

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION
(EMERGENCY)

ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1789

H. P. 1283

House of Representatives, January 17, 1966

The Committee on Legal Affairs suggested.

JEROME G. PLANTE, Clerk

Presented by Mr. Cote of Lewiston.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SIX

**AN ACT Establishing a Home Repair Financing Act and Defining and
Regulating Secondary Mortgage Loans.**

Emergency preamble. Whereas, under the present statutes there is no law regulating the fraudulent and dishonest practices and abuses existing in the home improvement business and the field of secondary mortgage financing; and

Whereas, such practices and abuses are contrary to the well being and against the public interest of the people of this State; and

Whereas, the following legislation is vitally essential to provide for necessary law enforcement to prevent the continuation of such practices and abuses; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. R. S., T. 9, c. 360, additional. Title 9 of the Revised Statutes is amended by adding a new chapter 360, Part 9, to read as follows:

**'PART 9
HOME REPAIR FINANCING
CHAPTER 360
HOME REPAIR FINANCING**

§ 3721. Short title

Chapter 360 may be cited as "The Home Repair Financing Act."

§ 3722. Definitions

In this chapter, unless the context otherwise indicates:

1. Cash price. "Cash price" means the cash sales price for which the home repair contractor would sell the goods and services which are the subject matter of a home repair contract if the sale were a sale for cash rather than an installment sale;

2. Commissioner. "Commissioner" means the Bank Commissioner of the State of Maine and includes those members of his department designated by him to administer and enforce this chapter;

3. Credit service charge. "Credit service charge" means that amount by which the time sales exceeds the aggregate of the cash price and the amounts specifically included for official fees;

4. Down payment. "Down payment" means all payments made in cash to the home repair contractor and all allowances given by the home repair contractor to the owner prior to or substantially contemporaneous with the execution of the home repair contract;

5. Goods. "Goods" means all chattels personal which are furnished or used in the modernization, rehabilitation, repair, alteration or improvement of real property except those furnished or used for a commercial or business purpose or for resale, and except stoves, freezers, refrigerators, air conditioners other than those connected with a central heating system, hot water heaters and other appliances furnished for use in a home and designated to be removable therefrom without material injury to the structure;

6. Holder. "Holder" means any person who is entitled to the rights of a home repair contractor under a home repair contract;

7. Home financing agency. "Home financing agency" means and includes any person, other than a home repair contractor, engaged, directly or indirectly, in the business of purchasing, acquiring, soliciting or arranging for the acquisition of home repair contracts, or any obligation in connection therewith by purchase, discount, pledge or otherwise;

8. Home repair contract. "Home repair contract" means an agreement, whether contained in one or more documents, between a home repair contractor and an owner to pay the time sales price of goods and related services in installments over a period of time greater than 3 months;

9. Home repair contractor. "Home repair contractor" means any person engaged in the business of selling goods and related services pursuant to a home repair contract;

10. Official fees. "Official fees" means the fees to be paid to a public officer for obtaining any permit or filing any lien or mortgage taken or reserved as security pursuant to a home repair contract;

11. Owner. "Owner" means a person who buys goods or services pursuant to a home repair contract or one who succeeds to the rights or assumes the obligations of such person;

12. Services. "Services" means labor, equipment and facilities furnished or used in connection with the installation or application of goods in the modernization, rehabilitation, repair, alteration or improvement of real property;

13. Time sales price. "Time sales price" means the total amount to be paid pursuant to the contract excluding default charges authorized under this chapter.

§ 3723. Form of contract

1. Contents. Every home repair contract shall:

A. Be in writing and contain the entire agreement between the owner and the home repair contractor;

B. State names and addresses of all parties, the dates when executed by the parties and contain a description of the goods and services;

C. Be completed in full without any blank spaces to be filled in after the contract is signed by the owner, except for serial numbers or identifying marks which are not available for the description of the goods at that time;

D. Contain the following notice in 10-point bold type or larger, directly above the space provided for the signature of the owner:

"NOTICE TO OWNER

Do not sign this contract in blank.

