

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1503

H.P. 1068

House of Representatives, May 4, 1995

An Act to Protect Consumers in High-cost Mortgages and Reverse Mortgages.

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

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative REED of Falmouth.

Cosponsored by Representatives: MITCHELL of Vassalboro, VIGUE of Winslow, Senator: SMALL of Sagadahoc.

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

Sec. 1. 9-A MRSA §8-103, sub-§1, ¶F-1 is enacted to read:

F-1. "High-rate, high-fee mortgage" means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction or a transaction under an open-end credit plan, if:

(1) The annual percentage rate at consummation of the transaction exceeds by more than 10 percentage points the yield on treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(2) The total of the points and fees payable by the consumer at or before closing exceeds the greater of 8% of the total loan amount or \$400.

For purposes of this subparagraph, points and fees include:

(a) All items included in the finance charge, except interest and the time-price differential;

(b) All compensation paid to mortgage brokers;

(c) Each of the charges listed in section 8-105, subsection 5 except an escrow for future payment of taxes, unless the:

(i) Charge is reasonable;

(ii) Creditor receives no direct or indirect compensation; and

(iii) Charge is paid to a 3rd party unaffiliated with the creditor; and

(d) Any other charges the administrator determines appropriate.

Sec. 2. 9-A MRSA §8-103, sub-§1, ¶H-1 is enacted to read:

H-1. "Reverse mortgage transaction" means a nonrecourse transaction in which a mortgage, deed of trust or equivalent consensual security interest is created against the

consumer's principal dwelling to secure one or more advances.

With respect to such a nonrecourse transaction, the payment of any principal, interest and shared appreciation or equity is due and payable, other than in the case of default, only after the transfer of the dwelling, the consumer ceases to occupy the dwelling as a principal dwelling or the death of the consumer.

Sec. 3. 9-A MRSA §8-106-A is enacted to read:

§8-106-A. Number of percentage points

1. Beginning 2 years after the effective date of the regulations adopted under the federal Riegle Community Development and Regulatory Improvement Act of 1994, Public Law No. 103-325, Section 155, 108 Stat. 2160, 2197 (1994) and no more often than biennially after the first increase or decrease in the number of percentage points under this section, the administrator may by rule increase or decrease the number of percentage points specified in this section if the administrator determines that the increase or decrease is:

A. Consistent with the consumer protection against abusive lending provided by amendments made by the federal Riegle Community Development and Regulatory Improvement Act of 1994, Title I, subtitle B, Public Law No. 103-325, 108 Stat. 2160, 2190 (1994); and

B. Warranted by the need for credit.

2. An increase or decrease under subsection 1 may not result in the number of percentage points referred to in subsection 1 being less than 8 percentage points or greater than 12 percentage points.

3. In determining whether to increase or decrease the number of percentage points referred to in subsection 1, the administrator shall consult with representatives of consumers, including low-income consumers, and lenders.

The amount specified in section 8-103, subsection 1, paragraph F-1, subparagraph (2) must be adjusted annually on January 1st by the annual percentage change in the Consumer Price Index, as reported on June 1st of the year preceding the adjustment.

This section may not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for an extension of credit.

2 Sec. 4. 9-A MRSA §§8-206-A and 8-206-B are enacted to read:

4 §8-206-A. High-rate, high-fee mortgages

6 1. In addition to other disclosures required under this
8 article, for each high-rate, high-fee mortgage the creditor shall
10 provide to the consumer the following disclosures in conspicuous
12 type.

14 A. "You are not required to complete this agreement merely
16 because you have received these disclosures or have signed a
18 loan application."

20 B. "If you obtain this loan, the lender has a mortgage on
22 your home. You could lose your home and any money you have
24 put into it if you do not meet your obligations under the
26 loan."

28 2. In addition to the disclosures required under subsection
30 1, the creditor shall disclose:

32 A. For a credit transaction with a fixed rate of interest,
34 the annual percentage rate and the amount of the regular
36 monthly payment; or

38 B. For any other credit transaction, the annual percentage
40 rate of the loan, the amount of the regular monthly payment,
42 a statement that the interest rate and monthly payment may
44 increase and the amount of the maximum monthly payment based
46 on the maximum interest rate allowed pursuant to the federal
48 Competitive Equality Banking Act of 1987, Public Law No.
 100-86, Section 1204, 101 Stat. 552, 662 (1987).

