

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2070

6
7 S.P. 762

In Senate, February 13, 1984

8 Submitted by the Department of Business, Occupational and Professional
9 Regulation pursuant to Joint Rule 24.

10 Reference to the Committee on Business Legislation is suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Clark of Cumberland.

11 Cosponsors: Representative Racine of Biddeford and Representative
Martin of Van Buren.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Amend the Maine Consumer Credit
18 Code.
19

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

22 Sec. 1. 9-A MRSA §1-110, sub-§1, as enacted by
23 PL 1981, c. 218, is repealed and the following en-
24 acted in its place:

25 1. Consumer credit transactions involving mobile
26 homes as defined in section 1-301, subsection 24-A;

27 Sec. 2. 9-A MRSA §1-202, sub-§8, as amended by
28 PL 1983, c. 212, §2, is further amended to read:

29 8. A loan made by a supervised lender when the
30 loan is secured by a first mortgage on real estate
31 and the security interest in real estate is not made
32 for the purpose of circumventing or evading this Act.

1 For purposes of this subsection, an advance of addi-
2 tional funds on an existing loan secured by a first
3 lien mortgage on real estate is considered made for
4 purposes of circumventing or evading this Act if that
5 advance is not made for a purpose directly related to
6 the modernization, rehabilitation, repair or altera-
7 tion of the real estate securing the loan. With re-
8 spect to a supervised lender other than a supervised
9 financial organization, the exemption provided by
10 this subsection shall be limited to residential mort-
11 gage transactions as defined in section 8-103, sub-
12 section 1, paragraph H or the refinancing of those
13 residential mortgage transactions, and shall apply to
14 the following provisions and no others: Maximum fi-
15 nance charge limitations, sections 2-308 and 2-401;
16 limitations on security interest, section 2-307; de-
17 linquency charges, section 2-502; limitations on at-
18 torney's fees, section 2-507; notice to consumer,
19 section 3-202; and notice of right to cure default,
20 sections 5-110 and 5-111; or

21 Sec. 3. 9-A MRSAs §1-301, sub-§15, as enacted by
22 PL 1973, c. 762, §1, is repealed and the following
23 enacted in its place:

24 15. "Credit" means the right granted by a credi-
25 tor to a consumer to defer payment of an obligation,
26 to incur an obligation and defer its payment or to
27 obtain possession of property or the benefit of ser-
28 vices and defer payment therefor pursuant to an
29 agreement which includes, but is not limited to, a
30 sale of goods, a sale of an interest in land, a sale
31 of services or a loan.

32 Sec. 4. 9-A MRSAs §1-301, sub-§19, ¶B, as amended
33 by PL 1975, c. 770, §§47 and 48, is further amended
34 to read:

35 B. The term does not include:

36 (i) Charges as a result of de-
37 fault, additional charges, section 2-501,
38 delinquency charges, section 2-502, or de-
39 ferral charges, section 2-503;

40 (ii) The discount, when a credi-
41 tor purchases or satisfies obligations of a

1 cardholder pursuant to a credit card and the
2 purchase or satisfaction is made at less
3 than the face amount of the obligation;

4 (iii) ~~the Any~~ discount ~~not in ex-~~
5 ~~cess of 5%~~ offered by a creditor or seller
6 for the purpose of inducing payment by cash,
7 check or other means to be made at the time
8 of sale not involving the use of a credit
9 card shall not constitute a finance charge
10 if ~~such that~~ discount is offered to all pro-
11 spective buyers and its availability is dis-
12 closed to all prospective buyers clearly and
13 conspicuously; or

14 (iv) "Closing costs" as defined
15 in subsection 8.

16 Sec. 5. 9-A MRSA §1-301, sub-§33, as enacted by
17 PL 1973, c. 762, §1, is amended to read:

18 33. "Sale of goods" includes any agreement in
19 the form of a bailment or lease of goods if the bail-
20 ee or lessee pays, will pay or agrees to pay as com-
21 pensation for use a sum substantially equivalent to
22 or in excess of the aggregate value of the goods in-
23 volved and it is agreed that the bailee or lessee
24 will become, or for no other or a nominal considera-
25 tion has the option to become, the owner of the goods
26 upon full compliance with his obligations under the
27 terms of the agreement, including any optional renew-
28 als thereof.

