LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

be occupied by that person as a bona fide personal abode, providing the installation, alternation, repair or replacement conforms to the standards set forth in this chapter and any rules adopted by the commission or the department.

Sec. B-13. 32 MRSA §4700-M, as enacted by PL 1993, c. 25, §13, is amended to read:

§4700-M. Reciprocity

The commission may issue a ~~registration~~ license without examination, in a comparable classification, to any person who holds a registration or license in any state, territory or possession of the United States or any country, if the commission determines that the requirements for registration or licensure of well drillers or pump installers under which the person's registration or license was issued do not conflict with this chapter or the code of performance adopted by the commission under this chapter.

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

Effective May 18, 2001.

CHAPTER 210

S.P. 324 - L.D. 1092

An Act to Prohibit Negative Option Sales Without a Consumer's Express Agreement

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

Sec. 1. 10 MRSA c. 205-A is enacted to read:

CHAPTER 205-A

REQUIRED DISCLOSURES TO CONSUMERS

§1210. Charges after trial period

In a sale agreed to by telephone, a merchant may not charge a consumer for a good or service after a trial period unless, prior to the charge, the consumer expressly agrees to be charged for the good or service if the consumer does not cancel the sale. At least 15 days prior to any charge, or 10 days prior to any charge if the good or service for which the consumer will be charged is physically delivered to the consumer on a weekly or more frequent basis, the merchant shall provide a consumer with a clearly written description of the agreement, the good or service being purchased, the amount being charged and the calendar date the consumer will be charged for the good or service if the consumer does not cancel the sale. This notice also must provide the specific steps by which the consumer can cancel the agreement by both mail and telephone. The merchant has the burden of proving that the consumer expressly agreed to this arrangement and that the required written notices were provided within the time limits set forth in this section.

§1210-A. Violation

A merchant who violates this chapter commits an unfair and deceptive act and a violation of Title 5, section 207.

See title page for effective date.

CHAPTER 211

H.P. 1271 - L.D. 1729

An Act to Amend the Maine Banking Code

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

Sec. 1. 9-B MRSA §162, sub-§§2 and 3, as amended by PL 1997, c. 537, §1 and affected by §62, are further amended to read:

2. Disclosure in response to legal process. The financial records are disclosed in response to a lawful subpoena, summons, warrant or court order that meets the requirements of section 163; ~~or~~

3. Disclosure in response to a request by the Department of Human Services. The financial records are disclosed in response to a request for information by the Department of Human Services for purposes related to establishing, modifying or enforcing a child support order~~.~~; or

Sec. 2. 9-B MRSA §162, sub-§4 is enacted to read:

4. Disclosure in response to a request by the Department of Labor. The financial records are disclosed in response to a notice of levy issued by the Department of Labor pursuant to Title 26, section 1233.

Sec. 3. 9-B MRSA §214, sub-§2-B, as enacted by PL 1997, c. 398, Pt. K, §1, is amended to read:

2-B. Assessment on nondepository trust companies. Nondepository trust companies that are not affiliated with a financial institution shall pay an annual assessment of not less than $2,000 or an amount determined by the superintendent ~~not to exceed~~ of at least 6¢ for every $10,000 of fiduciary

assets under its management, custody or care. The superintendent may further define by rule fiduciary assets under management, custody or care or change the minimum assessment whenever economic conditions warrant such a change. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. These assessments must be paid annually by February 15th of each year on fiduciary assets outstanding December 31st of the prior year.

Sec. 4. 9-B MRSA §214, sub-§2-C is enacted to read:

2-C. Assessment on uninsured bank or merchant bank. If an uninsured bank or merchant bank predominately engages in the business of a nondepository trust company, then the uninsured bank or merchant bank shall pay an annual assessment as prescribed in subsection 2-B. Otherwise, an uninsured bank or merchant bank shall pay an annual assessment as prescribed in subsection 2.

Sec. 5. 9-B MRSA §221, sub-§2, as repealed and replaced by PL 1995, c. 628, §11, is amended to read:

2. Exception. ~~Notwithstanding the requirements set forth in subsection 1~~ In satisfaction of the examination requirements of this section, the superintendent may accept the examination reports of other state, federal or foreign regulatory agencies as a method of satisfying such requirements in whole or in part.

