CHAPTER 24

ANTICOMPETITIVE OR DECEPTIVE PRACTICES

§241. Anticompetitive or unfair practices

1. Rules and regulations.

A. The superintendent has the power to adopt rules, in accordance with section 251, defining, limiting or proscribing acts and practices that, when engaged in by a financial institution authorized to do business in this State or its subsidiaries, by a credit union authorized to do business in this State or by a financial institution holding company or its subsidiaries, are determined to be anticompetitive, unfair, deceptive or otherwise injurious to the public interest. [PL 1999, c. 218, §2 (AMD).]

B. Such rules and regulations may be promulgated by the superintendent upon complaint of interested parties, or in rule-making proceedings initiated by the bureau. [PL 1975, c. 500, §1 (NEW).]

C. The authority granted to the superintendent herein shall be in addition to the cease and desist powers granted in section 231; and the fact that rules and regulations have not been promulgated hereunder shall not affect the validity of any cease and desist order issued pursuant to section 231, subsection 1. [PL 1975, c. 500, §1 (NEW).]

D. Whenever the superintendent has reason to believe that any financial institution authorized to do business in this State or any credit union authorized to do business in this State is using or is about to use any method, act or practice in violation of section 231 and that proceedings would be in the public interest, he may bring an action in the name of the State against such entity to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice. At least 10 days prior to commencement of any action under this section, the superintendent shall notify the entity of his intended action, and give the entity the opportunity to confer with the superintendent in person or by counsel or other representative as to the proposed action. Notice shall be given the entity by mail, postage prepaid, sent to their usual place of business. The superintendent may proceed without notice as required by this section upon a showing of facts by affidavit of immediate irreparable harm to the consumers of the State. The action may be brought in the Superior Court of the county in which such entity is located or has its principal place of business or may be brought in the Superior Court of Kennebec County. The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this section. Any district attorney or law enforcement officer receiving notice of any alleged violation of this section shall immediately forward written notice of same with any other information that he may have to the office of the superintendent. Any person or entity, who violates the terms of an injunction issued under this section, shall forfeit and pay to the State to be applied to the General Fund a civil penalty of not more than $10,000 for each violation. For the purposes of this section, the court issuing such injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the superintendent, acting in the name of the State, may petition for recovery of such civil penalty. In any action under this section where a permanent injunction is issued, the court may order the person or entity against whom the permanent injunction has been issued to pay to the State the costs of the investigation of that person or entity by the superintendent and the costs of suit, which fund shall be applied in the carrying out of the duties of the Bureau of

Financial Institutions. [PL 1977, c. 302 (NEW); PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF).]

[PL 1999, c. 218, §2 (AMD); PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF).]

2. Prices of financial services.

A. The authority granted to the superintendent in subsection 1 shall not be construed as authorizing the superintendent to establish the price at which financial services may be offered to the public, except that the superintendent may establish prices for such services upon a showing that the manner and method of actual pricing of a particular service, and the offering of such to the public, is anticompetitive or deceptive. [PL 1975, c. 500, §1 (NEW).]

B. An interested party affected by the exercise of the superintendent's authority in paragraph A shall have the right to appeal such decision or order pursuant to section 233, subsection 1 and shall also be entitled to rights specified in section 233, subsection 2. [PL 1975, c. 500, §1 (NEW).]

[PL 1975, c. 500, §1 (NEW).]

3. Alternative mortgage instruments. The Legislature declares that the preemption provided by the United States Garn-St. Germain Depository Institutions Act of 1982, Public Law 97-320, Section 804, shall not apply. The Legislature further declares that the superintendent shall have the power to promulgate regulations in accordance with section 251, which define, limit or otherwise authorize the use of alternative mortgage instruments by financial institutions. The Legislature further finds and declares that regulations promulgated prior to the preemption of the United States Garn-St. Germain Depository Institutions Act of 1982 shall continue to have full force and effect.

[PL 1983, c. 307, §2 (NEW).]

4. Attorneys. Every financial institution authorized to do business in this State and every credit union authorized to do business in this State that accepts an application for a residential mortgage loan for one to 4 residential units and that requires that an attorney search the title of the subject real estate shall permit the prospective mortgagor to select a qualified attorney of the mortgagor's choice to search the title of the subject real estate and certify that title to the institution or land title insurance company, except that the institution may require the prospective mortgagor's attorney to provide it with evidence of adequate liability insurance or land title insurance or such other written policy requirements as the institution may determine necessary to protect its interests, as long as, if all requirements are met by the attorney chosen by the mortgagor, additional legal costs may not be assessed by the financial institution or credit union against the mortgagor for review of the title search or any other relevant title documents by the institution, its title company or attorney.