29 Sec. 6. 9-A MRSA §2-302, sub-§1, as enacted by
30 PL 1973, c. 762, §1, is amended to read:

31 1. The administrator shall receive and act on
32 all applications for licenses to make supervised
33 loans under this Act. Applications shall be filed in
34 the manner prescribed by the administrator and shall
35 contain the information the administrator requires by
36 rule to make an evaluation of the financial responsi-
37 bility, character and fitness of the applicant. Ini-
38 tial applications for a license shall be accompanied
39 by a \$500 fee. Renewal applications shall include a
40 \$200 fee. Licenses shall be granted for a 2-year pe-
41 riod and shall expire on September 30th.

1 Sec. 7. 9-A MRSA §2-302, sub-§2, ¶C, as enacted
2 by PL 1975, c. 179, §2, is repealed.

3 Sec. 8. 9-A MRSA §2-302, sub-§3, as enacted by
4 PL 1973, c. 762, §1, is amended to read:

5 3. Upon written request, the applicant is enti-
6 tled to a hearing on the question of his qualifica-
7 tions for a an initial license if (a) the administra-
8 tor has notified the applicant in writing that his
9 application has been denied, or (b) the administrator
10 has not issued a license within 60 days after the ap-
11 plication for the initial license was filed. A re-
12 quest for a hearing may not be made more than 15 days
13 after the administrator has mailed a writing to the
14 applicant notifying him that the application has been
15 denied and stating in substance the administrator's
16 findings supporting denial of the application.

17 Sec. 9. 9-A MRSA §2-302, sub-§4, as enacted by
18 PL 1973, c. 762, §1, is amended to read:

19 4. A separate license shall be required for each
20 place of business. No license fee may be imposed for
21 any license issued for a place of business other than
22 that of the first licensed location of the licensee.

23 Sec. 10. 9-A MRSA §2-310 is enacted to read:

24 §2-310. Servicing requirements of assigned super-
25 vised loans

26 No supervised loan may be assigned under this Ar-
27 article unless:

28 1. The supervised lender making the loan retains
29 servicing of the loan and maintains a place of busi-
30 ness in this State; or

31 2. The assignee maintains a toll free telephone
32 number that is disclosed to obligors on each periodic
33 billing notice and that is staffed during normal
34 business hours for obligors to use to communicate
35 with the obligee concerning the supervised loan.

36 Sec. 11. 9-A MRSA §3-204, sub-§2, as amended by
37 PL 1983, c. 212, §6, is further amended to read:

1 2. A creditor may change the terms of an open-
2 end credit account whether or not the change is au-
3 thorized by prior agreement. Except as provided in
4 ~~subsection~~ subsections 3 and 3-A, the creditor shall
5 give to the consumer written notice of any change of
6 terms relating to penalties, interest or other
7 charges at least 30 days before the effective date of
8 the change. Any change of terms which would increase
9 any penalty, interest or other charges may not affect
10 outstanding balances incurred prior to the effective
11 date of any such change unless:

12 A. The creditor includes in the notice of change
13 an offer to finance by a separate loan arrange-
14 ment the outstanding unpaid balance as of the ef-
15 fective date of the change at the same rate of
16 interest with the same repayment schedule as ap-
17 plies to that open-end credit account;

18 B. The consumer may accept the offer of a sepa-
19 rate loan arrangement with respect to the then
20 existing unpaid balance anytime prior to 7 days
21 before the change is to become effective;

22 C. The creditor has legal authority to make such
23 a loan; and

24 D. No minimum finance charge is assessed nor
25 prepayment penalty charged on the loan.

26 Sec. 12. 9-A MRS §3-204, sub-§3, as amended by
27 PL 1983, c. 212, §7, is further amended to read:

28 3. The notice procedure specified in subsection
29 ~~2 is not required~~ does not have to be followed if:

30 A. The consumer, after receiving the notice of
31 the change and his rights specified in subsection
32 2, agrees in writing to the change; or

33 B. ~~The change involves no significant cost to~~
34 ~~the consumer; or~~

35 C. The change applies only to debts incurred af-
36 ter a date specified in a notice of the change
37 given 15 days prior to the effective date of the
38 change.

1 Sec. 13. 9-A MRSA §3-204, sub-§3-A is enacted to
2 read:

3 3-A. No notice of a change in terms is required
4 if the change involves no significant cost to the
5 consumer.