You are entitled to a copy of the contract at the time you sign.

Keep it to protect your legal rights.";

E. State if workmen's compensation and public liability insurance are carried by the home repair contractor and applicable to the work to be performed under the contract and if the home repair contractor is qualified by law as a self-insurer.

2. Prohibited contract provisions. No home repair contract shall contain:

A. Any acceleration clause under which any part or all of the time balance not yet matured may be declared due and payable because the holder deems himself to be insecure;

B. Any agreement to pay any amount other than the time sales price of the goods and services furnished under the contract;

C. Any power of attorney to confess judgment or any other power of attorney;

D. Any provision relieving the home repair contractor from liability upon any claim which the owner may have under the contract;

E. Any provisions whereby the owner waives any right of action against the home repair contractor or holder or other person acting in his or their be-

half for any act committed in the collection of the payments under the contract or in the repossession of the goods, the subject matter of the home repair contract;

F. Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned;

G. Any provision for a payment or credit to any owner for the privilege of placing any sign on the premises where the work is being done or for recommending to the home repair contractor the names of any person or persons, who might be interested in making an installment home repair contract unless such provision has been approved by the commissioner.

§ 3724. Promissory notes

A home repair contract shall not require execution of a note or series of notes by the owner which, when separately negotiated, will cut off as to third parties any right of action or defense which the owner may have against the contractor.

The contract may require execution of a promissory note but only if it bears on the same side of the note as contains the maker's signature the following legend in at least 10-point bold type: "Payment of this note is subject to the terms of a home repair contract of even date between maker and payee." No such note may be negotiated or otherwise transferred without simultaneous delivery of the related contract.

§ 3725. Contract copy to owner

Every home repair contractor shall furnish without charge a completely executed copy of the home repair contract to the owner immediately after the owner signs such contract and any acknowledgment of receipt thereof by the owner shall be in 10-point bold type or larger.

§ 3726. Certificate of completion

No home repair contractor shall request or accept a certificate of completion signed by the owner prior to the actual completion of the work to be performed under the home repair contract.

§ 3727. Contract items

Every home repair contract shall state separately:

1. Cash price. The cash price of the goods and services to be furnished;
2. Down payment. The down payment;
3. Unpaid cash balance. The unpaid cash balance which is the difference between subsections 1 and 2;
4. Official fees. The official fees;
5. Principal balance. The principal balance, which is the sum of subsections 3 and 4;

6. Credit service charge. Credit service charge;

7. Time balance. The time balance, which is the sum of subsections 5 and 6, the number of installments required, the amount of each installment and the due dates thereof.

§ 3728. Payment of time balance.

Every home repair contract shall provide for the payment of the time balance at substantially equal intervals of time and in substantially equal amounts. When appropriate for the purpose of facilitating payment, the contractor may provide for payments on a schedule which reduces or omits payments over a period or periods not in excess of 93 days in any 12-month period.

§ 3729. Credit service charges; prohibitions

1. Credit service charge limitation.

A home repair contractor may impose and receive a credit service charge not more than the following:

A. In any case in which the due date of the last installment of the contract is more than 8 months after the date of the contract, \$7 per \$100 per year computed on the principal balance, or \$12, whichever is greater;

B. In any case in which the due date of the last installment of the contract is 8 months or less after the date of the contract, \$7 per \$100 per year computed on the principal balance, or \$10, whichever is greater.

2. Prohibited charges. No home repair contractor or any other person shall charge, collect or receive from any owner, directly or indirectly, any further or other amount for costs, charges, insurance premiums, examination, appraisal service, brokerage, commission, interest, discount, expense, fee, fine penalty or other thing of value in connection with a home repair contract other than the charges permitted by this chapter, except court costs, attorney's fees and the expenses of retaking and storing repossessed goods which are authorized by law.