Sec. 6. 9-B MRSA §221, sub-§§4 and 5 are enacted to read:

4. Affiliates. The superintendent may examine the affairs of the affiliates of a financial institution, other than a federally chartered financial institution, as necessary to fully disclose the relationship between the financial institution and its affiliates and the effect of those relationships on the affairs of the financial institution.

5. Service corporations. The superintendent may examine any service corporation established pursuant to section 445 or 864 or any bank service company established under the federal Bank Service Company Act that provides services to a financial institution. Whenever a financial institution or any affiliate other than a financial institution causes to be performed for itself by contract or otherwise any services authorized for service corporations under section 131, whether on or off premises, such performance is subject to regulation and examination of the superintendent as if such services were being performed by the financial institution or affiliate itself on its own premises.

Sec. 7. 9-B MRSA, §222, sub-§3, ¶A, as amended by PL 1975, c. 500, §1, is further amended to read:

A. Every financial institution subject to this Title shall make semiannually, and at such other times as the superintendent may direct, a report of condition to the superintendent. ~~Such~~ The report ~~shall~~ must exhibit in detail and under appropriate headings the assets, liabilities and capital of the institution as of such date as the superintendent may specify. Each such report ~~shall~~ must contain a declaration that the report is true and correct signed by an officer designated by the board of directors to make such declaration and to so act on the board's behalf. The financial institution shall retain a copy of the report that is filed with the bureau, including the original signature or signatures attesting that the report is true and correct and shall make it available upon examination of the financial institution. The report ~~required hereunder shall~~ must be transmitted to the superintendent within 10 days after a request ~~therefor~~ for the report.

Sec. 8. 9-B MRSA §241, sub-§9, ¶A, as enacted by PL 1995, c. 628, §18, is amended to read:

A. A person, if duly authorized under the laws of this State, another state or the United States to conduct the business of banking, may use as a part of the name or title under which it conducts business in this State the terms "saving," "savings," "savings bank," "bank," "banker," "trust," "trust company," "banking" or "trust and banking company." The superintendent may require the filing of supporting documentation relating to this paragraph in the form and manner and containing such information as the superintendent may prescribe.

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

12. Electronic banking. A financial institution or credit union organized under the provisions of federal law, law of another state or law of a foreign country that does not meet the definition of authorized to do business in this State, pursuant to section 131, may engage in the business of banking through electronic or similar means in this State and is subject to the provisions of Parts 1 and 2 to the same extent Parts 1 and 2 apply to a financial institution authorized to do business in this State.

Sec. 10. 9-B MRSA §339-A, sub-§2, as amended by PL 1997, c. 398, Pt. E, §11, is repealed.

Sec. 11. 9-B MRSA §427, sub-§7, as amended by PL 1999, c. 218, §20, is further amended to read:

7. Transfer of deposit or account. A depositor may transfer, absolutely or conditionally, that depositor's deposit or account to any other person, subject to any provisions affecting such deposit or account pursuant to this chapter by a written assignment in a form approved by the institution, accompanied by delivery of the evidence of the deposit or account. Evidence of the deposit or account means the membership certificate, share certificate, account book, passbook or any other evidence of the deposit or account that has been issued in connection with such deposit or account. Every such transfer of a deposit or account is considered to include the deposit or account and the evidence of the deposit or account issued in connection with the deposit or account. An absolute transfer is not effective against an institution until such written assignment and the accompanying evidence of the deposit or account are delivered to the institution with a request that it complete such transfer upon its records. A conditional transfer is not effective against an institution unless and until it actually receives notice of the conditional transfer in writing.

This subsection does not apply to the creation, perfection or enforcement of a security interest in a deposit or account other than an assignment of a deposit or account in a consumer transaction as defined in Title 11, section 9-1102, subsection 26.