6 Sec. 14. 9-A MRSA §3-310, sub-§1, ¶C, as enacted
7 by PL 1981, c. 138, is amended to read:

8 C. The maximum amount by which the annual per-
9 centage rate may increase at any one time, If
10 the maximum amount by which the annual percentage
11 rate may increase at any one time is unlimited,
12 that fact shall be clearly stated;

13 Sec. 15. 9-A MRSA §3-310, sub-§1, ¶E, as enacted
14 by PL 1981, c. 138, is amended to read:

15 E. The maximum amount by which the annual per-
16 centage rate may increase over the term of the
17 transaction. If the maximum amount by which the
18 annual percentage rate may increase over the term
19 of the transaction is unlimited, that fact shall
20 be clearly stated;

21 Sec. 16. 9-A MRSA §3-310, sub-§1, ¶H, as amended
22 by PL 1981, c. 579, is further amended to read:

23 H. A hypothetical calculation showing the effect
24 on the transaction's other terms and schedule of
25 payments if the annual percentage rate when the
26 credit is extended was increased once by the max-
27 imum amount disclosed under paragraph C. If
28 there is no maximum amount by which the annual
29 percentage rate may increase under paragraph C,
30 then a hypothetical calculation showing the ef-
31 fect on the transaction's other terms and sched-
32 ule of payments if the annual percentage rate
33 when credit is extended is increased by 5%. With
34 respect to open-end credit transactions, the cal-
35 culatation will consist of a comparison of the fi-
36 nance charge that the increased annual percentage
37 rate will yield on \$1,000 for one billing cycle
38 with the finance charge that the annual percent-
39 age rate in effect at the time the agreement is
40 executed will yield.

1 Sec. 17. 9-A MRSA §3-310, sub-§5, is enacted to
2 read:

3 5. The administrator may adopt reasonable rules
4 in accordance with this section governing variable
5 rate consumer credit transactions that are secured by
6 an interest in real estate. In adopting any rule, the
7 administrator shall take into consideration the terms
8 of any rules adopted by the Superintendent of Banking
9 relating to variable rate mortgage instruments. In
10 any rule, the administrator may specify:

11 A. The maximum amount by which the annual per-
12 centage rate may change during a period of time
13 and over the entire term of the agreement;

14 B. The minimum notice that may be required to be
15 given to the mortgagor prior to a change in the
16 annual percentage rate;

17 C. Acceptable indices that may be used by credi-
18 tors for the purpose of determining when, and the
19 amount by which, changes in the annual percentage
20 rate may occur and what effects, if any, the
21 choice of index may have on the rate movement al-
22 lowances specified in paragraph A; and

23 D. Appropriate hypothetical examples to illus-
24 trate the effects of changes in the annual per-
25 centage rate.

26 Sec. 18. 9-A MRSA §6-204, sub-§§1 - 3, as en-
27 acted by PL 1979, c. 660, §11, are amended to read:

28 1. The administrator may impose a civil penalty
29 of \$5 per day on any person failing to comply with
30 the ~~notification and fee requirements of this Part~~
31 requirements of sections 6-202 and 6-203.

32 2. No civil penalty may be imposed if the fee
33 fees required by section 6-203 is, subsections 1 to
34 3, are paid not more than 30 days after the date es-
35 tablished in section 6-202, subsection 1, or if the
36 expenses of examination incurred by the administrator
37 pursuant to section 6-203, subsection 4, are paid
38 within 30 days of receipt of notice by the examinee
39 of their assessment.

1 3. If a licensee fails to pay the fee fees re-
2 quired by section 6-203, subsections 1 to 3 on or be-
3 fore February 20th of any year, or if the licensee
4 fails to pay the expenses of examination of the ad-
5 ministrators within 30 days of receipt of the notice
6 of assessment, the failure may be treated by the ad-
7 ministrators as grounds for revocation of the license.

8 Sec. 19. 9-A MRS §8-204, sub-§5, ¶D, as enacted
9 by PL 1981, c. 243, §25, is amended to read:

10 D. Advances under a preexisting open-end credit
11 plan if a security interest has already been re-
12 tained or acquired in conformance with this sec-
13 tion and such advances are in accordance with a
14 previously established credit limit for such plan
15 adopted in conformance with this section. This
16 paragraph shall cease to be effective on April 1,
17 1985 whatever day it is made ineffective under
18 federal law.