§ 3730. Delinquency charges and attorney's fees

1. Delinquency and collection charge. A home repair contract may provide for a delinquency or collection charge for default in the payment of any such contract or any installment thereof, if such default continues for a period of 10 days. Such charge shall not exceed 5% of the amount of the installment in default or \$5 whichever is the lesser and may be collected in cash or charged to the owner's account. The delinquency charge for any one installment shall not be charged or collected more than once. If charged to the owner's account such charge shall be levied within 35 days from the date of such default and written notification that such charge has been made shall be mailed to the owner within 5 days from the date when such charge was made.

2. Attorney's fees. The home repair contract may also provide for the payment of reasonable attorney's fees when a payment in default for a period of

10 days is referred to an attorney, not a salaried employee of the holder of the contract, for collection.

§ 3731. Receipt for cash payment

Whenever payment is made in cash on account of any home repair contract, the person receiving such payment shall, at the time of receiving such payment, furnish to the person making such payment a written receipt therefor showing the date, identification of the account and the amount paid. Unless notice has been given to the owner of an assignment of a home repair contract, payment thereunder or tender thereof by the owner to the last known holder of such contract shall be binding upon any holder or assignee thereof.

§ 3732. Credit upon anticipation of refund payment

Any owner may satisfy in full at any time before maturity the amount of any balance to become due on any home repair contract and in so satisfying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the credit service charge, less an acquisition cost of \$15, as the sum of the periodical time balances scheduled by the contract to follow the installment date after the date of prepayment bears to the sum of all the periodical time balances under the scheduled payments in the original contract. Where the amount of the credit for anticipation of payments is less than \$1, no refund need be made.

§ 3733. Extension or deferment

The holder of a home repair contract, upon agreement in writing with the owner, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The holder may charge and contract for the payment of an extension or deferral charge by the owner and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.

§ 3734. Refinancing

The holder of a home repair contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinance charge by the owner and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of official fees incident to such refinancing after the deduction of a refund credit in an amount equal to that to which the owner would have been entitled under section 3732 if he had prepaid

in full his obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. Such refinance charge shall not exceed the rate of finance charge provided under this chapter. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, any additional official fees, the amount of the finance charge under the refinancing agreement, the new unpaid time balance and the new schedule of installment payments.

§ 3735. Statement of account

Upon written request from the owner, the holder of the home repair contract shall deliver to the owner within 10 days from receipt of the written request a statement of the owner's account showing the date and amount of all payments made or credited to the account and the total amount, if any, unpaid under the contract. Not more than 2 such statements shall be required in any 12-month period.

§ 3736. Payment of contract in full

With respect to contracts pursuant to which there is a lien, mortgage or encumbrance upon the goods or real property, upon payment in full by the owner of the time sales price and other amounts lawfully due under a home repair contract, the holder shall:

1. Original instruments. Return to the owner the original instruments evidencing indebtedness under a home repair contract which were signed by the owner or his sureties or guarantors in connection with such contract, excepting such instruments as are filed with a public official and retained in the files of such official;
2. Security interest. Release all security interest in the goods and real property affected by the home repair contract; and
3. Delivery. Deliver to the owner such good and sufficient assignments, releases of liens and mortgages on personal and real property and such other instruments of title as may be necessary to vest the owner with complete evidence of title.

With respect to all other contracts, the holder, upon payment in full by the retail buyer of the time sales price and other amounts lawfully due under a home repair contract, shall furnish the owner with such instruments as the commissioner may by regulation provide.

§ 3737. Unauthorized charges

All costs and charges in connection with such contract which are not authorized by this chapter shall be unenforceable. Any payment of such costs or charges shall be applied to the next maturing installment or, if the contract has been fully paid, remitted to the owner and the owner shall be entitled to recover all such costs or charges.

