

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 788

S.P. 278

In Senate, March 17, 1987

Reference to the Committee on Banking and Insurance suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator BUSTIN of Kennebec.

Cosponsored by Representative RACINE of Biddeford,
Representative TRACY of Rome.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

**AN ACT to Control Points in First Mortgage
Transactions.**

1
2
3

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

6 **Sec. 1. 9-A MRSA §1-202, sub-§8, as amended by**
7 **PL 1985, c. 336, §2, is further amended to read:**

8 8. A loan made by a supervised lender when the
9 loan is secured by a first mortgage on real estate
10 and the security interest in real estate is not made
11 for the purpose of circumventing or evading this Act,
12 provided that, with respect to advances of additional
13 funds on that loan, this exemption shall apply only
14 to those advances to protect the security and ad-
15 vances representing the negative amortization of
16 principal as specified in the loan agreement. The

1 exemption provided by this subsection shall not apply
2 to the requirements on servicing of assigned super-
3 vised loans, section 2-310, or to the regulation of
4 fees on loans, section 2-511. With respect to a
5 supervised lender other than a supervised financial
6 organization, the exemption provided by this subsec-
7 tion shall apply to the following provisions and no
8 others: Maximum finance charge limitations, sections
9 2-308 and 2-401; limitations on security interest,
10 section 2-307; delinquency charges, section 2-502;
11 limitations on attorney's fees, section 2-507; notice
12 to consumer, section 3-202; and notice of right to
13 cure default, sections 5-110 and 5-111; or

14 **Sec. 2. 9-A MRS §2-510, sub-§§1, 2 and 9, as**
15 **repealed and replaced by PL 1975, c. 433, §1, are**
16 **amended to read:**

17 1. Except as provided in subsection 2, upon pre-
18 payment in full of the unpaid balance of a
19 ~~precomputed~~ consumer credit transaction, an amount
20 not less than the unearned portion of the finance
21 charge calculated according to this section shall be
22 rebated to the consumer. If the rebate otherwise re-
23 quired is less than \$1, no rebate need be made.

24 2. Upon prepayment in full, but not upon a refi-
25 nancing, section 2-504, of a consumer credit transac-
26 tion, ~~whether or not precomputed,~~ other than one pur-
27 suant to open-end credit, the creditor may collect or
28 retain a minimum charge as permitted by section
29 2-201, subsection 6, and section 2-401, subsection 7,
30 if the minimum charge was contracted for and the fi-
31 nance charge at the time of prepayment is less than
32 the minimum charge contracted for.

33 9. Upon prepayment in full of a ~~precomputed~~ con-
34 sumer credit transaction by the proceeds of consumer
35 credit insurance, section 4-103, the consumer or his
36 estate is entitled to the same rebate as though the
37 consumer had prepaid the agreement on the date the
38 proceeds of insurance are paid to the creditor, but
39 no later than 14 days after satisfactory proof of
40 loss is furnished to the creditor.

41 **Sec. 3. 9-A MRS §2-511 is enacted to read:**

1 §2-511. Regulation on fees on loans secured by first
2 lien mortgagee on real estate

3 1. A mortgage shall not charge a loan fee,
4 finder's fee, points, so called, or similar fees in a
5 mortgage transaction involving a residential property of
6 4 or fewer units located in this State and occu-
7 pied or to be occupied in whole or in part by the
8 mortgagor, except to the extent those fees or points
9 constitute reimbursement for reasonable originating
10 or underwriting expenses, as determined by rule
11 adopted by the administrator, incurred by the mortga-
12 gee and reimbursement for any commitment or other
13 fees paid or to be paid by the mortgagee for the in-
14 tended purpose of selling mortgage loans in the sec-
15 ondary mortgage market.

16 2. This section shall not apply to loans guaran-
17 teed in whole or in part by the Veterans' Administra-
18 tion, loans insured by the Federal Housing Adminis-
19 tration, loans originated, assigned to, guaranteed or
20 insured, in whole or in part, by the Maine State
21 Housing Authority or other loans subject to
22 governmentally imposed interest rate ceilings, as de-
23 termined by rule adopted by the administrator.

24

STATEMENT OF FACT

25 This bill addresses the issue of mortgage points
26 in 2 ways, depending upon the nature of the transac-
27 tion. In second mortgage and consumer loan transac-
28 tions that are subject to the Maine Consumer Credit
29 Code, the bill requires that any prepaid finance
30 charges be refunded according to an equitable formula
31 (the actuarial method) if a loan is prepaid. In that
32 way, the consumer would only pay an interest rate
33 equivalent to the disclosed rate, no matter when he
34 paid off the loan.

35 This bill also establishes authority in the Su-
36 perintendent of the Bureau of Consumer Credit Protec-
37 tion to regulate the charging of points, or other
38 loan fees, by bank and nonbank mortgage lenders in
39 first lien mortgage lending transactions. Points are
40 now routinely charged by mortgage lenders. While a

1 portion of the points represents compensation to the
2 lender for the costs of origination, and sale, if the
3 loan is sold in the secondary mortgage market, the
4 remainder is quick profit received by the lender be-
5 fore it would otherwise be earned.

6 While the impact of points is reflected in the
7 annual percentage rate disclosed to the consumer,
8 that disclosure is premised upon the impact of the
9 points being spread over the life of the loan. In
10 reality, most mortgage loans prepay relatively early
11 in their term, due to sale of the property or refi-
12 nancing. When prepayment occurs the true cost of
13 credit can be significantly higher than what was dis-
14 closed to the consumer because the impact of points
15 is now compressed into the shortened loan term. Be-
16 cause refund of the unearned portion of the points
17 would be impractical due to the sale of most mortgage
18 loans in the secondary market, regulation at the
19 outset of the transaction, as proposed in this bill,
20 is the most efficient and effective way to regulate
21 points.

22 The Commonwealth of Massachusetts currently regu-
23 lates points by administrative rule. This bill is
24 modeled on the Massachusetts law.

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