financial institution, a financial institution holding company of such financial institution, or from any other subsidiary of such financial institution holding company; or

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

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

11. Annuities. A financial institution, credit union or financial institution holding company, or a subsidiary or employee of such an entity, authorized to do business in the State may sell, or arrange for the sale of, through a licensed 3rd-party, annuities purchased from a licensed insurance company and may share commissions in connection with the sale of annuities pursuant to the provisions of Title 24-A. A financial institution, a credit union or a financial institution holding company or an employee or subsidiary of such an entity must be licensed in accordance with Title 24-A, ~~section sections 1512 or 1531, subsection 1, paragraph F~~ before engaging in any of the activities concerning the sale of annuities authorized by this subsection. ~~If annuities are sold pursuant to the authorization under this subsection through an arrangement with a licensed 3rd party agent, that 3rd party agent may not be licensed to sell general lines insurance or life and health insurance.~~ As used in this subsection, the words "sell annuities" and "arrange for the sale of annuities" do not include the underwriting of those products.

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

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

B. Shall orally inform a prospective purchaser of annuities that the annuities are not insured by the Federal Deposit Insurance Corporation; and

C. Before a sale of annuities is completed, must obtain a written statement signed by the pur-

chaser of the annuities stating that the purchaser received the oral notice required by paragraph B.

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

§448. Insurance agency activities

1. Authorization. A financial institution or credit union authorized to do business in this State, or financial institution holding company, or an affiliate of either, other than a licensed supervised lender regulated under Title 9-A, Article IV, Part 4, may act as an agent, broker or consultant in this State and may employ, affiliate with or hire as a 3rd-party agent an insurance agent or agency, broker or consultant, if the agent, agency, broker or consultant is duly licensed under Title 24-A or engage in authorized insurance activities in another state, if the agent, agency, broker or consultant complies with the applicable laws of that state.

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

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

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

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

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

B. When a prospective purchaser of insurance is directly and personally contacted by the institution, the institution shall orally inform that prospective purchaser of insurance that the insurance product is not insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, as applicable; and

C. Before the sale of an insurance product is completed the institution must obtain a written

statement signed by the purchaser of insurance that the purchaser received the oral notice required by paragraph B.

4. Distinguishing insurance products from loan or deposit products; identification of insurance brokers and agents To the extent practicable, sales of insurance products authorized by this section must take place in a manner that minimizes customer confusion between the deposit, share or loan products offered by the institution and those insurance products. An institution authorized under subsection 1 is in compliance with this subsection if it utilizes signs clearly visible to its customers that distinguish its insurance products from its deposit, share or loan products and that adequately identify insurance agents, brokers and consultants affiliated with the institution.

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

6. Applicability. Other than the authorizations provided in subsection 1, this section does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by

Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance. This section also does not apply to annuity sales authorized under section 443, subsection 11.

Sec. 18. 24-A MRSA §1514, as amended by PL 1973, c. 585, §12, is repealed.

Sec. 19. 24-A MRSA §1514-A, as amended by PL 1995, c. 329, §10, is further amended to read:

§1514-A. Insurance agency and brokerage activities by financial institutions and related parties

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

~~A. "Financial institution" means a trust company, commercial bank, savings bank, industrial bank, savings and loan association or credit union, either state chartered or federally chartered.~~

A-1. "Affiliate" means any of the following entities:

(1) A subsidiary of a financial institution or credit union authorized to do business in this State or of a financial institution holding company;

(2) An employee, an officer other than a director, or licensed 3rd-party agent of a financial institution or credit union authorized to do business in this State, a financial institution holding company or any institution listed in subparagraph (1);

(3) A person or entity possessing 5% or more of the ownership interests of a financial institution or credit union authorized to do business in this State, or of a financial institution holding company or of any institution listed in subparagraph (1); or

(4) An insurer or insurance agent, broker or consultant utilizing space in the retail area of a financial institution or credit union authorized to do business in this State or of a financial institution holding company or an institution listed in subparagraph (1) in order to engage in the transaction of insurance when payments for use of the space are made to that institution pursuant to a space-sharing agreement based directly or indirectly upon a percentage of the volume

of business conducted by the insurer, insurance agent, broker or consultant.