§ 3738. Licensees

No person shall engage in the business of a home financing agency or a home repair contractor in this State without first obtaining a license from the commissioner as provided for in this chapter. Any industrial bank, trust company or national bank authorized to do business in this State shall be authorized to transact business as a home financing agency, subject to this chapter, except that it shall not be required to obtain a license or pay a license fee hereunder. No license issued under this chapter shall be transferable or assignable.

§ 3739. Application for license

Application for a license under this chapter shall be in writing, under oath, and shall be in the form prescribed by the commissioner.

The application shall state the name and residence and business addresses of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof. It shall state the address where the business is to be conducted, demonstrate the financial responsibility of the applicant and set forth any other information the commissioner may require.

§ 3740. Approval or rejection of license application

Within 60 days after the filing of the application and the payment of the fees herein set forth the commission shall:

1. Issue license. Issue and deliver to the applicant a license to engage in the business of a home financing agency or a home repair contractor in accordance with this chapter.
2. Refuse to issue license. Refuse to issue the license for any reason for which he may suspend, revoke or refuse to renew any license under this chapter.

§ 3741. Refusal of license; hearing

If the commissioner refuses to issue a license he shall:

1. Notification. Notify the applicant of the denial and of his right to request a hearing within 10 days;
2. License fee. If the applicant does not request a hearing, return the sum paid as a license fee;
3. Hearing. If the applicant requests such a hearing, give notice of the grounds for refusal and hold a hearing thereon, and within 30 days after such hearing the commissioner shall file a written decision containing his findings and conclusions and serve a copy thereof upon the applicant.

§ 3742. Licensee's name and location; changes

No licensee shall transact any business subject to this chapter under any other name or maintain an office at any other location than that designated in the license. In case such location be changed, the commissioner shall endorse the change of location on the license without charge.

§ 3743. License fees; renewals

Every home financing agency shall pay to the commissioner at the time of making the application and annually thereafter upon renewal a license fee of \$100. Each home repair contractor shall pay to the commissioner at the time of making the application and thereafter annually upon renewal a license fee of \$25.

§ 3744. License duration; abatement

No abatement in the amount of the said license fee shall be made if the license is issued for less than one year, nor if the license is surrendered, canceled or revoked prior to the expiration of the period for which such license was issued. Every license shall expire on December 31st of each year.

§ 3745. Revocation or suspension of license

The commissioner may suspend, revoke or refuse to renew any license issued hereunder, upon 10 days' notice in writing, forwarded by registered or certified mail to the principal place of business or residence of such licensee, stating the contemplated action and in general the grounds therefor, after reasonable opportunity to be heard, if he shall find that the licensee or any owner, director, officer, member, partner, employee or agent of such licensee has:

1. Misstatements. Made any material misstatement in the application;
2. Violation of law. Knowingly or without the exercise of due care failed to comply with or violated any provisions of this chapter;
3. Fraud. Defrauded any retail buyer or willfully failed to perform any written agreement with any owner;
4. Misrepresentation. Willfully misrepresented or failed to disclose any of the material particulars or the nature thereof required to be stated or furnished to the owner under this chapter;
5. Contracts signed in blank. Knowingly taken any instrument evidencing a home repair contract which was signed in blank;
6. Bad faith. Otherwise demonstrated lack of financial responsibility, unworthiness, bad faith or dishonesty.

§ 3746. Investigation of licensees

The commissioner shall have power to make such investigations as he shall deem necessary, and may examine the books, accounts, records and files of any person who is a party to or holder of a home repair contract. The commissioner shall have power to administer oaths and affirmations to any person whose testimony is required.

§ 3747. Commissioner's power of subpoena; contempt

The commissioner shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter pertaining to this chapter.

In case of a failure of any person to comply with any subpoena issued by the commissioner or to testify to any matter concerning which he may be lawfully

interrogated, the Superior Court, on application of the commissioner, may issue an order requiring the attendance of such person and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished as for contempt.

