

Date: (Filing No. H-)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 639, L.D. 920, Bill, "An Act To Require Mortgage Servicers To Act in Good Faith in Dealings with Homeowners"

Amend the bill by striking out all of section 1.

Amend the bill in section 2 in subsection 11 by striking out all of the last paragraph (page 3, lines 11 to 14 in L.D.) and inserting the following:

'A mortgage servicer 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 subsection 12. As used in this section, "mortgage servicer" means a servicer who is responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage described in section 6111, subsection 1, including amounts for escrow accounts; making or advancing payments to the owner of a mortgage loan or other 3rd parties with respect to the amounts received from the borrower pursuant to a loan servicing contract; and evaluating borrowers for loss mitigation or loan modification options.'

Amend the bill by striking out all of section 3 and inserting the following:

'Sec. 3. 14 MRSA §6321-A, sub-§12, as enacted by PL 2009, c. 402, §18, is 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 subsection 11 participating in the mediation process is obligated to participate in good faith. In determining the nature and extent of appropriate sanctions, the court shall consider the need for deterrence of similar future conduct by the party being sanctioned and by others, and is permitted to 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. As used in this section, "good

COMMITTEE AMENDMENT

1 faith" means honesty in fact and the observance of reasonable commercial standards of
2 fair dealing.'

3 Amend the bill in section 4 in subsection 13 in the 3rd line from the end (page 4, line
4 4 in L.D.) by striking out the following: "section 6113, subsection 1, paragraph B" and
5 inserting the following: 'subsection 11'

6 Amend the bill by striking out all of section 5.

7 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
8 section number to read consecutively.

9 **SUMMARY**

10 This amendment removes from the bill the private action for damages against a
11 mortgage servicer, but incorporates the definitions of "mortgage servicer" and "good
12 faith" in that provision into the mediation statutes. The amendment deletes the data
13 collection requirement. The amendment, like the bill, requires a mortgage servicer to
14 participate in mediation in good faith.