

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTIETH LEGISLATURE

FIRST REGULAR SESSION
December 2, 2020 to March 30, 2021

FIRST SPECIAL SESSION
April 28, 2021 to July 19, 2021

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2021

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 18, 2021

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

Augusta, Maine
2021

Sec. 3. 30-A MRSA §371-B, sub-§4, as amended by PL 2003, c. 510, Pt. C, §11, is further amended to read:

4. Exception. Any person who served as a full-time law enforcement officer employed by a municipal police department or a state agency, including the University of Maine System, on or before July 1, 1990 or is serving in the office of sheriff on June 26, 1997 2021 or who served prior to that date is deemed to meet the minimum qualifications of subsection 3.

See title page for effective date.

CHAPTER 203
S.P. 334 - L.D. 1066

An Act To Clarify the Definition of "Mortgage Servicer" in the Laws Governing Mortgage Foreclosures

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

Sec. 1. 14 MRSA §6113, as enacted by PL 2019, c. 363, §1, is amended to read:

§6113. Mortgage servicer duty of good faith

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

A. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

B. Except as provided in subsection 5, "mortgage servicer" means a person that is responsible for:

- (1) Receiving scheduled periodic payments from an obligor pursuant to the terms of a mortgage described in section 6111, subsection 1, including amounts for escrow accounts;
(2) Making or advancing payments to the owner of the loan or other 3rd parties with respect to the amounts received from the obligor pursuant to a loan servicing contract; and
(3) Evaluating obligors for loss mitigation or loan modification options.

B-1. Except as provided in subsection 5, "mortgage servicer" means a person responsible for servicing an obligation, including a person that holds or owns an obligation or originates a mortgage loan if the person also services the obligation.

C. "Obligation" means a debt or other duty or liability of an obligor secured by a mortgage of the

type described in section 6111, subsection 1 and includes a mortgage deed even if the debt secured by the mortgage deed has been discharged in bankruptcy.

D. "Obligor" means a person that:

- (1) Owes payment or performance of an obligation;
(2) Has provided property other than the mortgaged property to secure payment of the obligation;
(3) Has granted a mortgage interest with respect to the mortgaged property; or
(4) Is otherwise accountable in whole or in part for payment of the obligation.

E. Except as provided in subsection 5, "servicer" means a person responsible for servicing an obligation, including a person that holds or owns an obligation or originates a mortgage loan if the person also services the obligation.

F. "Servicing" means any combination one or more of the following:

- (1) Receiving a periodic payment from an obligor under the terms of an obligation, including an amount received for an escrow account;
(2) Making or advancing payments to the owner of an obligation on account of an amount due from the obligor under a mortgage servicing loan document or a servicing contract;
(3) Making a payment to the obligor under a home equity conversion mortgage or reverse mortgage;
(4) Evaluating the obligor for loss mitigation or communicating with the obligor with respect to loss mitigation;
(5) Collecting funds from a homeowner for deposit into an escrow account and making payments out of an escrow account; and
(6) Taking any other action with respect to an obligation that affects the obligor's payment or performance of the obligation or that relates to the enforcement of the rights of the loan owner arising under the obligation.

2. Duty of good faith. A mortgage servicer shall act in good faith toward an obligor in the servicing of an obligation secured by a mortgage and in any foreclosure action relating to such an obligation.

3. Effect of violation during foreclosure. If during a foreclosure action a mortgage servicer controlling or managing the action on its own behalf or on behalf of the owner of the obligation subject to foreclosure is shown to have committed a violation of its duty of good

faith under subsection 2, the court may dismiss the action, stay the action on appropriate terms and conditions or impose other appropriate sanctions until the violation is cured.

4. Remedies for violation. The following are remedies for a violation of the duty of good faith under subsection 2.

A. A homeowner or obligor injured by a violation of the duty of good faith may bring an action against the mortgage servicer for all actual damages sustained by the homeowner or obligor.

B. In addition to the damages recoverable under this subsection, the court may award a homeowner or obligor statutory damages not exceeding \$15,000 for a pattern or practice of the mortgage servicer's violating the duty of good faith. In determining whether to award statutory damages and the amount of statutory damages, the court shall consider all relevant factors, including:

- (1) The frequency and persistence of violations by the mortgage servicer;
- (2) The nature of the violations;
- (3) The extent to which the violations were intentional; and
- (4) The extent to which the actions that constitute violations are prohibited by state or federal laws, rules or regulations, and the extent to which such actions constitute violations by the mortgage servicer of any consent judgments to which it is a party.

C. If the court determines during a foreclosure action or an independent action for damages that there has been a violation of the duty of good faith:

- (1) The mortgage servicer may not charge the loan owner for, or add to the amount of the obligation, any attorney's fees or costs incurred as a result of the violation or any other attorney's fees or costs incurred before the mortgage servicer cures the violation; and
- (2) The court shall order the mortgage servicer to pay to the obligor the obligor's costs incurred in the action and reasonable attorney's fees as determined by the court.