Sec. 12. 9-B MRSA §427, sub-§10, as amended by PL 1979, c. 540, §13, is further amended to read:

10. Adverse claim to deposit or account. Except as provided in Title 11, section 4-405, and in Title 18-A, sections 6-107 and 6-112, notice to any financial institution authorized to do business in this State of an adverse claim to a deposit or account standing on its books to the credit of any person ~~shall~~ is not ~~be~~ effectual to cause said institution to recognize said adverse claimant, unless said adverse claimant shall either procure a restraining order, injunction or other appropriate process against said institution from a court of competent jurisdiction in a civil action to which the person to whose credit the deposit or account stands is made a party, or shall execute to said institution, in form and with sureties acceptable to it, a bond indemnifying said institution from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of checks or other orders of the person to whose credit the deposit or account stands on the books of said institution.

This subsection does not apply to the creation, perfection or enforcement of a security interest in a deposit or account other than an assignment of a deposit or account in a consumer transaction as defined in Title 11, section 9-1102, subsection 26.

Sec. 13. 9-B MRSA §428, as repealed and replaced by PL 1977, c. 707, §2, is amended to read:

§428. Inactive deposits or accounts

All moneys in unclaimed accounts in each financial institution authorized to do business in this State ~~shall~~ must be disposed of according to Title 33, chapter ~~27~~ 41.

Sec. 14. 9-B MRSA §446-A, sub-§1, as amended by PL 1999, c. 218, §21, is further amended to read:

1. Application required. A financial institution shall make application to the superintendent in accordance with section 252 for authority to engage in a closely related activity, except that an application is not necessary if all of the following conditions are satisfied:

A. Before and immediately after the proposed transaction, the financial institution is well capitalized as determined by the superintendent;

B. At the time of the transaction, the financial institution is well managed, which means that in connection with the financial institution's most recent examination:

(1) The financial institution received a composite rating of one or 2 pursuant to the uniform financial institution rating system adopted by the Bureau of Banking; and

(2) The financial institution received at least a satisfactory rating for management;

C. The book value of the total assets to be acquired does not exceed 15% of the consolidated total risk-weighted assets of the financial institution;

D. The consideration to be paid for the securities or assets to be acquired does not exceed 15% of the consolidated capital of the financial institution;

E. During the 12-month period prior to the proposed transaction, the financial institution has not been under an enforcement action nor is there an enforcement action pending;

F. The financial institution provides written notification to the superintendent ~~not later than 10 business days after~~ at least 30 days prior to consummating the transaction; and

G. The activity is authorized pursuant to this Title or by rule or order of the superintendent.

Notwithstanding paragraphs A and G, the superintendent, after review of the written notification under paragraph F, may require an application if the superintendent determines that the activity raises significant supervisory concerns or raises significant legal or policy issues.

Sec. 15. 9-B MRSA §466, sub-§4, as amended by PL 1975, c. 666, §23-A, is further amended to read:

4. Unauthorized business. ~~No~~ A person ~~shall~~ may not engage in the business of ~~financial institutions~~ banking unless ~~he~~ the person is properly authorized, nor may a person represent that ~~he~~ that person is acting as ~~such~~ a financial institution, nor use an artificial or corporate name ~~which~~ that purports to be or suggests that ~~it~~ the person is ~~such~~ a financial institution unless the financial institution is properly authorized to do business in this State and except as provided in section 241, subsection 12. ~~Financial institutions organized under the laws of the United States shall not be subject to this provision.~~

Sec. 16. 9-B MRSA §814, sub-§1, as amended by PL 1999, c. 218, §25, is further amended to read:

1. Field of membership. "Field of membership" of a credit union means those persons, including nonnatural persons, having a common bond of occupation or association; multiple groups of such persons, each group having a common bond of occupation or association within that group; residence or employment within a well-defined neighborhood, community or rural district; employment by a common employer or by employers located within a well-defined industrial park or community; membership in a bona fide fraternal, religious, cooperative, labor, rural, educational or similar organization; and members of the immediate families of such persons.

A. When determining whether a credit union's proposed field of membership meets the requirements of this section, the superintendent shall consider all guidelines established by the National Credit Union Administration that address the issues of common bond, overlapping fields of membership, expansions or conversions of field of membership and the documentation required for amending a field of membership.

B. The superintendent shall provide notice to interested parties of a bylaw amendment sought by a credit union that proposes a change in field of membership.

C. For purposes of this section, "nonnatural person" means a corporation, partnership, joint venture, trust, estate, unincorporated association, fraternal organization or voluntary association that is:

(1) Specifically listed in a credit union's bylaws as a member;

(2) With respect to a community-chartered credit union, located within the geographic limits of the credit union's field of membership; or

(3) Composed principally of individual persons within the credit union's field of membership and the credit union's field of membership includes organizations of such persons.

