

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 788

H.P. 565

House of Representatives, February 15, 2005

An Act To Establish Consumer Protections and Regulations for Deferred Deposit Loans

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DUPLESSIE of Westbrook.
Cosponsored by Senator SULLIVAN of York and
Representatives: PERRY of Calais, TARDY of Newport, Senators: DAVIS of Piscataquis,
TURNER of Cumberland.

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

4 Sec. 1. 32 MRSA c. 80-B is enacted to read:

6 CHAPTER 80-B

8 DEFERRED DEPOSIT LOAN ACT

10 §6185. Short title

12 This chapter may be known and cited as "the Deferred Deposit Loan Act."

14 §6186. Definitions

16 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

18 1. Administrator. "Administrator" means the Director of
20 the Office of Consumer Credit Regulation within the Department of
22 Professional and Financial Regulation.

24 2. Consumer. "Consumer" means a person other than an
26 organization who is the buyer, lessee or debtor to whom credit is
28 granted in a deferred deposit loan transaction.

30 3. Deferred deposit loan. "Deferred deposit loan" means a
32 transaction when a lender, for a fee, does the following:

34 A. Accepts a dated instrument from a consumer;

36 B. Agrees to hold the dated instrument for a period of time
38 prior to negotiation or deposit of the dated instrument; and

40 C. Pays to the consumer, credits to the consumer's account
42 or pays to another person on the consumer's behalf the
44 amount of the dated instrument, less charges authorized
46 under section 6193.

48 4. Instrument. "Instrument" means a personal check or
50 authorization to transfer or withdraw funds from an account
signed by the consumer and made payable to a person subject to
this chapter.

5. Lender. "Lender" means any person who offers or makes a
deferred deposit loan, who arranges a deferred deposit loan for a
3rd party or who acts as an agent for a 3rd party, regardless of
whether the 3rd party is exempt from licensing under this chapter
or whether approval, acceptance or ratification by the 3rd party
is necessary to create a legal obligation for a 3rd party.

2 "Lender" includes, but is not limited to, a supervised lender as
4 defined in Title 9-A, section 1-301, subsection 39 and a
6 supervised financial organization as defined in Title 9-A,
8 section 1-301, subsection 38-A. Notwithstanding that a
supervised lender or supervised financial organization may be
exempt from this chapter's license and fee requirements under
federal law, all other applicable provisions apply to both a
deferred deposit loan and a lender.

10 6. Person. "Person" means an individual or an organization.

12 7. Renewal. "Renewal" means any deferred deposit loan when
14 the loan is not paid in full and the lender agrees to allow the
consumer to pay the fee only for a new deferred deposit loan.

16 **§6187. License requirements**

18 1. License; renewal. A lender may not engage in the
20 business of making deferred deposit loans without obtaining a
22 license from the administrator as provided in this chapter. A
24 license may not be transferred or assigned. A license issued
under this chapter expires on December 31st of the year approved.
An annual license application must be mailed by December 1st of
each year for the following year.

26 2. Application. An application for an initial license or
28 renewal under this chapter must be made in writing in the form
and manner approved by the administrator. The application must
include the following information:

30 A. The name and address of the license applicant and, if
32 the applicant is a corporation, limited liability company or
34 partnership, the name and address of each officer, director,
36 registered agent or principal member of the corporation,
limited liability company or partnership; and

38 B. The physical location and address of each business
office to be licensed.

40 The application may also include any other information concerning
42 the financial responsibility, background, experience and
activities of the applicant required by the administrator.

44 3. Fees. The initial application for a license may be
46 filed at any time and must include a fee of \$500. The license
fee is not refundable in any event and is not abated by
48 surrender, suspension or revocation of the license. The fee for
a renewal of a license is \$250.

2 4. Qualifications. Upon the filing of an application, the
3 administrator must determine whether the applicant and its
4 members, officers, directors or principals have the financial
5 responsibility, character, experience and general fitness to
6 engage in the business of making deferred deposit loans in a fair
7 and efficient manner in accordance with the public interest and
8 the applicable law. If the administrator fails to make such a
9 determination under this subsection, the administrator may not
10 issue a license and shall notify the applicant in writing of the
11 reasons for the denial.

