

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1487

6
7 S.P. 558

In Senate, May 9, 1985

8 Reference to the Committee on Business and Commerce suggested and
9 ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Bustin of Kennebec.

Cosponsored by Representative Stevens of Bangor and Representative
11 Martin of Van Buren.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
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 §1-111 is enacted to read:

23 §1-111. Record retention

24 Every person required to file notification, or
25 his assignee, shall maintain records of all consumer
26 credit transactions entered into in conformity with
27 generally accepted accounting principles and prac-
28 tices in a manner that will enable the administrator
29 to determine whether that person or his assignee is
30 complying with the provisions of this Act. The
31 records need not be kept in the place of business
32 where the transaction was entered into, if the admin-
33 istrator is given free access to the records,
34 wherever located. All records pertaining to consumer
35 credit transactions shall be retained for at least 2

1 years after making the final entry on the account in-
2 involved, except that in the case of open-end credit,
3 the 2 years shall be measured from the date of each
4 account entry.

5 Sec. 2. 9-A MRSA §1-202, sub-§8, as amended by
6 PL 1983, c. 720, §2, is further amended to read:

7 8. A loan made by a supervised lender when the
8 loan is secured by a first mortgage on real estate
9 and the security interest in real estate is not made
10 for the purpose of circumventing or evading this Act,
11 provided that, with respect to advances of additional
12 funds on that loan, this exemption shall apply only
13 to those advances to protect the security and ad-
14 vances representing the negative amortization of
15 principal as specified in the loan agreement. The
16 exemption provided by this subsection shall not apply
17 to the requirements on servicing of assigned super-
18 vised loans, section 2-310. With respect to a su-
19 pervised lender other than a supervised financial or-
20 ganization, the exemption provided by this subsection
21 shall be limited to residential mortgage transactions
22 as defined in section 8-103, subsection 1, paragraph
23 H or the refinancing of these residential mortgage
24 transactions, and shall apply to the following provi-
25 sions and no others: Maximum finance charge limita-
26 tions, sections 2-308 and 2-401; limitations on secu-
27 rity interest, section 2-307; delinquency charges,
28 section 2-502; limitations on attorney's fees, sec-
29 tion 2-507; notice to consumer, section 3-202; and
30 notice of right to cure default, sections 5-110 and
31 5-111; or

32 Sec. 3. 9-A MRSA §2-304, sub-§1, as enacted by
33 PL 1973, c. 762, §1, is repealed.

34 Sec. 4. 9-A MRSA §2-304, sub-§2, as enacted by
35 PL 1973, c. 762, §1, is amended to read:

36 2. On or before April 15 each year, The adminis-
37 trator may, by rule, require every licensee shall to
38 file with the administrator a composite annual report
39 in the form prescribed by the administrator relating
40 to all supervised loans made by him that licensee.
41 Information contained in annual reports shall be con-
42 fidential and may be published only in composite

1 form. The administrator may at any time require addi-
2 tional reports if he deems such action necessary to
3 the proper supervision of licensees.

4 Sec. 5. 9-A MRSA §3-310, sub-§3, as enacted by
5 PL 1981, c. 138, is amended to read:

6 3. A variation in the annual percentage rate not
7 in accordance with the disclosures required by sub-
8 section 1, paragraph C or H, or any rule adopted un-
9 der this section, shall be considered a charge in ex-
10 cess of that allowed by this Code under section
11 5-201, subsections 3 and 4.

12 Sec. 6. 9-A MRSA §3-310, sub-§6, as enacted by
13 PL 1983, c. 720, §20, is amended to read:

14 6. The provisions of sections 2-503, 2-504,
15 2-510 and 3-308 and 3-310, subsection 1 shall not
16 apply to any consumer credit transaction that is sub-
17 ject to rules promulgated under subsection 5 and that
18 is in compliance with those rules.

19 Sec. 7. 9-A MRSA §4-204 is enacted to read:

20 §4-204. Notice of right to cancel credit insurance
21 in open-end transactions

22 A creditor who provides consumer credit insurance
23 in relation to open-end credit shall, at least annu-
24 ally, inform the consumer of the voluntary nature of
25 the insurance and of his right to cancel that insur-
26 ance at will. The notice required by this section
27 shall be on a separate document and shall explain the
28 procedures the consumer must follow in order to can-
29 cel the insurance.

30 STATEMENT OF FACT

31 Sections 1 and 3 of this bill establish a uniform
32 period for which records must be retained by all
33 creditors and lessors. Current law only addresses
34 record retention by supervised lenders. The bureau,
35 by rule, had applied the same standard to all credi-
36 tors: Failure to have done so would have meant un-

1 equal treatment among creditors and an impairment of
2 bureau enforcement authority. Recently, certain
3 challenges have been made to this rule. These sec-
4 tions of the bill clarify the Code by expressly stat-
5 ing that all creditors must comply with the same
6 2-year record retention requirements.

7 Section 2 removes the last major impediment to
8 full competition in mortgage lending by mortgage com-
9 panies. Under current law, mortgage companies can
10 only lend money on a consumer's principal residence.
11 This restriction denies mortgage companies the right
12 to lend on 2nd homes. There is no rational basis for
13 such a restriction and this section of the bill elim-
14 inates it.

15 Sections 4 and 5 address alternative mortgage
16 transactions under the Code. Section 4 clarifies the
17 consumer remedy that may be invoked in cases in which
18 a creditor fails to comply with a disclosure require-
19 ment established by rule. Section 5 makes a techni-
20 cal change to make it clear that a creditor who com-
21 plies with the disclosure requirements of any rule
22 adopted by the administrator for alternative mortgage
23 transactions does not also have to follow the disclo-
24 sure provisions of the law.

25 Section 7 requires creditors who sell credit in-
26 surance on open-end accounts to send annual reminders
27 to consumers that such insurance is optional and can
28 be canceled at any time. Such a provision is needed
29 since, in open-end transactions, disclosures are made
30 only at the outset of the relationship and never
31 again. Because these relationships may endure for
32 many years, consumers may forget they are buying in-
33 surance as well as their right to cancel that insur-
34 ance.

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