§ 3748. Records of transactions

Every home repair contractor, home financing agency and holder of a home repair contract shall maintain at its place or places of business such books, accounts and records relating to all transactions under this chapter as will enable the commissioner to enforce full compliance with the provisions hereof. All such books, accounts and records shall be preserved and kept available for such period of time as the commissioner may by regulation require. The commissioner may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the commissioner to determine compliance with this chapter.

§ 3749. Assignments

No holder shall sell, transfer or assign any obligation in connection with a home repair contract or any evidence of indebtedness thereunder to any person who is not authorized as a home financing agency, except that such obligation or evidence of indebtedness may be sold, transferred or assigned to a state or national bank outside of this State, if the contract is retained by the holder and collection of payments thereon is made to the holder.

§ 3750. Cash loans

No cash loan shall directly or indirectly be included in or combined or consolidated with any home repair contract or with any extension, deferment or refinancing agreement pertaining thereto.

§ 3751. Violations

Any home repair contractor, home financing agency or holder of a home repair contract and any officer, partner, member, employee, agent or representative of either who shall knowingly violate this chapter or shall directly or indirectly counsel, aid or abet such violation shall be liable to a fine of not more than \$2,500 for each offense.

Any person who violates section 3738 shall be guilty of a misdemeanor and shall be liable to a fine of not less than \$100 and not more than \$500 for each offense.

Sec. 2. R. S., T. 9, Part 10, c. 380, additional. Title 9 of the Revised Statutes is amended by adding a new part 10, chapter 380, to read as follows:

‘PART 10
SECONDARY MORTGAGE LOANS
CHAPTER 380
SECONDARY MORTGAGE LOANS

§ 4001. Short title

Chapter 380 may be cited as “The Secondary Mortgage Loan Act.”

§ 4002. Definitions

In this chapter, unless the context otherwise indicates:

1. Commissioner. "Commissioner" means the Bank Commissioner of the State of Maine.
2. Licensee. "Licensee" means any person duly licensed by the commissioner under this chapter.
3. Net proceeds. "Net proceeds" means the difference between the full amount of a secondary mortgage loan and the amount of interest taken in advance upon such loan pursuant to this chapter.
4. Payment period. "Payment period" means the period of time scheduled by the terms of a secondary mortgage loan to elapse between the days upon which installment payments are required to be made on such loan.
5. Person. "Person" means an individual, corporation, partnership or any other group of individuals however organized, but does not include any insurance company, financial institution as defined in section 222, credit union, national bank or federal savings and loan association authorized to do business in this State.
6. Secondary mortgage loan. "Secondary mortgage loan" means a loan in an amount in excess of \$2,500 made to an individual or partnership not to be repaid in 90 days or less which is secured in whole or in part by a mortgage upon any interest in real property used as a dwelling with accommodations for not more than 4 families, which property is subject to the lien of one or more prior mortgages or the purchase of any interest in an existing mortgage made to secure such a loan.

§ 4003. Necessity for license

No person shall make or negotiate, or offer to make or negotiate, any secondary mortgage loan in the regular course of business unless he, his broker, agent and other representative shall have first obtained a license from the commissioner as provided for by this chapter. A person shall not be deemed to be **acting in the regular course of business** if he makes or negotiates not more than 2 secondary mortgage loans in a calendar year.

§ 4004. Residence requirements

Every applicant for a license under this chapter shall have been a bona fide resident of this State for a period of at least 2 years prior to the date of filing the application for such license. In the case of a corporate applicant, the holder or holders of at least 50% of the stock of such corporation shall have resided in this State for a period of at least 2 years prior to the date of filing the application.

§ 4005. Application for license; content

Application for a license under this chapter shall be in writing, under oath, and shall be in the form prescribed by the commissioner.

The application shall state the name and residence and business addresses of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer, director and stockholder thereof. It shall state the address where the business is to be conducted and any other information the commissioner may require.

