

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1560

S.P. 517

In Senate, May 14, 1987

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative TELOW of Lewiston, Representative RACINE of Biddeford.

STATE OF MAINE

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

1 AN ACT to Recodify the First-lien Real Estate  
2 Secured Lending Provisions Relating to  
3 Nonbanks in the Maine Consumer Credit  
4 Code.  
5

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

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

10 8. A loan or credit sale made by a supervised  
11 lender creditor when the loan or credit sale is se-  
12 cured by a first mortgage on real estate and the se-  
13 curity interest in real estate is not made for the  
14 purpose of circumventing or evading this Act, pro-  
15 vided that, with respect to advances of additional  
16 funds on ~~that~~ a loan, this exemption shall apply only

1 to those advances to protect the security and ad-  
2 vances representing the negative amortization of  
3 principal as specified in the loan agreement. The  
4 exemption provided by this subsection shall not apply  
5 to the requirements on servicing of assigned super-  
6 vised loans, section 2-310. With respect to a su-  
7 pervised lender other than a supervised financial or-  
8 ganization and a creditor making a credit sale, the  
9 exemption provided by this subsection shall apply to  
10 ~~the following provisions and no others:--Maximum fi-~~  
11 ~~nance charge limitations, sections 2-300 and 2-401;~~  
12 ~~limitations on security interest, section 2-307; de-~~  
13 ~~linquency charges, section 2-502; limitations on at-~~  
14 ~~torney's fees, section 2-507; notice to consumer,~~  
15 ~~section 3-202; and notice of right to cure default,~~  
16 ~~sections 5-110 and 5-111~~ articles II, III, IV and V  
17 only; or

18 **Sec. 2.** 9-A MRSA §1-301, sub-§11, ¶B, as amended  
19 by PL 1981, c. 243, §7, is repealed.

20 **Sec. 3.** 9-A MRSA §1-301, sub-§14, ¶B, as amended  
21 by PL 1981, c. 243, §10, is further amended to read:

22 B. A "consumer loan" does not include:

23 (i) a sale or lease in which the  
24 seller or lessor allows the buyer or lessee  
25 to purchase or lease pursuant to a credit  
26 card other than a lender credit card, or.

27 ~~(ii) except for the purposes of~~  
28 ~~Article VIII, or unless the loan is made~~  
29 ~~subject to this Act by agreement, section~~  
30 ~~1-109, a loan secured by an interest in land~~  
31 ~~if the security interest is bona fide and~~  
32 ~~not for the purpose of circumvention or eva-~~  
33 ~~sion of this Act and the finance charge does~~  
34 ~~not exceed 12 1/4% per year calculated ac-~~  
35 ~~cording to the actuarial method on the un-~~  
36 ~~paid balances of the amount financed on the~~  
37 ~~assumption that the debt will be paid ac-~~  
38 ~~cording to the agreed terms and not be paid~~  
39 ~~before the end of the agreed term.~~

40 **Sec. 4.** 9-A MRSA §1-301, sub-§40, as enacted by  
41 PL 1973, c. 762, §1, is further amended to read:



1     §9-301. Advertising

2             1. No creditor may engage in this State in false  
3 or misleading advertising concerning the terms and  
4 conditions of a consumer credit transaction subject  
5 to this article.

6             2. This section imposes no liability on the own-  
7 er or personnel, as such, of any medium in which an  
8 advertisement appears or through which it is dissemi-  
9 nated.

10     §9-302. Terms and conditions of consumer credit  
11 transactions; rulemaking

12             1. The administrator may adopt reasonable rules  
13 in accordance with this section governing consumer  
14 credit transactions, including agreements which are  
15 alternative mortgage transactions as defined in the  
16 Alternative Mortgage Transaction Parity Act of 1982,  
17 the United States Code, Title 12, Section 3802, sub-  
18 section 1. In adopting any rule, the administrator  
19 shall take into consideration the terms of any simi-  
20 lar rules adopted by the Superintendent of Banking  
21 for supervised financial organizations chartered un-  
22 der the laws of this State.

