

# MAINE STATE LEGISLATURE

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DATE: April 1, 1999

(Filing No. S-59 )

**BANKING AND INSURANCE**

Reported by:

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**STATE OF MAINE  
SENATE  
119TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 45, L.D. 116, Bill, "An Act to Protect Consumers in Real Estate Mortgage Transactions"

Amend the bill in section 1 in that part designated "~~§522.~~" in subsection 1 in paragraph B in the first line (page 1, line 24 in L.D.) by inserting after the following: "funds" the following: 'or electronic transfer'

Further amend the bill in section 1 in that part designated "~~§522.~~" in subsection 1 in paragraph D in the first 2 lines (page 1, lines 28 and 29 in L.D.) by striking out the following: "state or political subdivision of a state" and inserting in its place the following: 'governmental entity or instrumentality'

Further amend the bill in section 1 in that part designated "~~§522.~~" in subsection 1 by striking out all of paragraph E (page 1, lines 31 to 34 in L.D.) and inserting in its place the following:

'E. Cashier's check, teller's check or any transfer of funds by check or otherwise that is finally collected and unconditionally available to the settlement agent;'

Further amend the bill in section 1 in that part designated "~~§522.~~" subsection 1 in paragraph F in the first line (page 1, line 36 in L.D.) by striking out the following: "issued" and inserting in its place the following: 'or other drafts drawn'

**COMMITTEE AMENDMENT**

Further amend the bill in section 1 in that part designated "~~§522.~~" in subsection 1 in paragraph G in the first line (page 1, line 39 in L.D.) by striking out the following: "Drafts issued" and inserting in its place the following: 'Checks or other drafts drawn'

Further amend the bill in section 1 in that part designated "~~§522.~~" by striking out all of subsection 2 (page 1, lines 45 to 48 in L.D.) and inserting in its place the following:

'2. Disbursement of settlement proceeds. "Disbursement of settlement proceeds" means the payment or sending of all proceeds of the transaction to the person or account designated to receive the proceeds.'

Further amend the bill in section 1 in that part designated "~~§522.~~" in subsection 3 in the last line (page 2, line 3 in L.D.) by inserting after the following: "documents." the following: 'A person is regularly engaged in making such loans if the person made 5 or more loans subject to this subchapter in the preceding calendar year or has made 5 or more such loans in the then current calendar year.'

Further amend the bill in section 1 in that part designated "~~§522.~~" in subsection 4 in the last line (page 2, line 7 in L.D.) by striking out the following: "occurs" and inserting in its place the following: 'and the receipt of those executed documents by the lender or settlement agent occur'

Further amend the bill in section 1 in that part designated "~~§522.~~" in subsection 5 in the last line (page 2, line 13 in L.D.) by inserting after the following: "transaction" the following: 'and includes any documents that may reasonably be required by the lender as a condition to disbursement of the settlement proceeds'

Further amend the bill in section 1 in that part designated "~~§522.~~" in subsection 6 in the first line (page 2, line 15 in L.D.) by striking out the following: "gross or net" and in the 2nd line (page 2, line 16 in L.D.) by inserting after the following: "lender" the following: 'to others'

Further amend the bill in section 1 in that part designated "~~§522.~~" in subsection 7 by striking out all of the first sentence (page 2, lines 19 to 24 in L.D.) and inserting in its place the following: '"Settlement" means the time when the settlement agent has received the loan funds, loan documents and other documents and funds to carry out the terms of the contract between the parties and the settlement agent reasonably determines that all conditions for disbursement of the settlement

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proceeds as required by applicable law or such contracts have been satisfied.'

Further amend the bill in section 1 in that part designated "**§522.**" in subsection 8 in the last line (page 2, line 32 in L.D.) by inserting after the following: "proceeds." the following: 'The lender may be the settlement agent.'

Further amend the bill in section 1 by striking out all of sections 523, 524, 525 and 526 and inserting in their place the following:

**§523. Applicability**

This subchapter applies to transactions:

1. Purposes. That are incurred primarily for personal, family or household purposes:

2. Not open-end credit. That are not open-end credit as that term is defined in Title 9-A, section 1-301, subsection 26:

3. Not involving multiple advances. That do not contemplate multiple advances of funds as set forth in or required by the terms of the loan documents:

4. Location of lender or closing. When the lending office or branch from which the loan is made is located in this State or the loan closing occurs within this State; and

5. Secured by mortgages. That are secured by mortgages on real estate containing not more than 4 residential dwelling units.

**§524. Duty of lender**

The lender shall cause, at or before loan closing, disbursement of loan funds to the settlement agent; however, in the case of any loan when a right of rescission applies and has not been exercised, the lender shall cause disbursement of loan funds to the settlement agent prior to noon of the first business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 United States Code, Section 1601, et seq, and the state truth-in-lending provisions, Title 9-A, article VIII, as applicable.

**§525. Duty of settlement agent**

The settlement agent shall cause recordation of any deed, mortgage or other documents required to be recorded and shall cause disbursement of settlement proceeds within 2 business days

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2 of settlement or, when any right of rescission applies pursuant  
3 to the federal Truth-in-Lending Act, 15 United States Code,  
4 Section 1601 et seq. or the state truth-in-lending provisions,  
5 Title 9-A, article VIII, as applicable, at the time that the  
6 settlement agent reasonably determines that such right of  
7 rescission has not been exercised.

8 **§526. Penalty**

10 1. Consumer remedies. A lender or settlement agent who  
11 violates any provision of this subchapter and causes actual  
12 damage to a consumer is subject to a civil action by the  
13 aggrieved consumer in which the consumer has the right to recover  
14 the greater of actual damages in an amount determined by the  
15 court or, except as provided in subsection 2, an amount  
16 determined by the court not less than \$250 nor more than \$1,000,  
17 plus costs of the action together with reasonable attorney's fees.

18 2. Bona fide error. Liability under subsection 1 is limited  
19 to actual damages, plus costs of the action together with  
20 reasonable attorney's fees, if the lender or settlement agent  
21 shows by a preponderance of the evidence that the violation was  
22 not intentional and resulted from a bona fide error  
23 notwithstanding the maintenance of procedures reasonably adopted  
24 to avoid any such error.

25 3. Limitation of actions. An action may not be brought  
26 pursuant to this subchapter more than 2 years after the violation  
27 occurred.'

28 Further amend the bill by inserting at the end before the  
29 summary the following:

34 **FISCAL NOTE**

35 The Bureau of Banking and the Office of Consumer Credit  
36 Regulation within the Department of Professional and Financial  
37 Regulation will incur some minor additional costs to administer  
38 the Funded Settlement Act and to handle any consumer complaints  
39 that may result. These costs can be absorbed within the  
40 agencies' existing budgeted resources.

41 This bill may increase the number of civil suits filed in  
42 the court system. The additional workload and administrative  
43 costs associated with the minimal number of new cases filed can  
44 be absorbed within the budgeted resources of the Judicial  
45 Department. The collection of additional filing fees may also  
46 increase General Fund revenue by minor amounts.'

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## SUMMARY

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This amendment requires that mortgage lenders provide closing funds to settlement agents prior to or at the time of closing. The amendment clarifies that in the case of a refinancing or other loan where a right of rescission applies the lender must provide the funds to the settlement agent prior to noon of the first business day after the expiration of the rescission period. The amendment also clarifies the remedies available to consumers in civil actions, adds a limitation of recovery to actual damages if a lender or settlement agent demonstrates the violation was a bona fide error and requires that civil actions be brought within 2 years after a violation occurred.

The amendment also adds a fiscal note to the bill.