§ 4006. Issuance of license; appeal

Upon the filing of the application, approval of the bond and the payment of the fee, the commissioner shall investigate the facts concerning the application and the requirements provided for in this section. Within 10 days after the filing of such application, the commissioner shall mail notice of the receipt of such application to each licensee having a place of business in the community in which the applicant proposes to do business. If objections to the issuance of the license are filed with the commissioner within 20 days after notice of the application has been mailed by the commissioner, or if the commissioner has doubts that the applicant can meet the requirements of this section, the commissioner shall so notify the applicant, in writing, within 10 days after the expiration of the 20 days' limitation for the filing of objections. The applicant may, within 15 days thereafter, request a hearing on the application and if such request is made, the commissioner shall designate a time and place for such hearing, which time shall be not less than 7 days nor more than 30 days from the date such request for a hearing is made and the commissioner shall notify the applicant and any licensees that have filed objections of the time and place so designated.

If the commissioner shall find, after his investigation and after any hearing, that the financial responsibility, experience, character and general fitness of the applicant, and members thereof, if the applicant is a copartnership, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter, and that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business is to be conducted, and that the applicant has available for the purpose of making loans under this chapter at the specific location liquid assets of at least \$50,000, and that if the applicant is a corporation, that such corporation was formed or organized under the laws of the State of Maine, he shall thereupon enter an order granting such application, file his findings as a public record in his office and forthwith issue and deliver a license to the applicant. If he shall not so find, he shall enter an order denying the application, file his findings as a public record in his office, and forthwith notify the applicant of the denial.

The commissioner shall approve or deny every application within 60 days from the filing thereof with the fee and the approved bond unless the period is extended by written agreement between the applicant and the commissioner. In the event of a hearing the commissioner's decision shall be made within 30 days after the conclusion of the hearing.

Each license shall expire on the last day of December of the year in which issued or for which a license fee shall have been paid unless prior to each De-

ember 15th, the licensee shall pay to the commissioner the fee provided for in section 4008 for each license held by him as a license fee for the succeeding calendar year, and file with the commissioner substantiation of the renewal or continuance of the bond provided for in section 4009.

Upon the refusal of the commissioner to issue such license, an appeal may be taken in accordance with Title 5, chapters 305 and 307.

§ 4007. Licenses

Each license shall specify the location of the office or branch and must be conspicuously displayed therein. In case such location be changed, the commissioner shall endorse the change of location on the license without charge.

Such license shall not be transferable or assignable.

No licensee shall transact the business provided for by this chapter under any other name or maintain an office at any other location than that designated in the license.

§ 4008. License fee; renewal

Every licensee shall pay to the commissioner at the time of making the application and annually thereafter upon renewal a license fee of \$25.

§ 4009. Bonding

Every licensee shall file with the commissioner a corporate surety bond in the principal sum of \$5,000. Such bond shall be in form satisfactory to the commissioner and shall be issued by a surety company authorized to transact business in this State. The bond shall run to the State and shall be conditioned that the licensee will comply with this chapter. The aggregate liability of the surety on the bond shall in no event exceed the amount of such bond.

§ 4010. Abatement of license fee

No abatement in the amount of said license fee shall be made if the license is issued for less than one year, nor if the license is surrendered, cancelled or revoked prior to the expiration of the period for which such license was issued.

§ 4011. Revocation or suspension of license

The commissioner may suspend, revoke or refuse to renew any license issued hereunder, upon 10 days' notice in writing, forwarded by registered or certified mail to the principal place of business of such licensee, stating the contemplated action and in general the grounds therefor, and after reasonable opportunity to be heard, if he shall find that the licensee or any owner, director, officer, member, partner, stockholder, employee or agent of such licensee has:

1. Misstatements. Made any material misstatement in the application;
2. Fraud. Committed any fraud, engaged in any dishonest activities, or misrepresented or failed to disclose any of the material particulars of any secondary mortgage loan transaction to any one entitled to such information;

3. Violations of law. Violated any of the provisions of this chapter or of any rule or regulation promulgated pursuant thereto;

4. Bad faith. Otherwise demonstrated unworthiness, bad faith, dishonesty or any other quality indicating that the business of the licensee has not been or will not be conducted honestly, fairly, equitably and efficiently within the purposes and intent of this chapter.