12 5. Investigations. Prior to issuing a license, the
13 administrator may make such investigations as the administrator
14 determines necessary to verify that the applicant for a license
15 has complied with the applicable provisions of this chapter.

16 6. Display of licenses. A license must be prominently
17 displayed in each business location of the lender.

20 7. Additional offices or relocations. A lender may not
21 open an additional office or relocate any office without prior
22 approval of the administrator. An application for approval must
23 be made in writing in the form and manner approved by the
24 administrator and must include a fee of \$150. The administrator
25 shall approve the additional office or relocation unless the
26 administrator finds that the lender does not have the required
27 assets or has not conducted business in accordance with this
28 chapter. Unless the administrator mails a notice denying
29 approval within 30 days of receiving the request, the application
30 is approved. The lender shall give written notice to the
31 administrator within 10 days of commencing business at the
32 additional or relocated office.

34 8. Notification of closing. A lender shall notify the
35 administrator in writing within 10 days of the closing of any
36 business office and provide any other information related to the
37 closing required by the administrator.

38 **§6188. Surety bond**

40 Each license application must be accompanied by evidence of
41 a surety bond in the aggregate amount of \$10,000 per business
42 office, not to exceed a total of \$50,000, to run to the
43 administrator for use by the administrator and any person or
44 persons who may have a cause of action against a lender. The
45 terms of the bond must run concurrently with the period of time
46 during which the license is in effect. The bond must be
47 conditioned on the applicant or lender performing all written
48 agreements with consumers, accurately accounting for all funds
49 received and operating the business in accordance with this
50 chapter and other applicable laws.

2 **§6189. Retention of books, accounts and records**

4 A lender shall maintain all books, accounts and records
6 necessary to determine the lender's compliance with this
8 chapter. Books, accounts and records related to making deferred
10 deposit loans must be maintained apart and separate from other
 books, accounts and records of the lender. Books, accounts and
 records must be retained for at least 3 years after final payment
 on any deferred deposit loan.

12 **§6190. Reporting requirements**

14 1. Annual report. A lender shall annually on or before
16 March 31st submit a written report to the administrator with
18 information required by the administrator concerning the deferred
20 deposit loans issued during the preceding calendar year. The
 report must be submitted in the form and manner required by the
 administrator.

22 2. Other reporting. Within 15 days of the event, a lender
24 shall notify the administrator of any of the following events and
 describe the expected impact of the event on the business
 operations of the lender:

26 A. The filing of bankruptcy, reorganization or receivership
28 proceedings by or against the lender;

30 B. Any regulatory or administrative proceedings instituted
 by any governmental authority involving the lender;

32 C. Any felony indictments of the lender or its directors,
34 officers, members, principals or partners; or

36 D. Any felony convictions of the lender or its directors,
 officers, members, principals or partners.

38 **§6191. Examinations**

40 1. Examination. The administrator may examine the books,
42 accounts and records of a lender and make investigations to
44 determine compliance with this chapter. At a minimum, the
 administrator shall conduct an examination of each lender
 licensed under this chapter at least once every 3 years.

46 2. Expenses. The expenses of the administrator necessarily
48 incurred in the examination or investigation of a lender are
 chargeable to the lender.

2 **§6192. Requirements and disclosures for deferred deposit loan**
3 **agreements**

4 A lender shall comply with the following requirements of
5 this section.

6 1. Written loan agreement. Each deferred deposit loan must
7 be evidenced by a written loan agreement that is signed and dated
8 by the consumer and an authorized representative of the lender on
9 the same day the loan is made and disbursed. The written
10 agreement must contain the name of the consumer, the transaction
11 date and the amount of the instrument. The agreement must also
12 establish a date not less than 7 days or more than 40 days after
13 the loan transaction date when the instrument may be deposited or
14 negotiated by the lender. The lender shall give a duplicate of
15 the original loan agreement to the consumer at the time of the
16 transaction.