3. The disclosures required by this section must be given
 to the consumer at least 3 business days prior to the
 consummation of the transaction.

4. After providing the disclosures required by this
 section, a creditor may not change the terms of the extension of
 credit if the changes make the disclosures inaccurate, unless new
 disclosures are provided that meet the requirements of this
 section.

A. A creditor may provide new disclosures by telephone
 under the following terms.

(1) The change is initiated by the consumer.

2 (2) At the consummation of the transaction under which
3 the credit is extended, the creditor provides to the
4 consumer the new disclosures in writing and the
5 creditor and the consumer certify in writing that those
6 new disclosures were provided by telephone at least 3
7 days prior to the date of consummation of the
8 transaction.

9 5. Upon determining that a modification of the disclosure
10 process is necessary to permit consumers to meet bona fide
11 personal financial emergencies, the administrator may adopt rules
12 authorizing the modification or waiver of the rights of
13 disclosure created under subsections 3 and 4 to the extent
14 allowed under the regulations.

15 6. A high-rate, high-fee mortgage may not contain terms
16 under which a consumer must pay a prepayment penalty for paying
17 all or part of the principal before the date on which the
18 principal is due.

19 A. For purposes of this subsection and subsection 7, any
20 method of computing a refund of unearned scheduled interest
21 is a prepayment penalty if it is less favorable to the
22 consumer than the actuarial method, as that term is defined
23 in the federal Housing and Community Development Act of
24 1992, Public Law No. 102-550, Section 933(d), 106 Stat.
25 3672, 3892 (1992).

26 7. Notwithstanding subsection 6, a high-rate, high-fee
27 mortgage may contain a prepayment penalty, including terms
28 calculating a refund by a method that is not prohibited under the
29 federal Housing and Community Development Act of 1992, Public Law
30 No. 102-550, Section 933(b), 106 Stat. 3672, 3892 (1992), for the
31 transaction in question if:

32 A. At the time the mortgage is consummated:

33 (1) The consumer is not liable for an amount of
34 monthly indebtedness payments, including the amount of
35 credit extended or to be extended under the
36 transaction, that is greater than 50% of the monthly
37 gross income of the consumer; and

38 (2) The income and expenses of the consumer are
39 verified by a financial statement signed by the
40 consumer, by a credit report and, in the case of
41 employment income, by payment records or by
42 verification from the employer of the consumer, which
43 may be in the form of a copy of a pay stub or other
44 payment record supplied by the consumer;

2 B. The penalty applies only to a prepayment made with
4 amounts obtained by the consumer by means other than a
6 refinancing by the creditor under the mortgage or an
 affiliate of that creditor;

8 C. The penalty does not apply after the end of the 5-year
 period beginning on the date the mortgage is consummated; and

10 D. The penalty is not prohibited under other applicable law.

12 8. A high-rate, high-fee mortgage may not provide for an
14 interest rate applicable after default that is higher than the
16 interest rate that applies before default. If the date of
18 maturity of such a mortgage is accelerated due to default and the
20 consumer is entitled to a rebate of interest, that rebate must be
 computed by a method that is not less favorable than the
 actuarial method, as that term is defined in the federal Housing
 and Community Development Act of 1992, Public Law No. 102-550,
 Section 933(d) 106 Stat. 3672, 3892 (1992).

22 9. A high-rate, high-fee mortgage that has a term of less
24 than 5 years may not include terms under which the aggregate
26 amount of the regular periodic payments will not fully amortize
 the outstanding principal balance.

28 10. A high-rate, high-fee mortgage may not include terms
30 under which the outstanding principal balance will increase at
 any time over the course of the loan because the regular periodic
 payments do not cover the full amount of interest due.

32 11. A high-rate, high-fee mortgage may not include terms
34 under which more than 2 periodic payments required under the loan
36 are consolidated and paid in advance from the loan proceeds
 provided to the consumer.