§ 4012. Surrender of license

Any licensee may surrender his license by delivering the license to the commissioner with written notice that he thereby surrenders the license, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender.

§ 4013. Reinstatement of suspended licenses

Every license issued hereunder shall remain in force and effect until the same shall have expired or been surrendered, revoked or suspended in accordance with this chapter, but the commissioner may reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked, if the conditions under which such licenses were revoked have been corrected and the commissioner is satisfied as the result of an investigation that such conditions are not likely to recur.

§ 4014. Investigations by commissioner

The commissioner, if he has reasonable cause to believe that any licensee, or any other person, has violated this chapter or any rules or regulations promulgated pursuant thereto, shall have the power to make such investigations as he shall deem necessary and may examine the books, accounts, records and files of such licensee or any other such person believed to have violated this chapter or any rules or regulations promulgated pursuant thereto.

§ 4015. Issuance of subpoenas

The commissioner shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision. The commissioner shall have the power to administer oaths and affirmations to any person whose testimony is required.

§ 4016. Failure to comply with subpoenas; contempt

In case of a failure of any person to comply with any subpoena issued by the commissioner or to testify with respect to any matter concerning which he may be lawfully interrogated the Superior Court on application of the commissioner may issue an order requiring the attendance of such person and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished by the court as for contempt.

§ 4017. Maintenance of records and accounts

Every licensee shall maintain at its place or places of business in this State such books, accounts and records relating to all transactions within this chapter as will enable the commissioner to enforce full compliance with this chapter.

All books, accounts and records of the licensee shall be preserved and kept available as provided herein for such period of time as the commissioner may by regulation require.

The commissioner may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the commissioner to determine compliance with this chapter.

§ 4018. Loan to comply with requirements

No licensee shall make or offer to make any secondary mortgage loan except on the terms and conditions authorized by this chapter.

§ 4019. Amount of loan

A licensee may make a secondary mortgage loan in such an amount that the net proceeds thereof shall equal a predetermined sum, and may take interest in advance upon the full amount of such loan for the period from the making of the loan to the date of maturity of the final installment. The full amount of such loan shall not exceed the aggregate of the net proceeds and the amount of interest which may be taken in advance, as determined by the application of the formula,
$$I = \frac{.10 A (P+1)}{2N}$$

in which "I" represents the amount of interest which may be taken in advance; "A" represents the amount of the predetermined net proceeds; "P" represents the number of payment periods contained in the period from the date of the making of the loan to and including the date of maturity of the final installment; and "N" represents, to the nearest whole number, the number of payment periods contained in a calendar year.

§ 4020. Schedule of maximum charges

The following is fixed as the schedule of maximum amounts which may be charged to an applicant for a secondary mortgage loan for costs, fees, services, points and premiums which may be incurred by such applicant in connection with a secondary mortgage loan:

1. Appraisal fee. Appraisal and inspection fee of \$30 per parcel or tract of land to be mortgaged;
2. Credit investigation. Credit investigation of borrower, \$10;
3. Search fee. Search fee of \$35 per parcel or tract of land to be mortgaged;
4. Legal fees. Legal fees, including preparation of all documents, not to exceed \$35;
5. Recording fees. Recording and filing fees not to exceed \$5 per document.

The borrower shall not be required to pay any commissions, finder's fees or points for the obtaining, procuring or placing of a secondary mortgage loan, and such commissions, finder's fees or points, if any, shall be paid by the licensee and only to licensed real estate brokers, attorneys at law of the State of Maine or licensees under this chapter. Any agreement for the payment of such commis-

sions, finder's fees or points, to be enforceable in the courts of this State, shall be in writing, signed by the licensee.

