

# MAINE STATE LEGISLATURE

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R. of S.

1

L.D. 1560

2

(Filing No. S-163 )

3

STATE OF MAINE

4

SENATE

5

113TH LEGISLATURE

6

FIRST REGULAR SESSION

7

COMMITTEE AMENDMENT "A " to S.P. 517, L.D.

8

1560, Bill, "AN ACT to Recodify the First-lien Real

9

Estate Secured Lending Provisions Relating to

10

Nonbanks in the Maine Consumer Credit Code."

11

Amend the bill by inserting after the enacting

12

clause the following:

13

'Sec. 1. 9-A MRSA §1-202, sub-§1, as repealed

14

and replaced by PL 1987, c. 129, §8, is amended to

15

read:

16

1. Extensions of credit primarily for business,

17

commercial, or agricultural purposes or to from gov-

18

ernments or governmental agencies, instrumentalities

19

or organizations;'

20

Further amend the bill by striking out all of

21

section 1 and inserting in its place the following:

22

'Sec. 1. 9-A MRSA §1-202, sub-§8, as repealed

23

and replaced by PL 1987, c. 129, §11, is amended to

24

read:

25

8. A loan or credit sale made by a supervised

26

~~lender creditor~~ to finance or refinance the acquisi-

27

tion of real estate or the initial construction of a

28

dwelling, or a loan made by a supervised--~~lender~~

29

~~creditor~~ secured by a first mortgage on real estate,

30

if the security interest in real estate is not made

31

for the purpose of circumventing or evading this Act,

32

provided that:

33

A. With respect to advances of additional funds

34

on the loan or credit sale made more than 30 days

35

after the initial advance, this exclusion shall

36

apply only to advances made:

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1 (1) Pursuant to the terms of a construction  
2 loan financing agreement;

3 (2) To protect the security or to perform  
4 the covenants of the consumer;

5 (3) As negative amortization of principal  
6 under the terms of the loan financing agree-  
7 ment; or

8 (4) From funds withheld at consummation  
9 pending the resolution of matters which oth-  
10 erwise would tend to delay or prevent clos-  
11 ing, including, without limitation, remedy  
12 of title defects or repairs to meet apprais-  
13 al standards;

14 B. The exemption provided by this subsection  
15 does not apply to the requirements on servicing  
16 of assigned supervised loans, section 2-310; and

17 C. With respect to a supervised-lender creditor  
18 other than a supervised financial organization, the  
19 exemption provided by this subsection shall apply to  
20 ~~the following provisions and no others:--Maximum--fi-~~  
21 ~~nance--charge--limitations, sections 2-308 and 2-401;~~  
22 ~~limitations on security interest, section 2-307;--de-~~  
23 ~~linquency--charges, sections 2-502 and 3-402; limita-~~  
24 ~~tions on attorneys fees, section 2-507; right to pre-~~  
25 ~~pay, section 2-509; rebate upon prepayment,--section~~  
26 ~~2-510;--notice to consumer, section 3-202; and notice~~  
27 ~~of right to cure default, sections--5-110--and--5-111~~  
28 articles II, III, IV and V only.'

29 Further amend the bill by inserting after section  
30 1 the following:

31 'Sec. 2. 9-A MRS §1-202, last ¶, as amended by  
32 PL 1981, c. 243, §§2 and 26, is further amended to  
33 read:

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1           The exclusions set forth in subsection 1 relating  
2 to extensions of credit to consumers by governments  
3 or governmental agencies, instrumentalities or orga-  
4 nizations, and in subsections 2, 4, 5, 7 and 8, shall  
5 not apply to the Maine Consumer Credit Code, Truth-  
6 in-lending, Article VIII.

7           **Sec. 3. 9-A MRSA §1-301, sub-§11, ¶A,** as amended  
8 by PL 1981, c. 243, §6, is further amended to read:

9           A. Except as provided in paragraph B, a "consum-  
10 er credit sale" is a sale of goods, services or  
11 an interest in land in which:

12                           (i) credit is granted either pur-  
13 suant to a credit card other than a lender  
14 credit card or by a seller who regularly en-  
15 gages as a seller in credit transactions of  
16 the same kind;

17                           (ii) the buyer is a person other  
18 than an organization;

19                           (iii) the goods, services or in-  
20 terest in land are purchased primarily for a  
21 personal, family or household purpose;

22                           (iv) either the debt is payable  
23 in instalments or a finance charge is made;  
24 and

25                           (v) with respect to a sale of  
26 goods or services not including manufactured  
27 housing, the amount financed does not exceed  
28 \$25,000;'

29           Further amend the bill by striking out all of  
30 section 2 and inserting in its place the following:

31           '**Sec. 2. 9-A MRSA §1-301, sub-§11, ¶B,** as re-  
32 pealed and replaced by PL 1987, c. 129, §19, is re-  
33 pealed.

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1           Sec. 3. 9-A MRSA §1-301, sub-§14, 1A, as amended  
2    by PL 1981, c. 243, §9, is further amended to read:

3           A. Except as provided in paragraph B, a "consum-  
4           er loan" is a loan made by a person regularly en-  
5           gaged in the business of making loans in which:

6                   (i) the debtor is a person other than an  
7                   organization;

8                   (ii) the debt is incurred primarily for a  
9                   personal, family or household purpose;

10                   (iii) either the debt is payable in instal-  
11                   ments or a finance charge is made; and

12                   (iv) either the amount financed does not  
13                   exceed \$25,000 or the debt is secured by  
14                   manufactured housing or an interest in  
15                   land.'