23             2. In any rule governing alternative mortgage  
24 transactions, the administrator may specify:

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

28             B. The minimum notice that may be required to be  
29 given to the mortgagor prior to a change in the  
30 annual percentage rate;

31             C. Acceptable indices that may be used by credi-  
32 tors for the purpose of determining when, and the  
33 amount by which changes in the annual percentage  
34 rate may occur and what effects, if any, the  
35 choice of index may have on the rate movement al-  
36 lowances specified in paragraph A;

37             D. Appropriate hypothetical examples to illus-  
38 trate the effects of changes in the annual per-  
39 centage rate;

1 E. Permissible variations in payment schedules,  
2 payment amounts, loan amortization and loan term  
3 resulting from rate variations or other contract  
4 terms; and

5 F. Permissible limitations on refunds of prepaid  
6 finance charges and notice requirements for pre-  
7 payment.

8 §9-303. Consumer's choice of title attorney in con-  
9 sumer credit transactions secured by real  
10 estate

11 1. Every creditor, which accepts an application  
12 for consumer credit transaction involving one to 4  
13 residential units and which requires that an attorney  
14 search the title of the subject real estate, shall  
15 permit the prospective mortgagor to select a quali-  
16 fied attorney of his own choice to search the title  
17 of the subject real estate and certify that title to  
18 the creditor or land title insurance company, pro-  
19 vided that the creditor may require the prospective  
20 mortgagor's attorney to provide it with evidence of  
21 adequate liability insurance or land title insurance  
22 or such other written policy requirements as the  
23 creditor may deem necessary to protect its interests,  
24 provided that if all such requirements are met by the  
25 attorney chosen by the mortgagor, no additional legal  
26 costs may be assessed by the creditor against the  
27 mortgagor for review of the title search or any other  
28 relevant title documents by the creditor, its title  
29 company or attorney.

30 2. Every creditor subject to this section shall  
31 provide written notice to the prospective mortgagor  
32 that he has the right to select a qualified attorney  
33 of his own choice for the performance of title work.  
34 The notice shall inform the prospective mortgagor  
35 that if the attorney chosen by the mortgagor meets  
36 the creditor's requirements, then no additional fees  
37 may be charged to the mortgagor for title work. If  
38 the prospective mortgagor indicates on the written  
39 notice that he does not wish to exercise his right to  
40 select an attorney, then the creditor may recommend  
41 an attorney.

1           3. Nothing in this section may be construed to  
2 require certification of title to a creditor if that  
3 creditor does not so require, or to a land title in-  
4 surance company if that company does not so require.

5 §9-304. Servicing requirements of assigned consumer  
6 credit transactions

7           No consumer credit transaction secured by a mort-  
8 gage on real estate may be assigned under this arti-  
9 cle unless:

10           1. The creditor entering into the agreement re-  
11 tains servicing of the account and either maintains a  
12 place of business in this State or maintains a  
13 toll-free telephone number or other free means of  
14 oral communication that is disclosed to mortgagors  
15 and staffed in the manner described in subsection 2;  
16 or

17           2. The assignee or servicing agent retained to  
18 collect the account maintains a toll-free telephone  
19 number, or other free means of oral communication,  
20 that is disclosed to mortgagors in each coupon book  
21 or on each periodic billing notice or statement of  
22 account and that is staffed during normal business  
23 hours for mortgagors to use to communicate with the  
24 assignee or servicing agent concerning the consumer  
25 credit transaction.

26 §9-305. Interest to be paid on funds held in escrow

27           A creditor, including any of its assignees, that  
28 enters into consumer credit transactions secured by a  
29 mortgage on real estate and which holds funds of a  
30 mortgagor in an escrow account for the payment of  
31 taxes or insurance premiums, either on its own behalf  
32 or on behalf of another mortgagee, shall pay interest  
33 on those funds in accordance with Title 9-B, section  
34 429.

35 §9-306. Notice of assignment

36           A consumer is not obligated to make payments on a  
37 consumer credit transaction to any creditor, other  
38 than the original creditor, until he receives notifi-  
39 cation of assignment of rights to payment and that

1 payment is to be made to the assignee. A notification  
2 which does not clearly and conspicuously identify the  
3 rights assigned is ineffective. If requested by the  
4 consumer, the assignee must seasonably furnish rea-  
5 sonable proof that the assignment has been made and  
6 unless he does so the consumer may pay the original  
7 creditor.