The borrower shall not be compelled to purchase from the licensee fire, life or title insurance policies in connection with a secondary mortgage loan.

§ 4021. Prohibited provisions

No instrument evidencing or securing a secondary mortgage loan shall contain:

1. Acceleration clause. Any acceleration clause under which any part or all of the unpaid balance of the obligation not yet matured may be declared due and payable because the holder deems himself to be insecure;
2. Confession of judgment. Any power of attorney to confess judgment or any other power of attorney;
3. Waiver of rights. Any provision whereby the debtor waives any rights accruing to him under this chapter or any other law;
4. Payment of installments. Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount;
5. Assignment of wages. Any assignment of or order for the payment of any salary, wages, commissions, or other compensation for services, or any part thereof, earned or to be earned.

§ 4022. Statement of borrower's account

Upon written request from the borrower, the holder of a secondary mortgage loan instrument shall deliver to the borrower within 10 days from receipt of the written request a statement of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. Not more than 2 such statements shall be required in any 12-month period.

§ 4023. Payment before maturity

Any borrower may satisfy in full at any time before maturity the amount of any balance to become due on any secondary mortgage obligation, and in so satisfying any such debt shall receive a refund credit on account of the interest taken in advance.

The amount of such refund shall represent at least as great a proportion of the credit service charge, less an acquisition cost of \$15, as the sum of the periodical time balances scheduled by the contract to follow the installment date after the date of prepayment bears to the sum of all the periodical time balances under the scheduled payments in the original contract. Where the amount of the credit for anticipation of payments is less than \$1, no refund need be made.

§ 4024. Refusal of mortgage holders to make loan

No licensee shall make or negotiate any secondary mortgage loan unless it shall appear, from satisfactory evidence furnished by the applicant, that the holder

of every existing mortgage upon the property offered as security for the secondary mortgage loan, other than the licensee, has declined to make a loan in the desired amount on the security of another mortgage upon such property.

§ 4025. False or misleading advertising

It shall be unlawful for any person to cause to be placed before the public in this State, directly or indirectly, any false or misleading advertising matter pertaining to secondary mortgage loans or the availability thereof; provided, however, that this section shall not apply to the owner, publisher, operator or employees of any publication or radio or television station which disseminates such advertising matter without knowledge of the false or misleading character thereof.

§ 4026. Violations

Any person who shall knowingly violate this chapter or shall directly or indirectly counsel, aid or abet such violation shall be liable, in addition to all other penalties and forfeitures imposed by this chapter or by any other law, to a penalty of not more than \$1,000 for each offense.

Such penalty shall be sued for and recovered by and in the name of the commissioner.

§ 4027. Enforceability of loans

No obligation arising out of a secondary mortgage loan shall be enforceable in the courts of this State unless such loan was negotiated and made in full compliance with this chapter.

§ 4028. Rules and regulations

The commissioner is authorized and empowered to make, alter, amend and repeal such rules and regulations as shall be necessary to the establishment and maintenance of a standard or fair, equitable and honest conduct in the transaction of secondary mortgage loans.

§ 4029. Effect upon existing financial institutions

Nothing contained in this chapter shall be deemed to have any effect whatever upon the existing powers of any insurance company, financial institution as defined in section 222, credit union, national bank or federal savings and loan association authorized to do business in this State which is subject to any other law of this State or of the United States regulating the power of such institution to engage in mortgage loan transactions, or upon the conditions and limitations imposed by any such law upon the exercise of such powers.'

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of Banks and Banking the sum of \$7,000 for the fiscal year ending June 30, 1966 and the sum of \$14,000 for the fiscal year ending June 30, 1967 to carry out the purposes of this Act. The breakdown shall be as follows:

BANKS AND BANKING, DEPARTMENT OF	1965-66	1966-67
Personal Services	(2) \$5,000	(2) \$10,000
All Other	2,000	4,000
	<hr/>	<hr/>
	\$7,000	\$14,000

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