Sec. 17. 9-B MRSA §814, sub-§2, as enacted by PL 1975, c. 500, §1, is repealed.

Sec. 18. 9-B MRSA §827, sub-§2, as repealed and replaced by PL 1983, c. 51, §2, is amended to read:

2. Receipt of payments from government agencies and other credit unions. A credit union may act as fiscal agent for and receive payments on shares and deposits from the Federal Government, this State or any agency or political subdivision or another federally insured credit union.

Sec. 19. 9-B MRSA §844, sub-§2, as amended by PL 1979, c. 429, §12, is further amended to read:

2. Verification of share, deposit and loan accounts.

A. At least once in every ~~3~~ 2 years~~, or more often if required by National Credit Union Administration law, rules or regulations~~, the supervisory committee shall verify or cause to be verified~~, 100% of~~ the share ~~and~~, deposit and loan accounts of members of the credit union and a report of the verification ~~shall~~ must be ~~made to the superintendent within 30 days of the completion of the verification~~ kept on file and available to be reviewed at the time of the next examination or upon request by the superintendent.

(1) If the verification is performed by the supervisory committee, a controlled verification of 100% of the members' share, deposit and loan accounts must be made.

(2) If the verification is performed by a certified public accountant, the auditor may choose the verification method set forth in subsection 1 or a sampling method sufficient in both number and scope on which to

base conclusions concerning the validity of such records.

B. If the superintendent ~~deems~~ determines such verification inadequate, ~~he~~ the superintendent may cause the bureau to verify such accounts; and the bureau ~~shall~~ must have full access to every aspect of the credit union's activities and to all books, papers, vouchers, resources and all other records and property belonging to said credit union, whether in its immediate possession or otherwise, for the purpose of facilitating such verification.

C. Expenses incurred by the superintendent in any such verification ~~shall~~ must be paid by the credit union, to be credited and used as provided in section 214.

Sec. 20. 9-B MRSA §862, sub-§4, as enacted by PL 1983, c. 51, §11, is repealed.

Sec. 21. 9-B MRSA §872, sub-§1, ¶¶A and B, as enacted by PL 1975, c. 500, §1, are amended to read:

A. ~~Any 2 or more credit unions authorized to do business in this State~~ A credit union organized under provisions of the laws of this State, another state or federal laws may merge or consolidate into a credit union organized under the laws of the State with the approval of the superintendent obtained pursuant to section 252, and in accordance with such procedures as the superintendent may require.

B. If any credit union involved in the proposed merger is a federal credit union, such merger is subject to all applicable laws, rules and regulations of the United States. A credit union involved in the proposed merger that is organized under provisions of law of another state is subject to all applicable laws, rules and regulations of that state.

Sec. 22. 9-B MRSA §876, as repealed and replaced by PL 1975, c. 666, §30, is amended to read:

§876. Acquisitions

A credit union organized under the laws of this State may acquire all or substantially all the assets of, or assume the liabilities of, any other credit union organized under provisions of the laws of this State, another state or federal laws or any financial institution authorized to do business in this State; provided that such purchase or sale pursuant to this section ~~shall~~ be executed in accordance with the requirements of section 355 and ~~shall~~ be subject to the provisions of sections 357 and 358.

Sec. 23. 9-B MRSA §1011, sub-§4, as amended by PL 1991, c. 386, §26, is further amended to read:

4. Control. A company controls another company, referred to in this chapter as a "subsidiary," if it owns 25% or more of the ~~voting shares~~ equity interest of the subsidiary or if under the federal Bank Holding Company Act of 1956, as amended, under the federal Home Owners' Loan Act, Section 1467A, as amended, or under the Federal Deposit Insurance Act, as amended, or regulations or policy statements issued thereunder, that company is presumed to control the subsidiary or a determination has been made by the superintendent that the company exercises a controlling influence over the management and policies of the subsidiary.