A-2. "Financial institution authorized to do business in this State" or a "credit union authorized to do business in this State" has the same meaning as defined in Title 9-B, section 131, subsections 12-A and 17-A.

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

B-1. "Licensed 3rd-party agent" means a licensed insurance agent, broker or consultant who engages in authorized insurance activities related to insurance products directly on behalf of a specified licensed insurance entity through an independent contractor relationship.

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

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

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

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

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

~~**2. Prohibition on licensing.** A financial institution, financial institution holding company or the~~

~~subsidiary of either or an officer, employee, agent or representative of a financial institution, financial institution holding company or the subsidiary of either may not be licensed as an insurance agent, broker or consultant in this State or may not act as an insurance agent, broker or consultant in this State. Nothing in this section limits the activity of these organizations with respect to credit life and credit health insurance to the extent authorized by chapter 37, group health insurance to the extent authorized by chapter 35 and group life insurance to the extent authorized by chapter 31. Nothing in this section prohibits a financial institution, credit union, financial institution holding company or a subsidiary or employee of any such entity from selling annuities, arranging for the sale of annuities or sharing commissions in connection with the sale of annuities to the extent authorized by Title 9-B, section 443, subsection 11, provided that such entity has been licensed pursuant to section 1531, subsection 1, paragraph F and if that activity includes the sale of variable annuity contracts, the National Association of Securities Dealers registration form has been submitted to the superintendent as required by the provisions of section 1520, subsection 3.~~

2. Licensing. A financial institution or credit union authorized to do business in this State, financial institution holding company or the subsidiary or affiliate of either of those entities or an officer, employee, agent or representative of a financial institution, credit union, financial institution holding company or the subsidiary of either of those entities may be licensed as an insurance agent, broker or consultant in this State and may act as an insurance agent, broker or consultant in this State. These organizations are not required to become licensed as an insurance agent, broker or consultant with respect to credit life and credit health insurance to the extent authorized by chapter 37 when the insured is enrolled in the policy; group health insurance to the extent authorized by chapter 35 when the insured is enrolled in the policy; group life insurance to the extent authorized by chapter 31 when the insured is enrolled in the policy; credit property insurance; credit involuntary unemployment insurance; forced placed property insurance; a vendor's single interest policy; and any other insurance product as determined by the superintendent. In addition, a financial institution, credit union, financial institution holding company or a subsidiary or employee of any such entity may sell annuities, arrange for the sale of annuities or share commissions in connection with the sale of annuities to the extent authorized by Title 9-B, section 443, subsection 11, if such an entity has been licensed pursuant to section 1531, subsection 1, paragraph F or section 1512 and if that activity includes the sale of variable annuity contracts, the National Association of Securities Dealers registration form has been submitted to the superintendent as required by the provisions of section 1520, subsection 3.

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

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

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

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

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

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

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

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

~~(2) The right of the consumer to consider insurance transactions in a confidential and noncoercive environment is assured.~~

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

5. Rulemaking. The superintendent, the Superintendent of Banking and the Director of the Office of Consumer Credit Regulation may, pursuant to this subsection, Title 9-A, section 4-407 and Title 9-B, section 448, subsection 5, undertake joint rulemaking to carry out the purpose of this section, including issues regarding signs, the physical location of sales of insurance and identification of agents and brokers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders. In adopting rules pursuant to this section, the superintendent, the Superintendent of Banking and the Director of the Office of Consumer Credit Regulation shall consider the possibility of confusion and perception of coercion among the insurance consuming public, the need for cost-effective delivery of insurance products to insurance consumers and the importance of parity among agents and brokers affiliated with federally chartered and state-chartered financial institutions and credit unions. Any rule adopted may not interfere significantly with the ability of an agent or broker to solicit or negotiate the sale of an insurance product, whether or not that agent or broker is affiliated with a financial institution, credit union, financial institution holding company or supervised lender, except when no other reasonable alternative exists to protect the insurance consuming public. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing in this section is intended to restrict or interfere with the ability of the bureau, the Bureau of Banking or the Office of Consumer Credit Regulation to adopt rules with respect to areas in which the respective agencies have independent jurisdiction.

