

MAINE STATE LEGISLATURE

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R. of S.

L.D. 1136

(Filing No. S-130)

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STATE OF MAINE
SENATE
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 380, L.D. 1136, Bill, "An Act to Clarify and Amend the Law Regarding Open-end Mortgages"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 9-B MRSA §436, sub-§4, is enacted to read:

4. Exemption. This section does not apply to mortgages that are recorded on or after January 1, 1994.

Sec. 2. 9-B MRSA §855, sub-§2, as repealed and replaced by PL 1985, c. 94, is amended to read:

2. Loans to secure future advances. Any An interest in real estate which that may be mortgaged to a credit union pursuant to this section may be mortgaged in the manner set forth in section 436, or in the manner set forth in Title 33, section 505 subject to the terms and conditions set forth therein in that section. Any An interest in real estate which that may be mortgaged to a credit union organized under the laws of the United States may be mortgaged in the manner set forth in section 436, or in the manner set forth in Title 33, section 505 subject to the terms and conditions set forth therein in that section. The maximum loan terms established in subsection 1, paragraphs C and D, shall apply to each loan or advance secured by a mortgage under section 436 or Title 33, section 505.

Sec. 3. 33 MRSA §505 is enacted to read:

§505. Open-end mortgages

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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2 A. "Contingent obligations" means obligations that become
4 fixed or certain at some time after the recording of a
6 mortgage securing those obligations, such as obligations
8 under a guarantee. Contingent obligations have priority
10 from the date of recording of the mortgage, in the full
12 amount of the contingent obligation identified in the
14 mortgage, if the maximum amount of the contingent obligation
16 secured by the mortgage is stated in the mortgage.

18 B. "Future advances" means debts or obligations secured by
20 a mortgage that arise subsequent to the execution and
22 recording of the mortgage; except that the term does not
24 include protective advances or contingent obligations. The
26 term "future advances" includes only those advances made to
28 or for the account of debtors designated in the mortgage.
30 Future advances have priority as provided in this section.

32 C. "Protective advances" means advances made by a mortgagee
34 that are necessary to protect the mortgagee's security
36 interest, to collect amounts due to the mortgagee or
38 represent interest earned on an obligation secured by the
40 mortgage. Protective advances have priority from the date
42 of recording of a mortgage.

44 2. Authorization. An interest in real property that may be
46 conveyed as security for a debt or other obligation may be
48 mortgaged to secure future advances up to a total amount
50 outstanding from time to time as stated in the mortgage
52 instrument. Future advances secured by such a mortgage
54 instrument have priority over persons who, subsequent to the
56 recording of the mortgage, acquire any rights in or liens upon
58 the mortgaged real estate, in accordance with subsection 5, only
60 if the mortgage instrument states that it secures future advances
62 and specifies the total amount of debts or obligations, including
64 future advances, that it may secure from time to time.

66 3. Applicability limited. This section may not be
68 construed to affect or otherwise change existing law that allows
70 mortgages to secure existing debts or obligations, debts or
72 obligations created simultaneously with the execution of the
74 mortgage, contingent obligations, protective advances, accrued
76 interest and other debts or obligations that may be secured by a
78 mortgage under existing law, but if such a mortgage states no or
80 nominal consideration and does not expressly provide for future
82 advances, the mortgage does not afford security for any advances
84 made subsequent to the execution of the mortgage, other than
86 protective advances.

88 4. Validity; requirements. A mortgage securing future
90 advances remains valid and retains its priority even if no funds

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2 have been advanced or all future advances have been repaid as
3 long as an agreement regarding future advances remains in
4 effect. Upon termination of the agreement regarding future
5 advances and repayment of all amounts secured by the mortgage,
6 the mortgage must be discharged.

7 5. Priority. Future advances secured by a mortgage have
8 priority over the rights of all persons who, subsequent to the
9 recording of such a mortgage, acquire any rights in or liens upon
10 the mortgaged real estate to the extent that the aggregate amount
11 of all debts or obligations secured at any one time, including
12 future advances but excluding protective advances, does not
13 exceed the total amount stated in the mortgage, subject to the
14 following.

15 A. The mortgagor or a successor in interest may file in the
16 same recording office in which the original mortgage is
17 filed and send to the mortgagee by registered mail, return
18 receipt requested, a written notice limiting the amount of
19 future advances, other than advances made pursuant to a
20 commitment as defined in Title 11, section 9-105, subsection
21 1, paragraph K, secured by that mortgage to not less than
22 the amount actually advanced as of the end of the 3rd
23 business day following the delivery of the notice.

24 B. A person who, subsequent to the recording of such a
25 mortgage, acquires any rights in or liens upon the mortgaged
26 real estate and has perfected those rights by all required
27 filings or recordings may send to the mortgagee by
28 registered mail, return receipt requested, a written notice
29 stating that future advances made by the mortgagee after the
30 end of the 3rd business day following receipt of the notice
31 are junior to that person's rights in or liens upon the
32 mortgaged real estate, except that the written notice does
33 not affect the priority of advances made pursuant to a real
34 property construction or improvement financing agreement as
35 defined in the United States Internal Revenue Code of 1986,
36 Section 6323(c) and any amendments as of December 31, 1991.

37 For purposes of this subsection, an advance made pursuant to a
38 credit card or a negotiable instrument drawn against a credit
39 account secured by a mortgage is deemed to have been made on the
40 earlier of the date on the negotiable instrument or credit card
41 voucher and the date the debtor received value in exchange for
42 the negotiable instrument or credit card voucher.

43 6. Amount of future advances in excess of mortgage amount.
44 Until repaid, the amount by which a future advance causes the
45 aggregate amount of all debts or obligations secured at any one
46 time, exclusive of protective advances, to exceed the total
47 amount of advances made pursuant to the mortgage, shall not
48 exceed the amount of advances made pursuant to the mortgage
49 at the time the advance is made.
50 For purposes of this subsection, an advance made pursuant to a

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2 amount stated in the mortgage does not have priority over persons
3 who, subsequent to the recording of the mortgage, acquire any
4 rights in or liens upon the mortgaged real estate. The mortgagee
5 may credit repayments first to amounts exceeding the total amount
6 of secured debts or obligations stated in the mortgage.

7 7. Application. This section applies to mortgages that are
8 recorded on or after January 1, 1994.

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FISCAL NOTE

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13 The Bureau of Banking will incur some minor additional costs
14 to enforce certain requirements pertaining to open-end
15 mortgages. These costs can be absorbed within the bureau's
16 existing budgeted resources.'

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STATEMENT OF FACT

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23 This amendment adds definitions of "protective advances" and
24 "contingent obligations" and clarifies the priority of those
25 amounts. This amendment also amends the Maine Revised Statutes,
26 Title 9-B, section 855, subsection 2, which cross-references the
27 current open-end mortgage statutes, Title 9-B, section 436. This
28 amendment adds a fiscal note to the bill.

Reported by Senator McCormick for the Committee on Banking
and Insurance. Reproduced and Distributed Pursuant to Senate
Rule 12.

(5/11/93)

(Filing No. S-130)