19 Sec. 20. 9-A MRS §8-208, sub-§1, ¶A, as enacted
20 by PL 1981, c. 243, §25, is amended to read:

21 A. Any actual damage sustained by such person as
22 a result of the failure; ~~or~~

23 Sec. 21. Transition provision. Notwithstanding
24 the Revised Statutes, Title 9-A, section 2-302, sub-
25 section 1, the administrators may, for purposes of
26 staggering the renewal dates of existing licenses,
27 cause certain licensees whose licenses must be re-
28 newed in 1984, to be renewed, upon proper applica-
29 tion, for only one year. In those cases where a li-
30 cense has been renewed for only one year, the license
31 fee shall be 1/2 the biennial renewal fee.

32 STATEMENT OF FACT

33 This bill makes a number of changes to the Maine
34 Consumer Credit Code, some of which involve signifi-
35 cant policy issues and others which are more of a
36 "housekeeping" variety.

37 Section 1 changes an outdated cross reference in
38 the Code, replacing it with the correct statutory
39 reference.

1 Section 2 places a limit on the use of so-called
2 "future advance" clauses in first lien mortgages. The
3 Consumer Credit Code has always granted an exemption
4 from its provisions to supervised financial organiza-
5 tions, such as banks, which make loans secured by
6 first lien mortgages on real estate. Some mortgage
7 agreements provide an opportunity for the mortgagor
8 to borrow more money on his mortgage, the so-called
9 "future advance," as his equity increases in the real
10 estate securing the note. The bureau took the posi-
11 tion that these future advances would only enjoy ex-
12 emption from the Code as long as they were made under
13 the same terms and conditions as the underlying mort-
14 gage. In the Franklin Savings Bank v. Bureau of Con-
15 sumer Credit Protection case, decided in June, 1983,
16 the Superior Court rejected the bureau's position.
17 The result of the court's decision is that all types
18 of nonreal estate-related loans, such as car loans,
19 vacation loans and student loans, can now be made
20 through the future advance mechanism. Because of the
21 Code exemption, the consumers involved would be de-
22 nied the protection of the Code that traditionally
23 applies to these types of loans if made by the same
24 lender through another lending mechanism. Loans made
25 through this mechanism would not be subject to the
26 volume fees, the bulk of the bureau's income. This
27 bill strikes a balance between the interests of lend-
28 ers and consumers by restricting future advances to
29 real estate-related purposes only, such as home im-
30 provement, but permitting those transactions to re-
31 main Code exempt.

32 The purpose contained in sections 3 and 5 is to
33 close a loophole in the Code created by the Law
34 Court's July, 1983 decision in Hawkes Television,
35 Inc. v. Maine Bureau of Consumer Credit Protection.
36 In its decision, the court concluded that because
37 "credit" was never formally extended to consumers the
38 "rent-to-own" agreements did not fall under the Maine
39 Consumer Credit Code. The result of this decision has
40 been that agreements in the form of renewable leases,
41 on appliances such as televisions and stereos, which
42 subject consumers to oppressive interest charges in
43 the rage of 70%, are legal in Maine. By changing the
44 definitions of the terms "credit" and "sale of
45 goods," this bill intends to make clear that
46 "rent-to-own" programs must comply with the Maine

1 Consumer Credit Code if they are to be offered in
2 this State.

3 Section 4 amends part of the definition of "fi-
4 nance charge" in the Code to bring it in line with
5 changes made by Congress through enactment of the
6 Cash Discount Act. This bill also brings the defini-
7 tion into conformity with the Maine Consumer Credit
8 Code, the Revised Statutes, Title 9-A, section 8-303,
9 subsection 3, which already reflects the changes made
10 by Congress in the Cash Discount Act.

11 Sections 6 to 9 establish biennial licensing for
12 supervised lenders. Presently, supervised lenders
13 once licensed are licensed in perpetuity. With the
14 increasing role supervised lenders, such as mortgage
15 companies, are playing in the marketplace today, the
16 bureau needs more flexibility in its control over
17 these licensees to ensure their accountability. This
18 biennial license period provides that and is consist-
19 ent with the statutory licensing scheme the bureau
20 already follows with regard to insurance premium fi-
21 nance companies, collection agencies and home repair
22 contractors.