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

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

~~charge as a limited license for the sale of annuities only.~~

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

1. Prohibition against certain requirements. ~~No~~ A person engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property may not require, as a condition to the financing or lending, or as a condition to the renewal or extension of any such loan or to the performance of any other act in connection with the financing or lending, that the purchaser or borrower, or ~~his~~ the successors, ~~shall~~ of the purchaser or borrower negotiate through a particular insurer or insurers, insurance agent or agents, broker or brokers, type of insurer or types of insurers, any policy of insurance or renewal thereof ~~insuring that property~~ issued in connection with the extension of credit. For purposes of this section, the term "policy" includes, but is not limited to, any temporary contract or binder, by whatever name known, under the terms of which insurance coverage commences at a specified time, and continues until a finished policy is issued or the risk is declined and coverage is terminated.

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

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

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

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

business days. Upon request by a licensed insurer, agent, broker or consultant, a customer, a lender or creditor must within 10 business days of receiving the request provide a copy of its written criteria for approving an insurer.

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

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

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

§2168-B. Solicitation or negotiation involving purchasers or borrowers

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

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

This section does not apply to group health and group life insurance to the extent authorized by chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the superintendent.

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

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

§2169. Notice of free choice of agent or insurer

Every debtor, borrower or purchaser of property with respect to which insurance of any kind on the property is required in connection with a debt or loan secured by that property or in connection with the sale of that property must be informed by the creditor or lender at the time of application for the loan or at the outset of negotiations regarding the loan or sale shall inform the purchaser or borrower of that person's right of free choice in the selection of the agent and insurer through or by which the insurance in connection with the loan is to be placed, including the right to choose an agent or broker whether or not that agent or broker is affiliated with a creditor or lender. For purposes of this section, "affiliated" has the same meaning as set forth in section 1514-A, subsection 1, with respect to financial institutions and credit unions or in Title 9-A, section 1-403 with respect to supervised lenders. In conjunction with this notice, a creditor or lender shall inform its purchasers or borrowers that obtaining insurance products from a particular agent or broker does not affect credit decisions by the creditor or lender regarding the purchaser or borrower, unless the insurance product selected violates the terms of the extension of credit regarding adequacy of coverage or is otherwise not approved under section 2168, subsection 2. Another person may not interfere either directly or indirectly with the borrower's, debtor's or purchaser's free choice of an agent and of an insurer that complies with the requirements set out in section 2168; and the creditor or lender may not refuse an adequate policy so tendered by the borrower, debtor or purchaser. A creditor or lender may not reject an insurance product selected by a purchaser or borrower because the product was not obtained from or through an insurance agent or broker affiliated with the institution. For purposes of this section, the term "policy" includes, but is not limited to, any temporary contract or binder, by whatever name known, under the terms of which insurance coverage commences at a specified time, and continues until a finished policy is issued or the risk is declined and coverage is terminated. Upon notice of any refusal of this tendered policy, the superintendent shall order the creditor or lender to accept the tendered policy, if the superintendent determines that the refusal is not in accordance with the requirements set out in section 2168. Failure to comply with such an order of the superintendent is a violation of this section.

This section does not apply to group health and group life insurance to the extent authorized by chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's

single interest policy or any other insurance product as determined by the superintendent.

Sec. 27. 24-A MRSA §2169-A is enacted to read:

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

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

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

3. Information permitted under Fair Credit Reporting Act. Notwithstanding subsection 1, a lender or creditor may exchange insurance information with its affiliates as permitted under the Fair Credit Reporting Act pursuant to Title 10, chapter 210 or 15 United States Code, Chapter 41.

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

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

Effective May 29, 1997.