16           Further amend the bill in section 3 in paragraph  
17    B by striking out subparagraph (ii) and inserting in  
18    its place the following:

19                           '(ii) except for the purposes of  
20                   Article ~~article~~ VIII, or unless the loan is  
21                   made subject to this Act by agreement, sec-  
22                   tion 1-109, a loan secured by an interest in  
23                   land, if made by a supervised financial or-  
24                   ganization and if the security interest is  
25                   bona fide and not for the purpose of circum-  
26                   vention or evasion of this Act and the fi-  
27                   nance charge does not exceed 12 1/4% per  
28                   year calculated according to the actuarial  
29                   method on the unpaid balances of the amount  
30                   financed on the assumption that the debt  
31                   will be paid according to the agreed terms  
32                   and not be paid before the end of the agreed  
33                   term.'

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1 Further amend the bill by inserting after section  
2 6 the following:

3 'Sec. 7. 9-A MRSA §6-203, sub-§2, as amended by  
4 PL 1983, c. 204, §1, is further amended to read:

5 2. Persons required to file notification who are  
6 sellers, lessors, or lenders shall pay an additional  
7 fee, at the time and in the manner stated in subsec-  
8 tion 1, of \$25 for each \$100,000, or part thereof, of  
9 the original unpaid balances arising from consumer  
10 credit transactions, except those secured by an in-  
11 terest in land in which the rate of finance charge  
12 disclosed is 12 1/4% or less, entered into in this  
13 State within the preceding calendar year and held ei-  
14 ther by the seller, lessor, or lender for more than  
15 30 days after the inception of the sale, lease or  
16 loan giving rise to the obligations, or by an assign-  
17 ee who has not filed notification. A refinancing of a  
18 sale, lease or loan resulting in an increase in the  
19 amount of an obligation is considered a new sale,  
20 lease or loan to the extent of the amount of the in-  
21 crease.'

22 Further amend the bill in section 7 in that part  
23 designated "§9-302." by striking out all of subsec-  
24 tion 1 and inserting in its place the following:

25 '1. In addition to other rule making authority  
26 that the administrator may have, he may adopt reason-  
27 able rules in accordance with this section governing  
28 agreements which are alternative mortgage transac-  
29 tions as defined in the Alternative Mortgage Transac-  
30 tion Parity Act of 1982, the United States Code, Ti-  
31 tle 12, Section 3802, subsection 1. In adopting any  
32 rule, the administrator shall take into consideration  
33 the terms of any similar rules adopted by the Super-  
34 intendent of Banking for supervised financial organi-  
35 zations chartered under the laws of this State.'

36 Further amend the bill in section 7 in that part  
37 designated "§9-308." by striking out all of the first

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1 paragraph and inserting in its place the following:

2 'A consumer may prepay in full or in part the un-  
3 paid balance of a consumer credit transaction that is  
4 an alternative mortgage transaction, as defined in  
5 section 9-301, subsection 1, at any time without pen-  
6 alty.

7 §9-309. Real estate appraisals; copies

8 Any creditor which imposes a fee on any person  
9 for the cost of an appraisal of any real estate shall  
10 furnish to the person, at no cost, a copy of the ap-  
11 praisal upon request.'

12 Further amend the bill in section 7 in that part  
13 designated "§9-405." in subsection 3 in the last line  
14 (page 11, line 8 in L.D.) by inserting after the fol-  
15 lowing: "made" the following: 'or the date the  
16 agreement was paid in full, whichever was earlier'

17 Further amend the bill by renumbering the sec-  
18 tions to read consecutively.

19 Further amend the bill by inserting before the  
20 statement of fact the following:

21 'FISCAL NOTE

22 This bill will result in the following effect on  
23 revenues:

	<u>1987-88</u>	<u>1988-89</u>
24		
25	Other Special Revenue	\$75,000      \$100,000

26 The Bureau of Consumer Credit Protection will not  
27 require additional resources to implement this bill.'

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1

STATEMENT OF FACT

2           This amendment makes some technical changes to  
3 the bill to reflect amendments made to the Maine Con-  
4 sumer Credit Code by Public Law 1987, chapter 129,  
5 enacted earlier this session. In addition, this  
6 amendment places mobile home loans and credit sales,  
7 where no real estate is involved, back under the  
8 protections of the Code. Such transactions were in-  
9 advertently excluded from the Code by the enactment  
10 of Public Law 1985, chapter 763, which excluded the  
11 financing of all personal property over \$25,000. Mo-  
12 bile homes are still considered personal property and  
13 consumers deserve the basic protection the Code of-  
14 fers in personal property transactions.

15           This amendment also preserves the status quo on  
16 fees to be paid by mortgage companies for loan in-  
17 struments under 12 1/4 % interest. Even though those  
18 transactions would be subject to the Code for regula-  
19 tory purposes, volume fees would not have to be paid  
20 on them unless the disclosed interest rate exceeded  
21 12 1/4%.

22           This amendment makes loans less than 12 1/4% made  
23 by creditors that are not supervised financial insti-  
24 tutions subject to the Maine Consumer Credit Code and  
25 continues the policy of making financial institution  
26 loans less than 12 1/4% not subject to the Code as  
27 they are supervised by the Bureau of Banking. This  
28 maintains the status quo for financial institutions.

29           Finally, this amendment clarifies that the right  
30 to prepay a consumer credit transaction applies only  
31 to those that are alternative mortgage transactions.

32

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Reported by Senator Theriault for the Committee on  
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