

MAINE STATE LEGISLATURE

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DATE: 3/20/96

(Filing No. H- 805)

M A J O R I T Y
BANKING AND INSURANCE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1239, L.D. 1699, Bill, "An Act to Amend and Further Deregulate the Maine Consumer Credit Code"

Amend the bill by inserting after the enacting clause the following:

'PART A'

Further amend the bill by inserting after section 5 the following:

'Sec. A-6. 9-A MRSA §8-105, sub-§1-A is enacted to read:

1-A. The finance charge may not include fees and amounts imposed by 3rd-party closing agents, including settlement agents, attorneys and escrow and title companies but not including fees for administering escrow accounts, if the creditor does not require the imposition of the charges or the services provided and does not retain the charges.

Sec. A-7. 9-A MRSA §8-105, sub-§4, ¶¶A and B, as enacted by PL 1981, c. 243, §25, are amended to read:

A. Fees and charges prescribed by law which that actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction; ~~ex~~

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2 B. The premium payable for any insurance in lieu of
4 perfecting any security interest otherwise required by the
6 creditor in connection with the transaction, if the premium
does not exceed the fees and charges described in paragraph
A which that would otherwise be payable; or

8 **Sec. A-8. 9-A MRSA §8-105, sub-§4, ¶C** is enacted to read:

10 C. Any tax levied on security instruments or on documents
12 evidencing indebtedness if the payment of those taxes is a
precondition for recording the instrument securing the
14 evidence of indebtedness.

16 **Sec. A-9. 9-A MRSA §8-105, sub-§5, ¶¶B and E**, as enacted by PL
1981, c. 243, §25, are amended to read:

18 B. Fees for preparation of a ~~deed, settlement statement or~~
20 either loan-related documents;

22 E. Appraisal fees, including fees related to any pest
infestation or flood hazard inspections conducted prior to
24 closing; and

26 **Sec. A-10. 9-A MRSA §8-201, sub-§3**, as enacted by PL 1981, c.
243, §25, is amended to read:

28 3. The administrator may provide by regulation that any
30 portion of the information required to be disclosed by this
Article ~~article~~ article may be given in the form of estimates ~~where~~ when
32 the provider of that information is not in a position to know
exact information. When a portion of the interest on any
34 consumer credit transaction is determined on a per diem basis and
collected upon the consummation of the transaction, any
36 disclosure with respect to that portion of interest is deemed
accurate for purposes of this Title if the disclosure is based on
38 information actually known to the creditor at the time the
disclosure documents are being prepared for the consummation of
the transaction.

40 **Sec. A-11. 9-A MRSA §8-204, sub-§§8 and 9** are enacted to read:

42 8. An obligor has no rescission rights arising solely from
44 the form of written notice used by the creditor to inform the
obligor of the rights of the obligor under this section if the
46 creditor provided the obligor the appropriate form of written
notice published and adopted by the administrator or provided the
48 obligor a comparable written notice of the rights of the obligor
that was properly completed by the creditor and otherwise

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complied with all other requirements of this section regarding notice.

9. Rescission rights in foreclosure are determined in accordance with the following.

A. Notwithstanding section 8-208-A, and subject to the time period provided in subsection 6, in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of any obligor securing an extension of credit, the obligor has a right to rescind the transaction equivalent to other rescission rights provided by this section, if:

(i) A mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(ii) The form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the administrator or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

B. Notwithstanding section 8-105, subsection 6, and subject to the time period provided in subsection 6, for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge are deemed accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this title.

C. This subsection does not affect a consumer's right of rescission in recoupment under law.

D. This subsection applies to all consumer credit transactions in existence or consummated on or after September 30, 1995.

Sec. A-12. 9-A MRSA §8-208, sub-§1, ¶B, as amended by PL 1981, c. 698, §21, is repealed and the following enacted in its place:

B. In an individual action:

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2 (i) Twice the amount of any finance charge in
3 connection with the transaction;

4
5 (ii) In the case of a consumer lease, 25% of the total
6 amount of monthly payments under the lease;

7
8 Liability under this paragraph may not be less than \$100 nor
9 greater than \$1,000; except that in the case of a credit
10 transaction not under an open-end credit plan that is
11 secured by real property or a dwelling, liability under this
12 paragraph may not be less than \$200 nor greater than \$2,000.