Every financial institution and credit union subject to this subsection shall provide written notice to the prospective mortgagor that the mortgagor has the right to select a qualified attorney of the mortgagor's choice for the performance of title work. The notice must inform the prospective mortgagor that, if the attorney chosen by the mortgagor meets the financial institution's requirements, additional fees may not be charged to the mortgagor for title work. If the prospective mortgagor indicates on the written notice that the mortgagor does not wish to exercise the mortgagor's right to select an attorney, then the institution may recommend an attorney.

This subsection may not be construed to require certification of title to a financial institution or credit union if that institution does not so require or to a land title insurance company if that company does not so require.

Any violation of this section by a financial institution authorized to do business in this State or credit union authorized to do business in this State is an anticompetitive or deceptive practice as defined in this chapter and subject to the remedies provided in this chapter in addition to such other remedies as may be provided otherwise by law.

[PL 1999, c. 218, §3 (AMD).]

5. Availability of funds for items deposited. With respect to items deposited into an account, financial institutions authorized to do business in this State and credit unions authorized to do business in this State shall make those funds available for withdrawal from that account within a reasonable time. The superintendent may adopt rules setting forth limitations and disclosure requirements governing funds availability. For purposes of this section, account means a checking account or any other transactional account, a savings account or a time account. If a federal law or regulation governing availability of funds is in effect, rules adopted under this subsection may not be more restrictive with respect to time periods in which funds must be available for withdrawal than those federal laws or regulations.
[PL 1999, c. 218, §4 (AMD).]

6. Returned check charges.

[PL 1989, c. 426 (NEW); MRSA T. 9-B §241, sub-§6 (RP).]

7. Restrictions on use of names of Maine financial institutions on credit cards. A credit card may be titled and may have the name of a financial institution authorized to do business in this State or credit union authorized to do business in this State on the card if:

A. The terms of the credit card contract comply with the laws applicable to that financial institution or credit union; or [PL 2003, c. 322, §12 (AMD).]

B. The name and state of the financial institution or credit union underwriting the debt appears on the credit card. [PL 2003, c. 322, §12 (AMD).]
[PL 2003, c. 322, §12 (AMD).]

8. Deposit production offices prohibited. No financial institution authorized to do business in this State or credit union authorized to do business in this State may operate deposit production offices in this State. The superintendent shall annually review the level of lending in this State relative to the level of deposits in this State of each financial institution authorized to do business in this State and each credit union authorized to do business in this State to determine whether deposit production offices are being operated. If the superintendent determines that a financial institution authorized to do business in this State or credit union authorized to do business in this State is operating deposit production offices, the superintendent may issue a cease and desist order pursuant to chapter 23. The superintendent may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. This subsection does not apply to limited purpose banks.
[PL 2005, c. 83, §6 (AMD).]

9. Restrictions on the use of the terms "savings," "bank" and derivatives of those terms. This subsection governs the use of the terms "savings," "bank" and derivatives of those terms.

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. [PL 2001, c. 211, §8 (AMD).]

B. Except as provided in paragraph A, a person, without prior written approval of the superintendent, may not use the terms "saving," "savings," "savings bank," "bank," "banker," "trust," "trust company," "banking" or "trust and banking company" or any derivatives of those terms as part of the name or title under which business is conducted or as a designation of such business. In determining whether to grant written permission, the superintendent shall consider whether the business to be conducted is similar to the business of banking and whether using those

terms or any derivatives of those terms could be deceptive or otherwise injurious to public interest. [PL 1995, c. 628, §18 (NEW).]

C. This subsection does not apply to out-of-state financial institutions, corporations or partnerships that, in the ordinary course of their business, have to file with the Secretary of State in processing the routine disposition of assets acquired by legitimate business dealings. [PL 1995, c. 628, §18 (NEW).]

D. A person who violates any provision of this subsection is subject to a civil penalty of not more than $10,000 for each violation. [PL 1995, c. 628, §18 (NEW).]

E. This subsection does not prohibit the use of any name of a person who was duly qualified to do business as a foreign corporation in that name under former Title 13-A, section 1201 on February 1, 1996. [RR 2001, c. 2, Pt. B, §6 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

[RR 2001, c. 2, Pt. B, §6 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

10. Deposit concentration. A financial institution authorized to do business in this State, a financial institution not authorized to do business in this State, a financial institution holding company, a foreign bank or a foreign bank holding company may not consolidate or merge or acquire control, directly or indirectly, of all or part of a financial institution authorized to do business in this State if, as the result of the consolidation, acquisition or merger, the acquiring institution would hold or control more than 30% of the total amount of deposits of financial institutions authorized to do business in this State that are attributable to branches located in this State; except, upon consideration of the decision-making criteria found in section 253, the superintendent may waive the 30% deposit concentration limit on a case-by-case basis. In calculating the amount of deposits that an acquiring institution may hold or control under this section, credit union shares are added to the amount of deposits of financial institutions authorized to do business in this State that are attributable to branches located in this State. The 30% deposit concentration limit does not apply to credit unions authorized to do business in this State.