8 §9-307. Receipts; statements of account; evidence of  
9 payment

10 1. The creditor shall give or send to a consum-  
11 er, without request, a written receipt for each pay-  
12 ment by coin or currency on an obligation pursuant to  
13 a consumer credit transaction. Sending to the consum-  
14 er a periodic statement showing a payment received by  
15 mail complies with this subsection, if it is sent to  
16 the debtor within 45 days after receipt of the pay-  
17 ment.

18 2. Upon written request of a consumer, the per-  
19 son to whom an obligation is owed pursuant to a con-  
20 sumer credit transaction, shall provide a written  
21 statement of the dates and amounts of payments made  
22 within the past 15 months and the total amount un-  
23 paid. The statement shall be provided without charge  
24 once during each year of the term of the obligation.  
25 If additional statements are requested, the creditor  
26 may charge not in excess of \$1 for each additional  
27 statement.

28 3. Within 30 days after the consumer has ful-  
29 filled all obligations with respect to a consumer  
30 credit transaction, the person to whom the obligation  
31 was owed shall give or send to the consumer written  
32 evidence acknowledging payment in full of all obliga-  
33 tions with respect to the transaction.

34 §9-308. Right to prepay

35 A consumer may prepay in full or in part the un-  
36 paid balance of a consumer credit transaction at any  
37 time without penalty.

38 PART 4

39 REMEDIES AND PENALTIES



1 §9-401. Misrepresentation

2 A creditor or a person acting for him may not in-  
3 duce a consumer to enter into a consumer credit  
4 transaction by misrepresentation of a material fact  
5 with respect to the terms and conditions of the ex-  
6 ension of credit. A consumer so induced may rescind  
7 the sale, lease or loan or recover actual damages, or  
8 both.

9 §9-402. Unconscionability; inducement by unconscio-  
10 nable conduct

11 1. With respect to a consumer credit transac-  
12 tion, if the court as a matter of law finds:

13 A. The agreement to have been unconscionable at  
14 the time it was made, or to have been induced by  
15 unconscionable conduct, the court may refuse to  
16 enforce the agreement; or

17 B. Any clause of the agreement to have been un-  
18 conscionable at the time it was made, the court  
19 may refuse to enforce the agreement, or may en-  
20 force the remainder of the agreement without the  
21 unconscionable clause, or may so limit the appli-  
22 cation of any unconscionable clause as to avoid  
23 any unconscionable result.

24 2. If it is claimed or appears to the court that  
25 the agreement or any clause thereof may be unconscio-  
26 nable, the parties shall be afforded a reasonable op-  
27 portunity to present evidence as to its setting, pur-  
28 pose and effect to aid the court in making the deter-  
29 mination.

30 3. For the purpose of this section, a change or  
31 practice expressly permitted by this article is not  
32 in and of itself unconscionable in the absence of  
33 other practices and circumstances.

34 §9-403. Illegal, fraudulent or unconscionable con-  
35 duct in attempted collection of debts

36 1. In attempting to collect an alleged debt  
37 arising from a consumer credit transaction, a person  
38 shall not:

- 1           A. Use or threaten force or violence;
- 2           B. Threaten criminal prosecution;
- 3           C. Disclose or threaten to disclose information  
4           affecting the debtor's reputation for credit  
5           worthiness with knowledge or reason to know that  
6           the information is false;
- 7           D. Communicate more than twice or threaten to  
8           communicate more than twice to the debtor's em-  
9           ployer information concerning the existence of a  
10           debt before or after obtaining final judgment  
11           against the debtor, except as permitted by law;
- 12           E. Disclose or threaten to disclose to a person  
13           other than the debtor or his spouse, information  
14           affecting the debtor's reputation, whether or not  
15           for credit worthiness, with knowledge or reason  
16           to know that the other person does not have a le-  
17           gitimate business need for the information, but  
18           this subsection does not prohibit the disclosure  
19           to another person of information permitted to be  
20           disclosed to him by law;
- 21           F. Disclose or threaten to disclose information  
22           concerning the existence of a debt known to be  
23           disputed by the debtor without disclosing that  
24           fact;
- 25           G. Claim, attempt or threaten to enforce a right  
26           that has been barred by law or a final order of  
27           the Supreme Judicial Court or a court of the  
28           United States;
- 29           H. Use a communication which simulates legal or  
30           judicial process or which gives the appearance of  
31           being authorized, issued or approved by a govern-  
32           ment, government agency or attorney-at-law when  
33           it is not; or
- 34           I. Engage in conduct in violation of a rule  
35           adopted and published by the administrator after  
36           like conduct has been restrained or enjoined by a  
37           final order of a court in a civil action by the  
38           administrator against any person pursuant to the  
39           provisions or injunctions against fraudulent or