13 Sec. A-13. 9-A MRSA §8-208-A is enacted to read:

14
15 **§8-208-A. Certain limitations on liability**

16
17 1. For any consumer credit transaction subject to this
18 Title that is consummated before September 30, 1995, a creditor
19 or any assignee of a creditor does not have civil, administrative
20 or criminal liability under this Title for, and a consumer does
21 not have extended rescission rights under section 8-204,
22 subsection 6 with respect to:

23 A. The creditor's treatment, for disclosure purposes, of:

24
25 (i) Taxes described in section 8-105, subsection 4,
26 paragraph C;

27 (ii) Fees described in section 8-105, subsection 5,
28 paragraphs B and E;

29 (iii) Fees and amounts described in section 8-105,
30 subsection 1-A; or

31 (iv) Borrower-paid mortgage broker fees referred to in
32 section 8-105, subsection 1, paragraph F;

33
34 B. The form of written notice used by the creditor to
35 inform the obligor of the rights of the obligor under
36 section 8-204 if the creditor provided the obligor with a
37 properly dated form of written notice published and adopted
38 by the administrator or a comparable written notice and
39 otherwise complied with all the requirements of this section
40 regarding notice; or

41 C. Any disclosure relating to the finance charge imposed
42 with respect to the transaction if the amount or percentage
43 actually disclosed:

44 (i) Is deemed accurate for purposes of this Title and

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COMMITTEE AMENDMENT "A" to H.P. 1239, L.D. 1699

- 2 if the amount disclosed as the finance charge does not
- 3 vary from the actual finance charge by more than \$200;
- 4 (ii) May, under section 8-105, subsection 6, paragraph
- 5 B, be deemed accurate for purposes of section 8-204; or
- 6
- 7 (iii) Is greater than the amount or percentage required
- 8 to be disclosed under this Title.

10 2. Subsection 1 does not apply to:

- 12 A. Any individual action or counterclaim brought under
- 13 this Title that was filed before June 1, 1995;
- 14
- 15 B. Any class action brought under this Title for which
- 16 a final order certifying a class was entered before
- 17 January 1, 1995;
- 18
- 19 C. The named individual plaintiffs in any class action
- 20 brought under this Title that was filed before June 1,
- 21 1995; or
- 22
- 23 D. Any consumer credit transaction for which a timely
- 24 notice of rescission was sent to the creditor before
- 25 June 1, 1995.

26 Sec. A-14. 9-A MRSA §8-209, sub-§§4, 5 and 6 are enacted to read:

28 4. The rights upon assignment of certain mortgages are

30 determined in accordance with the following.

- 32 A. Any person who purchases or is otherwise assigned a
- 33 high-rate, high-fee mortgage, as defined in section 8-103,
- 34 subsection 1, paragraph F-1, is subject to all claims and
- 35 defenses with respect to that mortgage that the consumer may
- 36 assert against the creditor of the mortgage, unless the
- 37 purchaser or assignee demonstrates by a preponderance of the
- 38 evidence that a reasonable person exercising ordinary due
- 39 diligence could not determine, based on the documentation
- 40 required by this Title, the itemization of the amount
- 41 financed and other disclosure of disbursements, that the
- 42 mortgage was a high-rate, high-fee mortgage. This paragraph
- 43 does not affect rights of a consumer under subsection 1, 2
- 44 or 3 or any other provision of this Title.
- 45
- 46 B. Notwithstanding any other provision of law, relief
- 47 provided as a result of any action made permissible by
- 48 paragraph A may not exceed:

- 50 (i) With respect to actions based upon a violation of

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this Title, the amount specified in section 8-208; and

(ii) With respect to all other causes of action, the sum of:

(a) The amount of all remaining indebtedness; and

(b) The total amount paid by the consumer in connection with the transaction.

C. The amount of damages that may be awarded under paragraph B, subparagraph (ii) must be reduced by the amount of any damages awarded under paragraph B, subparagraph (i).

D. Any person who sells or otherwise assigns a high-rate, high-fee mortgage, as defined in section 8-103, subsection 1, paragraph F-1, shall include a prominent notice of the potential liability under this subsection as determined by the administrator.

5. The liability of assignees for consumer credit transactions secured by real property is determined in accordance with the following.