38 12. A creditor may not engage in a pattern or practice of
40 extending credit to a consumer under a high-rate, high-fee
42 mortgage based on the consumer's collateral without regard to the
 consumer's repayment ability, including the consumer's current
 and expected income, current obligations and employment.

44 13. A creditor may not make a payment to a contractor under
46 a home improvement contract from amounts extended as credit under
 a high-rate, high-fee mortgage, except:

48 A. In the form of an instrument that is payable to the
 consumer or jointly to the consumer and the contractor; or

2 B. At the election of the consumer, by a 3rd-party escrow
4 agent in accordance with terms established in a written
 agreement signed by the consumer, the creditor and the
 contractor before the date of payment.

6 14. A mortgage that contains a provision prohibited by this
8 section is deemed a failure to deliver the material disclosures
 required under this article for the purpose of section 8-204.

10 15. The administrator may, by rule or order, exempt
12 specific mortgage products or categories of mortgages from any of
14 the prohibitions specified in subsections 6 to 13 if the
 administrator finds that the exemption:

16 A. Is in the interest of the borrowing public; and

18 B. Applies only to products that maintain and strengthen
 home ownership and equity protection.

20 16. The administrator, by regulation or order, shall
22 prohibit acts or practices in connection with:

24 A. Mortgage loans that the administrator finds unfair,
26 deceptive or designed to evade the provisions of this
 section; and

28 B. Refinancing of mortgage loans that the administrator
30 finds are associated with abusive lending practices or that
32 are otherwise not in the interest of the borrowing public.
 For purposes of this section, the term "affiliate" has the
 same meaning as in the federal Bank Holding Company Act of
 1956, 12 United States Code, Section 1841, subsection (K).

34 **§8-206-B. Reverse mortgages**

36 1. In addition to the disclosures required under this
38 article, for each reverse mortgage the creditor shall provide to
40 the consumer, at least 3 days prior to the consummation of the
42 transaction, a disclosure in conspicuous type of a good faith
44 estimate of the projected total cost of the mortgage to the
46 consumer expressed as a table of annual interest rates. Each
 annual interest rate must be based on a projected total future
 credit extension balance under a projected appreciation rate for
 the dwelling and a term for the mortgage. The disclosure must
 include:

48 A. Statements of the annual interest rates for at least 3
50 projected appreciation rates and at least 3 credit
 transaction periods, as determined by the administrator,
 including:

- 2 (1) A short-term reverse mortgage;
- 4 (2) A term equaling the actuarial life expectancy of
6 the consumer; and
- 8 (3) Any longer term the administrator determines
10 appropriate; and
- 12 B. A statement that the consumer is not obligated to
14 complete the reverse mortgage transaction merely because the
16 consumer has received the disclosure required under this
18 section or has signed an application for the reverse
 mortgage.
- 20 2. In determining the projected total cost of the mortgage
22 to be disclosed to the consumer under subsection 1, the creditor
24 shall take into account:
- 26 A. Any shared appreciation or equity that the lender is, by
28 contract, entitled to receive;
- 30 B. All costs and charges to the consumer, including the
32 costs of any associated annuity that the consumer elects or
34 is required to purchase as part of the reverse mortgage
 transaction;
- 36 C. When an associated annuity is purchased and whether or
38 not that purchase is required by the lender as a condition
 of making the reverse mortgage, all payments to and for the
 benefit of the consumer including the annuity payments
 received by the consumer and financed from the proceeds of
 the loan, instead of the proceeds used to finance the
 annuity; and
- 40 D. Any limitation on the liability of the consumer under
42 reverse mortgage transactions such as nonrecourse limits and
 equity conservation agreements.

STATEMENT OF FACT

44 The federal Home Ownership and Equity Protection Act of 1994
46 amended the federal Truth-in-Lending Act to include new
48 protections for consumers entering into high-rate, high-fee
50 mortgages and reverse mortgages. This State enforces
 truth-in-lending at the state level and, in order to maintain
 parity with the new federal provisions and protect the State's
 exemption from federal preemption in this area, this bill
 incorporates these important consumer protections into law.