5. Exclusion. The ~~terms term~~ "mortgage servicer" and "servicer" defined in subsection 1 ~~do~~ **does** not include a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A; a financial institution holding company as defined in Title 9-B, section 1011, subsection 1; a mutual holding company as defined in Title 9-B, section 1052, subsection 2; a credit union service organization as defined in 12 Code of Federal Regulations, Section 712.1; a subsidiary of a supervised financial organization, financial institution holding company, mutual holding company or credit

union service organization; or the Maine State Housing Authority.

Sec. 2. 14 MRSA §6321-A, sub-§11, as corrected by RR 2019, c. 1, Pt. A, §14, is amended by amending the first blocked paragraph to read:

A mortgage servicer as defined in section 6113, subsection 1, paragraph ~~B~~ B-1 participating in the mediation process submits to the jurisdiction of the court with respect to the power of the court to sanction parties who fail to participate in the mediation process in good faith as required by section 6113, subsection 2.

Sec. 3. 14 MRSA §6321-A, sub-§12, as amended by PL 2019, c. 363, §3, is further amended to read:

12. Good faith effort. Each party and each party's attorney, if any, must be present at mediation as required by this section and shall make a good faith effort to mediate all issues. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions. A mortgage servicer as defined in section 6113, subsection 1, paragraph ~~B~~ B-1 participating in the mediation process shall participate in good faith as required by section 6113, subsection 2. In determining the nature and extent of appropriate sanctions, the court shall consider the need for deterrence of similar future conduct by the entity being sanctioned and by others and may take into account prior orders imposing sanctions upon the sanctioned party, whether in the same case or in other previous cases. The imposition of any sanction does not bar any independent action by a defendant to seek recovery with respect to the actions giving rise to the order of sanctions.

Sec. 4. 14 MRSA §6321-A, sub-§13, as amended by PL 2019, c. 363, §4, is further amended to read:

13. Report. A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide or other reasonable determination of net present value. If the mediation did not result in the settlement or dismissal of the action, the report must include the outcomes of the Net Present Value Worksheet or other determination of net present value. As part of the report, the mediator may notify the court if, in the mediator's opinion, either party failed to negotiate in good faith. The mediator's report must also include a statement of all agreements reached at mediation, with sufficient specificity to put all parties on notice of their obligations under agreements reached at mediation, including but not limited to a description of all documents that must be completed and provided pursuant to the agreements reached at mediation and the time frame during

which all actions are required to be taken by the parties, including decisions and determinations of eligibility for all loss mitigation options. The mediator's report must identify the name of any mortgage servicer as defined in section 6113, subsection 1, paragraph B-B-1 that participates in the mediation process, and any order of sanctions must likewise identify the name of the mortgage servicer.

See title page for effective date.

**CHAPTER 204
H.P. 969 - L.D. 1313**

**An Act To Clarify Who Signs
and Swears to a Certificate
Stating the Results of a Breath-
alcohol Test**

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

Sec. 1. 29-A MRSA §2431, sub-§2, ¶B, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

B. A person qualified to operate a self-contained, breath-alcohol testing apparatus may issue a certificate stating the results of the an analysis of a test that the person administered.

See title page for effective date.

**CHAPTER 205
H.P. 1034 - L.D. 1400**

**An Act To Protect Towing
Operators Providing
Emergency Assistance by
Allowing the Use of a Flashing
Green Light**

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

Sec. 1. 29-A MRSA §2054, sub-§2, ¶C, as amended by PL 2019, c. 327, §1, is further amended by enacting a new subparagraph (2-A) to read:

(2-A) A wrecker may be equipped with a flashing green auxiliary light mounted on top of the vehicle in such a manner as to emit a green light over a 360-degree angle. A flashing green auxiliary light on a wrecker equipped in accordance with this subparagraph may be used only when:

(a) The operator is assisting another vehicle operator or loading a vehicle onto the wrecker; and

(b) The wrecker is pulled to the side of, or off, a public way and has halted in a location where it can safely remain stationary.

See title page for effective date.

**CHAPTER 206
S.P. 245 - L.D. 631**

**An Act To Provide Funding for
Maine's Health Insurance
Consumer Assistance Program**

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

Sec. 1. 24-A MRSA §4326, sub-§5 is enacted to read:

5. Funding. The State shall provide necessary funding for the consumer assistance program.

Sec. 2. Transfers from available fiscal year 2021-22 and fiscal year 2022-23 Department of Professional and Financial Regulation, Bureau of Insurance, Other Special Revenue Funds balances to the Department of the Attorney General. Notwithstanding any provision of law to the contrary, on October 1, 2021 and on July 1, 2022 the State Controller shall transfer \$200,000 from available balances in the Bureau of Insurance Other Special Revenue Funds account within the Department of Professional and Financial Regulation to the Department of the Attorney General.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Provides allocations for the Attorney General to contract with a designated nonprofit and independent health insurance consumer assistance entity to continue to operate the Health Insurance Consumer Assistance Program.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
All Other	\$200,000	\$200,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$200,000	\$200,000

See title page for effective date.