Sec. 24. 9-B MRSA §1015, sub-§1, ¶D, as amended by PL 1997, c. 398, Pt. K, §10, is further amended to read:

D. Authority for a Maine financial institution holding company to engage in a closely related activity or any other activity or to acquire or establish a subsidiary to engage in a closely related activity or any other activity; or

Sec. 25. 9-B MRSA §1015, sub-§1, ¶E, as repealed and replaced by PL 1997, c. 683, Pt. A, §2, is amended to read:

E. Authority for any financial institution holding company, foreign bank or foreign bank holding company controlling a Maine financial institution to engage in a closely related activity in ~~Maine,~~ the State or ~~acquisition~~ to acquire or ~~establishment of~~ establish a subsidiary in ~~Maine~~ the State to engage in a closely related activity.

Sec. 26. 9-B MRSA §1239 is enacted to read:

§1239. Holding companies of uninsured banks

If a holding company is not a financial institution holding company under chapter 101 by virtue of controlling a financial institution other than a merchant bank, a nondepository trust company or an uninsured bank, the superintendent may grant the holding company a waiver from the provisions of chapter 101; except that, the superintendent may not waive the requirements of section 1013, subsection 1 and the application requirements of section 1015 relevant to section 1013, subsection 1.

If a holding company is not a financial institution holding company under chapter 101 by virtue of controlling financial institutions other than a merchant bank, nondepository trust company or uninsured bank, the superintendent may examine the holding company, including its subsidiaries and affiliates, to the extent

necessary to determine the soundness and viability of the uninsured bank.

Sec. 27. Application. Any limited member of a credit union on the effective date of this Act remains a credit union member after the effective date of this Act.

See title page for effective date.

CHAPTER 212

H.P. 406 - L.D. 527

An Act to Amend Certain Laws Administered by the Department of Environmental Protection

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

Sec. 1. 38 MRSA §344-B, sub-§1, as enacted by PL 1991, c. 804, Pt. B, §4 and affected by §7, is amended to read:

1. Publication of timetables. No later than ~~August~~ November 1st of each year, the commissioner shall publish processing timetables for each permit and license issued by the department. Permit and license processing timetables must be published simultaneously in all newspapers designated by the Secretary of State as papers of record under Title 5, section 8053, subsection 5. The commissioner shall enter the published processing timetables into the record of the board at the first meeting of the board following publication.

Except as provided in this section, the deadline governing the processing of an application is determined by the timetable in effect on the date the application is determined to be complete.

Sec. 2. 38 MRSA §352, sub-§3, as amended by PL 1999, c. 243, §2, is further amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by ~~August~~ November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. A special fee may not exceed $75,000. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application. The processing fee for that application must be the actual cost to the department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit.

Sec. 3. 38 MRSA §569-A, sub-§5-A, as enacted by PL 1999, c. 334, §3, is amended to read:

5-A. Penalty for late payment of fees. Fees assessed under subsection 5, paragraph A are due to the department on or before the last day of the month immediately following the month in which the oil was transferred or first transported in Maine. Licensees or registrants who fail to pay the fee by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 5. The department may waive the penalty for good cause shown by the licensee or registrant. Good cause may include, without limitation, events that may not be reasonably anticipated or events that were not under the control of the licensee or registrant.

Sec. 4. 38 MRSA §1310-D, first ¶, as amended by PL 1991, c. 759, §1, is further amended to read:

The provisions of this ~~article~~ section govern open-municipal solid waste landfills.

Sec. 5. 38 MRSA §1310-N, sub-§6-D, as amended by PL 1995, c. 642, §9, is further amended to read:

6-D. Solid waste facilities licensed under rules valid on or after May 24, 1989. A solid waste facility license issued under applicable solid waste management rules valid on or after May 24, 1989 remains in effect unless modified, revoked or suspended under section 341-D, subsection 3. These licensees must:

A. Comply with applicable operating rules adopted by the board;

B. Comply with annual facility reporting rules adopted by the board; and

C. Beginning 5 years after the date of issuance of the license, pay an annual facility reporting fee established by the commissioner. The annual fee established in this paragraph must be an amount equal to 20% of the relicensing fee that would have applied to that facility.

Notwithstanding the terms of this subsection, ~~sludge or residual utilization licenses~~ a license issued to a solid waste facility that is not a solid waste landfill may be voluntarily surrendered by the license holder upon department approval.