17 2. Required disclosures. The loan agreement must also
18 disclose the following to the consumer:

19 A. The principal amount of the loan;

20 B. Any fees charged;

21 C. The annual percentage rate determined in accordance with
22 Federal Reserve Board Regulation Z;

23 D. Evidence of receipt from the consumer of a check dated
24 the same date as the loan to be used as security for the
25 loan or evidence of authorization to withdraw or transfer
26 funds from the consumer's account for the benefit of the
27 lender;

28 E. An agreement by the lender not to present the check for
29 payment or deposit until a specified maturity date; and

30 F. A description of the consumer's right to cancel the loan
31 transaction at any time before the close of business on the
32 next business day following the transaction by repaying to
33 the lender the amount advanced to the consumer.

34 **§6193. Authorized charges to consumers**

35 A lender may charge the following fees or charges to a
36 consumer in conjunction with making or arranging a deferred
37 deposit loan.

38 1. Administrative fee. A lender may charge as a fee for
39 each loan an amount that does not exceed 7.5% of the total amount
40 of loan proceeds advanced to the consumer.
41

2 2. Dishonored instrument charge. If an instrument held by
4 a lender as a result of a deferred deposit loan is returned to
6 the lender from a financial institution due to insufficient
8 funds, a closed account or stop payment order, the lender may
10 contract for and collect a returned instrument charge, not to
12 exceed \$25. The charge under this subsection is not permitted if
14 the instrument dishonored by a financial institution or a stop
16 payment order is placed by the consumer due to forgery or theft
 of the instrument. This subsection does not prohibit a lender
 from also exercising all civil means authorized by law to collect
 the face value of the instrument and any costs or attorney's fees
 awarded by a court and incurred as a result of the dishonored
 instrument, except that an award of attorney's fees may not
 exceed the total amount of the deferred deposit loan.

 For the purposes of this section, "financial institution"
has the same meaning as in Title 9-B, section 131, subsection 17.

20 §6194. Prohibited practices

22 A lender may not engage in any of the following business
24 practices.

26 1. Prohibited clauses. A lender may not obtain any
agreement from the consumer:

28 A. Giving the lender or any 3rd party a power of attorney
30 or authority to confess judgment for the consumer;

32 B. Authorizing the lender or any 3rd party to bring suit
34 against the consumer in a court outside this State; or

36 C. Waiving any right granted to the consumer under this
38 chapter.

40 2. Renewal. A lender may not renew the same loan more than
42 twice.

44 3. Postdated instrument. A lender may not require or
46 accept a postdated instrument as security for or in payment of a
48 loan.

50 4. Obligation on more than one loan. A lender may not
cause a consumer to be obligated on more than one loan at any
time for the purpose of increasing charges payable by the
consumer.

5. Other security. A lender may not take an interest in
any property other than an instrument as security for a loan.

2 6. Prescribed terms. A lender may not make a deferred
4 deposit loan with a term of less than 7 days or more than 40 days.

6 7. Maximum loan amount. A lender may not lend an amount
8 greater than \$700 or 25% of the gross monthly income of a
 consumer, whichever is less, and the amount financed may not
 exceed \$700 at any time.

10 8. Maximum amount of instrument. An instrument held as a
12 result of a deferred deposit loan may not exceed \$822.50.

14 9. Treatment of Armed Forces personnel. A lender may not
16 engage in any of the following activities with respect to a
 deferred deposit loan issued to a consumer who is a member of the
 Armed Forces of the United States called to active duty:

18 A. The garnishment of wages or salary for repayment of a
20 loan;

22 B. The initiation of any collection activity during the
 period of active duty; and

24 C. Any communication with the military chain of command
26 with regard to a loan issued to a member of the Armed Forces
 of the United States.

28 A lender must comply with the terms of any repayment agreement
30 negotiated through a military counselor on behalf of a consumer
 who is a member of the Armed Forces of the United States and
 called to active duty.

