

MAINE STATE LEGISLATURE

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(EMERGENCY)

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FIRST REGULAR SESSION

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ONE HUNDRED AND ELEVENTH LEGISLATURE

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Legislative Document

No. 1082

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H.P. 790

House of Representatives, March 7, 1983

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Submitted by the Department of Business Regulation pursuant to Joint Rule 24.

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On Motion of Representative Brannigan of Portland, referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

11

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

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Cosponsors: Representative Racine of Biddeford, Representative Stevens of Bangor and Representative Martin of Van Buren.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD

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NINETEEN HUNDRED AND EIGHTY-THREE

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18

AN ACT to Override the Federal Preemption
of State Authority to Regulate Alternative
Mortgage Transactions.

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Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

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Whereas, the United States Garn-St. Germain Depository Institutions Act of 1982, Public Law 97-320, Section 804, has preempted certain provisions of the Maine Banking Code and Consumer Credit Code relating to alternative mortgage instruments; and

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Whereas, the federal preemption is effective unless a state overrides the preemption by an explicit state law; and

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1 Whereas, state laws and regulations designed to
2 protect consumers can be ignored during this pre-
3 emption period and can only be reinstated upon the
4 effective date of this override; and

5 Whereas, in the judgment of the Legislature,
6 these facts create an emergency within the meaning of
7 the Constitution of Maine and require the following
8 legislation as immediately necessary for the preser-
9 vation of the public peace, health and safety; now,
10 therefore,

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

13 Sec. 1. 9-A MRSA §1-110, as enacted by PL 1981,
14 c. 218, is amended by adding at the end a new para-
15 graph to read:

16 The Legislature declares that the preemption pro-
17 vided by the United States Garn-St. Germain Deposi-
18 tory Institutions Act of 1982, Public Law 97-320,
19 Section 804, shall not apply. The Legislature fur-
20 ther declares that the applicable provisions of the
21 Maine Consumer Credit Code relating to alternative
22 mortgage instruments shall apply, including, but not
23 limited to, sections 3-308 and 3-310.

24 Sec. 2. 9-B MRSA §241, sub-§3 is enacted to
25 read:

26 3. Alternative mortgage instruments. The Legis-
27 lature declares that the preemption provided by the
28 United States Garn-St. Germain Depository Insti-
29 tutions Act of 1982, Public Law 97-320, Section 804,
30 shall not apply. The Legislature further declares
31 that the superintendent shall have the power to
32 promulgate regulations in accordance with section
33 251, which define, limit or otherwise authorize the
34 use of alternative mortgage instruments by financial
35 institutions. The Legislature further finds and
36 declares that regulations promulgated prior to the
37 preemption of the United States Garn-St. Germain
38 Depository Institutions Act of 1982 shall continue to
39 have full force and effect.

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

STATEMENT OF FACT

The Bureau of Banking has promulgated regulations authorizing the use of alternative mortgage instruments by state-chartered financial institutions. These regulations contain certain consumer safeguards and disclosure requirements considered necessary to increase public awareness. The United States Garn-St. Germain Depository Institutions Act of 1982 preempts all state laws governing the use of alternative mortgage instruments. This amendment to the Maine Banking Code overrides that provision of this federal law and reinstates current regulations.

In addition, the Maine Consumer Credit Code regulates certain mortgage transactions such as mobile home credit sales or loans not involving real estate and any 2nd lien mortgage. The preemption of the United States Garn-St. Germain Depository Institutions Act of 1982 also applies to these types of transactions. The prohibition on balloon payments and the disclosures required by Title 9-A, section 3-310 for variable rate contracts will be reinstated with this override.

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