A. Except as otherwise provided in this Title, any civil action against a creditor for a violation of this Title and any proceeding under section 8-108 against a creditor, with respect to a consumer credit transaction secured by real property, may be maintained against any assignee of that creditor only if:

(i) The violation for which the action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with the transaction pursuant to this Title; and

(ii) The assignment to the assignee was voluntary.

B. For the purposes of this subsection, a violation is apparent on the face of the disclosure statement if:

(i) The disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note or any other disclosure of disbursement; or

(ii) The disclosure statement does not use the terms or format required under this Title.

6. The treatment of a servicer of a consumer obligation

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COMMITTEE AMENDMENT "A" to H.P. 1239, L.D. 1699

2 from a consumer credit transaction is determined in accordance
3 with the following.

4 A. A servicer of a consumer obligation arising from a
5 consumer credit transaction may not be treated as an
6 assignee of such an obligation for purposes of this section
7 unless the servicer is or was the owner of the obligation.

8
9
10 B. A servicer of a consumer obligation arising from a
11 consumer credit transaction may not be treated as the owner
12 of the obligation for purposes of this section on the basis
13 of an assignment of the obligation from the creditor or
14 another assignee to the servicer solely for the
15 administrative convenience of the servicer in servicing the
16 obligation. Upon written request by the obligor, the
17 servicer shall provide the obligor, to the best knowledge of
18 the servicer, with the name, address and telephone number of
19 the owner of the obligation or the master servicer of the
20 obligation.

21 C. For purposes of this subsection, the term "servicer" has
22 the same meaning as in the federal Real Estate Settlement
23 Procedures Act of 1974, Section 6(i)(2).

24 D. This subsection applies to all consumer credit
25 transactions in existence or consummated on or after
26 September 30, 1995.'

27
28 Further amend the bill by inserting at the end before the
29 statement of fact the following:

32 'PART B

33 **Sec. B-1. 9-A MRSA §8-105, sub-§1, ¶¶D and E,** as enacted by PL
34 1981, c. 243, §25, are amended to read:

- 35
36 D. Fee for an investigation or credit report; e=
- 37
38 E. Premium or other charge for any guarantee or insurance
39 protecting the creditor against the obligor's default or
40 other credit loss- , or

41 **Sec. B-2. 9-A MRSA §8-105, sub-§1, ¶F** is enacted to read:

42
43 F. Borrower-paid mortgage broker fees, including fees paid
44 directly to the broker or to the lender for delivery to the
45 broker, whether the fees are paid in cash or financed.

46
47 **Sec. B-3. 9-A MRSA §8-105, sub-§6** is enacted to read:

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2 paragraphs ~~paragraph~~ paragraph B or D, is for failing to comply with
the requirements of section 8-204, or section 8-206,
4 subsection 1, paragraph B, C, D, E, F, G or I, J.'

6 Further amend the bill by relettering or renumbering any
nonconsecutive Part letter or section number to read
8 consecutively.

10 Further amend the bill by inserting at the end before the
statement of fact the following:

12 **FISCAL NOTE**

14 **1996-97**

16 **REVENUES**

18 Other Funds \$3,000

20 The authorization to charge license fees for supervised
22 lender branch offices will increase dedicated revenue
collections. The estimated annual increase to the Office of
24 Consumer Credit Regulation within the Department of Professional
and Financial Regulation is \$3,000 beginning in fiscal year
26 1996-97.

28 This bill may decrease the number of civil suits filed in
the court system. The Judicial Department may realize some minor
30 savings from reductions of workload and administrative costs
associated with the minimal number of cases that will no longer
32 be filed. Reductions in the collection of filing fees may
decrease General Fund revenue by minor amounts.'

34 **STATEMENT OF FACT**

38 This amendment is the majority report and is designed to
incorporate changes made to the Federal Truth in Lending Act that
40 became effective September 30, 1995. Enacting such changes into
state law protects Maine's exemption from federal enforcement.
42 In Parts A and B of the amendment, the changes ease the strict
tolerances on minor creditor disclosure errors, which have led to
44 expensive class-action lawsuits in other states.

46 In Part C, the amendment corrects an error in existing
provisions of the Maine Consumer Credit Code.

48 The amendment also adds a fiscal note.