[PL 2007, c. 79, §6 (AMD).]

11. Choice of insurance producer. A financial institution authorized to do business in this State 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 producer 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 producer, consultant 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 unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

[PL 1999, c. 218, §5 (AMD).]

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.

[PL 2001, c. 211, §9 (NEW).]

12. (REALLOCATED TO T. 9-B, §241, sub-§13) Privacy of consumer information.
[RR 2001, c. 1, §15 (RAL); PL 2001, c. 262, Pt. B, §7 (NEW).]

13. (REALLOCATED FROM T. 9-B, §241, sub-§12) Privacy of consumer information. A financial institution authorized to do business in this State or a credit union authorized to do business in this State shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); or the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001). This subsection is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24.

Any violation of this subsection is an anticompetitive or deceptive practice for the purposes of this chapter and is subject to the remedies provided in this chapter in addition to remedies otherwise provided by law.
[RR 2001, c. 1, §15 (RAL).]

14. Choice of accounting, tax or attest services provider. A financial institution authorized to do business in this State or a 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 may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an accounting, tax or attest services provider who is accredited as a certified public accountant, public accountant or enrolled agent, except that the financial institution or credit union may require the provider chosen by the purchaser or borrower to provide adequate evidence of liability insurance or such other written policy requirements as the financial institution or credit union may determine necessary to protect its interest.
[PL 2007, c. 185, §3 (NEW).]

15. Deceptive use of names. A person may not use in an unauthorized or deceptive manner the name, abbreviated name or title of any financial institution authorized to do business in this State, credit union authorized to do business in this State, financial institution holding company or their affiliates or subsidiaries in any written or oral advertisement or solicitation. Use of a name, abbreviated name or title is not unauthorized or deceptive if the person using the name, abbreviated name or title has obtained written authorization for such use from the financial institution, credit union, holding company, affiliate or subsidiary or if the use is limited solely to a truthful written advertisement or solicitation comparing the relative attributes of similar products or services offered by the financial institution, credit union, holding company, affiliate or subsidiary and the person using the name, abbreviated name or title.

The superintendent may, through the Attorney General, bring a civil action against any person who willfully violates any provision of this subsection. The penalty for violation of this subsection may not exceed $5,000 for each violation.

Any financial institution, credit union, holding company, affiliate or subsidiary whose name, abbreviated name or title is used by any person in violation of this subsection may, in addition to any other remedy available under the laws of this State, bring an action to enjoin such use and recover damages. The court shall award actual damages or $5,000 for each violation, whichever is greater, plus attorney's fees and costs, upon a finding that a violation has occurred.
[PL 2009, c. 103, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1977, c. 302 (AMD). PL 1983, c. 307, §2 (AMD). PL 1985, c. 311, §5 (AMD). PL 1985, c. 561 (AMD). PL 1989, c. 426 (AMD). PL 1991, c. 135 (AMD). PL

1991, c. 755, §2 (AMD). PL 1995, c. 628, §18 (AMD). PL 1997, c. 315, §13 (AMD). PL 1997, c. 660, §D2 (AMD). PL 1999, c. 218, §§2-5 (AMD). RR 2001, c. 1, §15 (COR). RR 2001, c. 2, §B6 (COR). RR 2001, c. 2, §B58 (AFF). PL 2001, c. 44, §11 (AMD). PL 2001, c. 44, §14 (AFF). PL 2001, c. 211, §§8,9 (AMD). PL 2001, c. 262, §B7 (AMD). PL 2003, c. 322, §12 (AMD). PL 2005, c. 83, §6 (AMD). PL 2007, c. 79, §6 (AMD). PL 2007, c. 185, §3 (AMD). PL 2009, c. 103, §1 (AMD).

§242. Deceptive advertising

1. Rules. The superintendent has authority to adopt rules, pursuant to section 251, defining, limiting or proscribing advertising by a financial institution authorized to do business in this State, a credit union authorized to do business in this State, an association of such institutions or a financial institution holding company, or representations made by those institutions, that is false, misleading or deceptive.
[PL 1999, c. 218, §6 (AMD).]

2. Orders against deceptive advertising.

A. The superintendent may issue an order in accordance with section 231 upon determining that any entity or entities described in subsection 1 has issued an advertisement or made a representation which is false, misleading or deceptive. [PL 1975, c. 500, §1 (NEW).]

B. If an entity has already issued or published such an advertisement or representation, the superintendent may order the entity to take such affirmative corrective action as he deems necessary and appropriate under the circumstances for the purpose of informing and protecting the public and other interested parties. [PL 1975, c. 500, §1 (NEW).]

C. The fact that rules and regulations have not been promulgated pursuant to this section shall not affect the validity of any order issued hereunder. [PL 1975, c. 500, §1 (NEW).]
[PL 1975, c. 500, §1 (NEW).]

