1	L.D. 731
2	Date: (Filing No. S- )
3	JUDICIARY
4	Reproduced and distributed under the direction of the Secretary of the Senate.
5	STATE OF MAINE
6	SENATE
7	128TH LEGISLATURE
8	FIRST REGULAR SESSION
9 10	COMMITTEE AMENDMENT " " to S.P. 243, L.D. 731, Bill, "An Act To Require Mortgage Servicers To Act in Good Faith in Dealings with Homeowners"
11 12	Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:
13	'Sec. 1. 9-A MRSA §9-403-A is enacted to read:
14	§9-403-A. Good faith and fair dealing
15 16 17 18 19	1. A person who services a consumer credit transaction that is made to finance or refinance the acquisition of real estate or the initial construction of a dwelling or that is secured by a first-lien mortgage on real estate, including but not limited to transactions described in section 9-101, shall, in addition to duties imposed by other statutes or at common law:
20 21 22	A. Act in good faith and with fair dealing in any transaction, practice or course of business in connection with the origination or servicing of any mortgage loan and in any foreclosure action relating to that obligation;
23	B. Safeguard and account for any money handled for the borrower;
24	C. Use reasonable skill, care and diligence; and
25 26 27 28	D. Timely and clearly disclose to the borrower material information that might reasonably affect the borrower's rights, interests or ability to receive the borrower's intended benefit from the residential mortgage loan, including servicing-related activities.
29 30 31	A servicer participating in the mediation process pursuant to Title 14, section 6321-A 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.
32 33	2. The duties and standards of care created in this section may not be waived or modified.

- 3. This section does not apply to a supervised financial organization, a financial institution holding company as defined in Title 9-B, section 1011, subsection 1 or a mutual holding company as defined in Title 9-B, section 1052, subsection 2 or a subsidiary of any of these entities.
- **Sec. 2. 9-A MRSA §9-405, sub-§1,** as amended by PL 2005, c. 206, §4, is further amended to read:
- 1. If a creditor, assignee or servicer has violated the provisions of this article applying to timely payments from escrow, section 9-305-A, timely responses to requests for payoff figures, section 9-305-B, misrepresentation, section 9-401, or illegal, fraudulent or unconscionable conduct in an attempted collection of debts, section 9-403, or duties of good faith and fair dealing, section 9-403-A, any aggrieved consumer has a right to recover all actual damages from that person, or in lieu thereof any consumer named as a plaintiff in the complaint as originally filed has a right to recover from a person violating this article an amount determined by the court not less than \$250 nor more than \$1,000 \$2,000. In addition to actual damages, the court may award a homeowner or borrower statutory damages not to exceed \$15,000 for a pattern or practice of violating section 9-403-A. No action pursuant to this subsection may be brought more than 2 years after the due date of the last scheduled payment.'

19 SUMMARY

This amendment replaces the bill. It imposes the duty to act in good faith and with fair dealing and consistently with specified standards of care on any person who services a consumer credit transaction that is made to finance or refinance the acquisition of real estate or the initial construction of a dwelling or that is secured by a first-lien mortgage on real estate. This amendment specifies that the duties and standards of care may not be waived or modified.

This amendment allows an aggrieved consumer to recover all damages or an amount determined by the court not less than \$250 nor more than \$2,000. Under current law, an aggrieved consumer may recover no more than \$1,000. The amendment provides that the court may, in addition to awarding actual damages, award a homeowner or borrower under the Maine Consumer Credit Code statutory damages not to exceed \$15,000 if the creditor, assignee or servicer engaged in a pattern or practice of violating the duties and standards of care.