23 Section 10 is designed to address a potentially
24 growing problem regarding the servicing of mortgages
25 sold in the secondary market. Increasingly, mortgages
26 made in Maine are being sold, sometimes several
27 times, in the secondary market to investors. If the
28 servicing of that mortgage is not retained by the en-
29 tity making the mortgage in Maine initially, consum-
30 ers may have, and have had, difficulty in reaching
31 the out-of-state company servicing that mortgage.

32 This bill offers 2 solutions to the problem.
33 First, the mortgage can be sold in the secondary mar-
34 ket if servicing remains with the initial Maine lend-
35 er. Alternatively, the mortgage and its servicing can
36 be sold provided the new mortgagee or servicing com-
37 pany has a toll free telephone number that Maine con-
38 sumers can call to discuss problems and have ques-
39 tions answered.

40 Sections 11 to 13 clarify the language of the
41 Maine Consumer Credit Code, the Revised Statutes, Ti-
42 tle 9-A, section 3-204, dealing with the notice that

1 must be given to consumers when terms in their open-
2 end credit accounts are changed. This bill makes it
3 clear that no matter what notice procedure is fol-
4 lowed, the consumer must still be notified of his
5 substantive right to finance his existing credit bal-
6 ance under the old terms.

7 Sections 14 to 16 make changes in the Maine Con-
8 sumer Credit Code, the Revised Statutes, Title 9-A,
9 section 3-310, which sets forth the disclosure re-
10 quirements for variable rate credit transactions. As
11 originally drafted, that section's disclosure re-
12 quirements presupposed interest rate movements that
13 were capped from year to year. Through deregulation
14 at the federal level and other changed circumstances
15 in the financial marketplace, variable rate instru-
16 ments are appearing that have no caps on the movement
17 of rates. Because there are no caps, it is impossible
18 to comply with certain subsections of the Revised
19 Statutes, Title 9-A, section 3-310. This bill modi-
20 fies that section to prescribe disclosures to be
21 given when no caps exist on interest rates.

22 Section 17 provides rule-making authority to the
23 superintendent in the area of variable rate mortgage
24 transactions. Because of the rapidity of change in
25 the financial marketplace, the flexibility inherent
26 in rulemaking is much desired over the requirement of
27 having to seek legislative change each time there is
28 a change in the economic circumstances surrounding
29 mortgage lending. This change also permits the super-
30 intendent to adopt a joint rule with the Bureau of
31 Banking on adjustable rate mortgages. A joint rule
32 will permit all mortgage lenders to be, for the first
33 time, treated equally in terms of their regulatory
34 obligations in granting home mortgages.

35 Section 18 amends the Revised Statutes, Title
36 9-A, section 6-204 to make failure to pay, or exces-
37 sively late payments of, examination charges subject
38 to civil penalties. Creditors which fail to file or
39 which are late in filing notification with the bureau
40 or paying volume fees are already subject to this
41 civil penalty provision. Although rarely imposed, the
42 threat of the penalty is a strong inducement to pay
43 promptly. Where examination costs make up approxi-
44 mately 20 to 25% of the bureau's total revenue, it is

1 important that these costs be paid promptly. Similar-
2 ly, they should be subject to the same terms and con-
3 ditions of payment as the other sources of bureau in-
4 come.

5 Section 19 amends the Revised Statutes, Title
6 9-A, section 8-204, concerning the consumer's right
7 of rescission, to conform the law to federal law.
8 Maine's truth-in-lending must remain substantially
9 equivalent to the federal truth-in-lending law for
10 the State to maintain its exempt status. This bill
11 repeals a specific date on which a particular para-
12 graph of the Revised Statutes, Title 9-A, section
13 8-204 would be repealed, inserting in its place lan-
14 guage that says the paragraph will be repealed when-
15 ever it is repealed under federal law.

16 Section 20 amends the Revised Statutes, Title
17 9-A, section 8-208, the civil liability provision of
18 Maine's truth-in-lending law, to conform it to the
19 federal law. Under federal law a consumer whose
20 rights had been violated could seek actual damages
21 and civil penalties. Under current Maine law the con-
22 sumer must make a choice between damages or a civil
23 penalty. To keep both laws consistent this bill re-
24 peals the word "or."

25 Section 21 is a transition provision that permits
26 the administrator to grant only one-year licenses to
27 certain supervised lenders in 1984 only and 2-year
28 licenses to others. This staggers the renewal years
29 of biennial licenses preventing them all from coming
30 due in one year. This spreads the administrative bur-
31 den of renewal processing over both years of the bi-
32 ennium.

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