1 unconscionable agreements or conduct, section  
2 6-111.

3 §9-404. Stay of enforcement of judgment

4 At any time after the entry of a judgment in fa-  
5 vor of a creditor against a consumer in an action  
6 arising from a consumer credit transaction, the  
7 court, for cause and upon motion of a party or on its  
8 own motion, while such court retains jurisdiction,  
9 may stay enforcement of the judgment by order upon  
10 just and equitable conditions and continue, modify or  
11 revoke the order as the interests of justice may re-  
12 quire.

13 §9-405. Effect of violations on rights of parties

14 1. If a creditor has violated the provisions of  
15 this article applying to misrepresentation, section  
16 9-401, or illegal, fraudulent or unconscionable con-  
17 duct in an attempted collection of debts, section  
18 9-403, any aggrieved consumer has a right to recover  
19 actual damages from that person, or in lieu thereof  
20 any consumer named as a plaintiff in the complaint as  
21 originally filed has a right to recover from a person  
22 violating this article an amount determined by the  
23 court not less than \$250 nor more than \$1,000. No ac-  
24 tion pursuant to this subsection may be brought more  
25 than 2 years after the due date of the last scheduled  
26 payment.

27 2. A debtor is not obligated to pay a charge in  
28 excess of that allowed by this article and if he has  
29 paid an excess charge he has a right to a refund. A  
30 refund may be made by reducing the debtor's obliga-  
31 tion by the amount of the excess charge. If the debt-  
32 or has paid an amount in excess of the lawful obliga-  
33 tion under the agreement, the debtor may recover the  
34 excess amount from the person who made the excess  
35 charge or from an assignee of that person's rights  
36 who undertakes direct collection of payments from or  
37 enforcement of rights against debtors arising from  
38 the debt.

39 3. If the creditor has contracted for or re-  
40 ceived a charge in excess of that allowed by this ar-  
41 ticle, or if a debtor, is entitled to a refund and a

1 person liable to the debtor refuses to make a refund  
2 within a reasonable time after demand, the debtor may  
3 recover from the creditor or the person liable an  
4 amount determined by the court not less than \$250 nor  
5 more than \$1,000. No action pursuant to this subsection  
6 may be brought more than one year after the due  
7 date of the last scheduled payment of the agreement  
8 pursuant to which the charge was made.

9       4. If a creditor has violated the provisions of  
10 this article applying to authority to make supervised  
11 loans, section 9-201, the debtor is not obligated to  
12 pay the loan finance charge. If he has paid any part  
13 of the loan finance charge, he has a right to recover  
14 the payment from the person violating this article or  
15 from an assignee of that person's rights who under-  
16 takes direct collection of payments or enforcement of  
17 rights arising from the debt. No action pursuant to  
18 this subsection may be brought more than one year af-  
19 ter the due date of the last scheduled payment of the  
20 agreement pursuant to which the charge was paid.

21       5. Except as otherwise provided, no violation of  
22 this article impairs rights on a debt.

23       6. A creditor has no liability under subsections  
24 1 or 3 if, within 60 days after discovering an error  
25 and prior to the institution of an action under this  
26 section or the receipt of written notice of the er-  
27 ror, the creditor notifies the person concerned of  
28 the error and corrects the error. If the violation  
29 consists of a prohibited agreement, giving the debtor  
30 a corrected copy of the writing containing the error  
31 is sufficient notification and correction. If the vi-  
32 olation consists of an excess charge, correction  
33 shall be made by an adjustment or refund.