3. Appeal. An interested party affected by the exercise of the superintendent's authority in subsection 2, paragraphs A or B shall have the right to appeal such decision or order pursuant to section 233, subsection 1 and shall also be entitled to rights specified in section 233, subsection 2.
[PL 1975, c. 500, §1 (NEW).]

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.
[PL 1997, c. 315, §14 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1997, c. 315, §14 (AMD). PL 1999, c. 218, §6 (AMD).

§243. Tie-in arrangements

1. Prohibition. A financial institution authorized to do business in this State or a credit union authorized to do business in this State 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 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; [PL 1997, c. 315, §15 (AMD).]

B. That the customer 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; [PL 1999, c. 218, §7 (AMD).]

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; [PL 1999, c. 218, §7 (AMD).]

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 [PL 1999, c. 218, §7 (AMD).]

E. That the customer 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. [PL 1999, c. 218, §7 (AMD).]

[PL 1999, c. 218, §7 (AMD).]

2. Exceptions. The superintendent may, pursuant to regulations issued in accordance with section 251, permit such exceptions to the prohibitions in subsection 1 as he considers will not be contrary to the public interest and the purposes of this section.

[PL 1975, c. 500, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1979, c. 663, §32 (AMD). PL 1997, c. 315, §15 (AMD). PL 1999, c. 218, §7 (AMD).

§243-A. Electronic terminals; fees for and records of transactions

1. Fees for use of terminals. A financial institution authorized to do business in this State or a credit union authorized to do business in this State that operates electronic terminals may charge fees for the use of the terminals as specified in this section.

A. A financial institution may charge a reasonable foreign transaction fee for the use of an electronic terminal if the fee is disclosed:

(1) On a sign posted on the electronic terminal or in clear view of a customer while viewing the electronic terminal; or

(2) Electronically during the course of the transaction in a manner that permits a customer to cancel the transaction without incurring the transaction fee.

For the purposes of this paragraph, "foreign transaction fee" means a fee charged for the use of an electronic terminal to a noncustomer of the financial institution that owns the electronic terminal. [PL 1991, c. 680, §1 (NEW).]

B. A financial institution may charge its own customers a reasonable fee for the use of an electronic terminal. [PL 1991, c. 680, §1 (NEW).]

[PL 1999, c. 218, §8 (AMD).]

2. Records of terminal transactions. For each transaction processed by an electronic terminal, except for a transaction involving a negotiable instrument that is its own receipt, the electronic terminal must make available to the customer at the time of the transaction a record of each transaction. The record must include:

A. The amount of the transaction. A fee for the transaction may be included in this amount if the electronic terminal is owned or operated by a financial institution other than the financial institution that holds the customer's account if the fee is disclosed on the record of the transaction and in accordance with subsection 1; [PL 1991, c. 680, §1 (NEW).]

B. The date of the transaction; [PL 1991, c. 680, §1 (NEW).]

C. The type of transaction and the type of account to which or from which money is transferred. Codes may be used for this purpose if they are explained on the record of the transaction; [PL 1991, c. 680, §1 (NEW).]

D. A number or code that identifies the customer, the customer's account number or the device used to access the electronic terminal; [PL 1991, c. 680, §1 (NEW).]

E. The location of the electronic terminal or a number or code identifying that location; and [PL 1991, c. 680, §1 (NEW).]

F. The name of each 3rd party to whom or from whom money is transferred, if the name provided by the customer can be reproduced by the electronic terminal on the record of the transaction. A code may be used for this purpose only if it is explained on the record of the transaction. [PL 1991, c. 680, §1 (NEW).]

[PL 1991, c. 680, §1 (NEW).]

3. Agreement to share electronic terminals. An agreement to share electronic terminals may not prohibit, limit or restrict the right of a financial institution authorized to do business in this State or a credit union authorized to do business in this State to charge a customer any fees allowed by state or federal law, or require a financial institution to limit or waive its rights or obligations under this section, except that a financial institution or credit union authorized to do business in this State may mutually agree with one or more other financial institutions or credit unions not to charge foreign transaction fees, as that term is defined in subsection 1, to the customers or members of those financial institutions or credit unions that are parties to the agreement.

[PL 1999, c. 218, §9 (AMD).]

SECTION HISTORY

PL 1991, c. 680, §1 (NEW). PL 1991, c. 853, §1 (AMD). RR 1997, c. 2, §36 (COR). PL 1999, c. 25, §1 (AMD). PL 1999, c. 218, §§8,9 (AMD).

§244. Exemption

A financial institution authorized to do business in this State or credit union authorized to do business in this State subject to the provisions of this chapter is exempt from the provisions of Title 5, chapter 10. [PL 2003, c. 322, §13 (AMD).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 2003, c. 322, §13 (AMD).