32 **§6195. Consumer rights**

34 1. Criminal liability. A consumer is not subject to any
36 criminal liability or penalty for entering into a deferred
38 deposit loan agreement in the event the instrument held by the
40 lender is dishonored unless the consumer's account on which the
 instrument is drawn was closed before the specified maturity date
 in the loan agreement.

42 2. Right of rescission. A consumer has the right to
44 rescind a deferred deposit loan on or before the close of the
 next business day following the transaction date of the loan by
 repaying to the lender the amount advanced to the consumer.

46 **§6196. Suspension or revocation of licenses**

48 After notice and hearing, the administrator may suspend or
50 revoke a lender's license if the administrator finds that:

2 1. Grounds for denial. A fact or condition exists that, if
it had existed at the time when the lender applied for its
license, would have been grounds for denying the application;

4
6 2. Violation. The lender knowingly violates a provision of
this chapter or a rule or order validly adopted by the
administrator under authority of this subchapter or violates any
8 other law or rule applicable to the lender's conduct;

10 3. Conviction; judgment. The lender has been convicted of a
felony or subject to a court judgment involving fraud,
12 misrepresentation or deceit;

14 4. Federal; other state order. A federal or state
administrative order has been entered against the lender for a
16 violation of federal law or rule or another state's law or rule;

18 5. Failure to perform written agreements. The lender has
failed to conduct its business in accordance with written
20 agreements with consumers;

22 6. Refusal of examination. The lender refuses to permit
the administrator to make an examination or investigation
24 authorized by this chapter;

26 7. Failure to respond. The lender fails to promptly and
adequately respond to communications or orders from the
28 administrator; or

30 8. Failure to report; make payments. The lender willfully
fails to make a report or fails to pay any fees required by this
32 chapter.

34 For purposes of this section, acts of any officer, director,
member, principal or partner are deemed acts of the lender.

36 **§6197. Administrative enforcement orders**

38
40 After notice and hearing, the administrator may order any
person to cease and desist from engaging in violations of this
chapter. The administrator may also order affirmative action
42 designed to correct past or future violations of this chapter.
Any hearing held under this subsection must be conducted in
44 accordance with the procedures of the Maine Administrative
Procedure Act, Title 5, chapter 375, subchapter 4. A respondent
46 aggrieved by an order of the administrator may obtain judicial
review of the order and the administrator may, through the
48 Attorney General, obtain an order of the court for enforcement of
its order in the Superior Court. The proceedings for review or
50 enforcement must be initiated and conducted in accordance with

2 the Maine Administrative Procedure Act, Title 5, chapter 375,
3 subchapter 7.

4 **§6198. Violations; civil penalties**

6 The administrator, through the Attorney General, may bring a
7 civil action against a person to recover a civil penalty for
8 knowingly violating this chapter and if the court finds that the
9 defendant has engaged in a knowing violation of this chapter or a
10 violation of an assurance of discontinuance, it may assess a
11 civil penalty of not more than \$1,000. For the purposes of this
12 section, each separate violation may be subject to the penalty
13 permitted under this section, and, for violations of section
14 6194, each deferred deposit loan made or arranged in violation of
15 that section constitutes a separate violation.

16 **§6199. Rules**

18 The administrator shall adopt rules to implement the
19 provisions of this chapter as necessary. Rules adopted pursuant
20 to this chapter are routine technical rules as defined in Title
21 5, chapter 375, subchapter 2-A.

24 **SUMMARY**

26 This bill establishes a regulatory mechanism for deferred
28 deposit loans. The bill designates the Department of
29 Professional and Financial Regulation, Office of Consumer Credit
30 Regulation as the regulator of lenders making deferred deposit
31 loans. It sets forth necessary licensing, fees and bond
32 requirements for lenders. The bill also sets out requirements
33 for lender reporting and examination of these lenders.

34 The bill specifically provides a number of consumer
35 protections, including the disclosure requirements for written
36 loan agreements, maximum loan amounts, limitations on fees
37 charged to consumers, maximum and minimum terms for loan
38 agreements and requirements for collection practices.