34       7. If the creditor establishes by a preponder-  
35 ance of evidence that a violation is unintentional or  
36 the result of a bona fide error notwithstanding the  
37 maintenance of procedures reasonably adapted to avoid  
38 any such violation or error, no liability is imposed  
39 under subsections 1, 2 and 4, the validity of the  
40 transaction is not affected, and no liability is im-  
41 posed under subsection 3, except for refusal to make  
42 a refund.

1           8. In an action in which it is found that a  
2 creditor has violated this article, the court shall  
3 award the debtor the costs of the action together  
4 with reasonable attorneys fees. Reasonable attorneys  
5 fees shall be determined by the value of the time  
6 reasonably expended by the attorney and not by the  
7 amount of the recovery on behalf of the debtor.

8           9. A creditor has no liability under subsections  
9 1 or 3, or under section 6-113, subsection 2, for any  
10 act done or omitted in good faith in conformity with  
11 any rule or interpretation thereof by the administra-  
12 tor, notwithstanding that after such act or omission  
13 has occurred, the rule or interpretation is amended,  
14 rescinded or determined by judicial or other authori-  
15 ty to be invalid for any reason.

16 §9-406. Refunds and penalties as set-off to obliga-  
17 tion

18           Refunds or penalties to which the consumer is en-  
19 titled pursuant to this Part may be set off against  
20 the consumer's obligation and may be raised as a de-  
21 fense to a suit on the obligation without regard to  
22 the time limitations prescribed by this Part.

23 §9-407. Criminal penalties

24           Any creditor, any officer or employee of a credi-  
25 tor, or any other person who willfully and knowingly  
26 violates this article, or directly or indirectly  
27 counsels, aids or abets that violation, shall be pun-  
28 ished by a fine of not more than \$2,500 for each of-  
29 fense or by imprisonment for not more than 6 months,  
30 or by both.

31           Sec. 8. Transition provision. All licenses is-  
32 sued by the administrator pursuant to the Maine Re-  
33 vised Statutes, Title 9-A, section 2-302, and all  
34 rules adopted by the administrator pursuant to Title  
35 9-A, section 3-310, subsection 5, that are in effect  
36 on the date this article becomes effective shall re-  
37 main in full force and effect as if issued or  
38 adopted, as the case may be, under this article, for  
39 their originally stated duration.

1

STATEMENT OF FACT

2           This bill reorganizes and recodifies provisions  
3 from 4 articles of the Maine Consumer Credit Code  
4 that deal with first-lien mortgage lending by  
5 nonbanks into a new article IX. The code was never  
6 initially intended to cover first-lien mortgage lend-  
7 ing, but its breadth caused new products offered by  
8 nontraditional lenders to become subject to its pro-  
9 visions. Over the years repeated alterations have  
10 been made to the code addressing first-lien mortgage  
11 loans or credit sales such that it has become an un-  
12 duly complex document. This bill, by relocating all  
13 relevant provisions of the code on first-lien mort-  
14 gage lending by nonbanks to one central location,  
15 will make the law far easier to sue and comprehend,  
16 resulting in better consumer protection.

17           This bill is to make all loans or credit sales by  
18 nonbanks that are secured by a first mortgage on real  
19 estate subject to the code, regardless of the inter-  
20 est rate. Under current law, loans or credit sales  
21 secured by first mortgages are outside of the code if  
22 the rate is 12 1/4% or less. In this relatively  
23 low-rate environment, most nonbank first mortgage  
24 loans escape code coverage and fall between regulato-  
25 ry cracks. Recent experience has demonstrated that  
26 for the most part problems consumers experience in  
27 first mortgage transactions are not rate related.  
28 Current law denies many consumers important consumer  
29 protections solely because of the rate on their mort-  
30 gage. In light of the fact that a home is the single  
31 most important investment most consumers have, this  
32 lack of effective protection and disparate treatment  
33 based on rate, can no longer be justified as sound  
34 public policy.

35

2187031887