

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 494

H.P. 383

House of Representatives, February 4, 2003

An Act To Enhance Consumer Protections in Relation to Certain Mortgages

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative O'NEIL of Saco.

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

Sec. 1. 9-A MRSA §8-103, sub-§1, ¶F-1, as enacted by PL 1995, c. 326, §2, is repealed and the following enacted in its place:

F-1. "High-rate, high-fee mortgage" means a consumer credit mortgage loan transaction, involving real property located within this State, that is considered a "mortgage" under Section 152 of the federal Home Ownership and Equity Protection Act of 1994, 15 United States Code, Section 1602(aa) and the regulations adopted pursuant thereto by the Federal Reserve Board, including 12 Code of Federal Regulations, Section 226.32 and the official staff commentary to the regulations as each may be amended from time to time.

Sec. 2. 9-A MRSA §8-206-A, sub-§8, as enacted by PL 1995, c. 326, §5, is amended to read:

8. A high-rate, high-fee mortgage may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default or for default charges in excess of 5% of the amount in default. If the date of maturity of such a mortgage is accelerated due to default and the 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).

Sec. 3. 9-A MRSA §8-206-A, sub-§11-A is enacted to read:

11-A. A lender who makes a high-rate, high-fee mortgage shall report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit reporting agency at least annually during the period the lender holds or services the loan.

Sec. 4. 9-A MRSA §8-206-A, sub-§12, as enacted by PL 1995, c. 326, §5, is amended to read:

12. A creditor may not engage in a pattern or practice of extending credit to a consumer under a high-rate, high-fee 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. There is a presumption that a creditor has violated this subsection if the creditor engages in a pattern or practice of making loans without verifying and documenting consumers' repayment ability.

2 **Sec. 5. 9-A MRSA §8-206-A, sub-§12-A** is enacted to read:

4 **12-A.** A creditor may not:

6 A. Charge any points in connection with a high-rate,
8 high-fee mortgage if the proceeds of the high-rate, high-fee
10 mortgage are used to refinance an existing high-rate,
12 high-fee mortgage owned by the lender and the last financing
14 was within one year of the current refinancing; except,
16 however, this paragraph does not prohibit a lender from
18 charging points in connection with any additional proceeds
20 received by the obligor or paid to 3rd parties on the
 obligor's behalf in connection with the refinancing. For
 purposes of this subsection, "additional proceeds" for a
 closed-end loan is the amount over and above the outstanding
 principal balance of the existing high-rate, high-fee
 mortgage; except, however, if the lender refunds all of the
 unearned points on the high-rate, high-fee mortgage being
 refinanced, "additional proceeds" means the principal
 balance of the new high-rate, high-fee mortgage; or

22 B. Charge a borrower any fees to modify, renew, extend or
24 amend a high-rate, high-fee mortgage or defer any payment
26 due under a high-rate, high-fee mortgage if, after the
28 modification, renewal, extension or amendment, the loan is
30 still a high-rate, high-fee mortgage or, if no longer a
32 high-rate, high-fee mortgage, the annual percentage rate has
34 not been reduced by a least 2 percentage points. For
36 purposes of this paragraph, the term "fees" does not include
38 interest that is otherwise payable and consistent with the
40 provisions of the loan documents. The provisions of this
42 paragraph do not prohibit a lender from charging, imposing
 or causing to be paid, directly or indirectly, prepaid
 finance charges in connection with any additional proceeds,
 as defined in paragraph A, received by the borrower in
 connection with the modification, renewal, extension or
 amendment, provided the prepaid finance charges on the
 additional proceeds do not exceed 5% of the additional
 proceeds. This paragraph does not apply if the existing
 high-rate, high-fee mortgage is 60 or more days delinquent
 and the modification, renewal, extension, amendment or
 deferral is part of a work-out process.

44 **Sec. 6. 9-A MRSA §8-206-A, sub-§§13-A to 13-C** are enacted to
46 read:

48 **13-A.** A creditor may not advertise that refinancing
50 preexisting debt with a high-rate, high-fee mortgage will reduce
 a borrower's aggregate monthly debt payment without also
 disclosing that the high-rate, high-fee mortgage may increase

2 both the borrower's aggregate number of monthly debt payments and
3 the aggregate amount paid by the borrower over the term of the
4 high-rate, high-fee mortgage.

6 13-B. A creditor may not recommend or encourage default or
7 further default by a borrower on an existing loan or other debt
8 prior to the closing of a high-rate, high-fee mortgage that
9 refinances all or any portion of the existing loan or debt.

10 13-C. Beginning January 1, 2004, a lender that makes a
11 high-rate, high-fee mortgage to a borrower and offers the
12 borrower the option to purchase an individual or group credit
13 life, accident, health, disability or unemployment insurance
14 product on a prepaid single premium basis must also offer the
15 borrower the option of purchasing that insurance product on a
16 monthly premium basis.

18 If a borrower purchases from a lender an individual or group
19 credit life, accident, health, disability or unemployment
20 insurance product, that borrower has the right to cancel the
21 insurance product at any time and receive a refund of any
22 unearned premiums paid. Notice of the right to cancel must be
23 sent by mail to the borrower by the lender no later than 30 days
24 after consummation. The notice must also disclose the type of
25 insurance product purchased, the cost of the product and the
26 procedure for canceling the product.

28 **Sec. 7. 9-A MRSA §8-206-A. sub-§§16-A. 16-B and 18** are enacted
29 to read:

30
31 16-A. The lender and any assignee of the lender have the
32 obligation, jointly and severally, to refund or credit the
33 borrower for any default charges, prepayment penalties or prepaid
34 finance charges collected in excess of the limits set forth in
35 this article.

36
37 16-B. A high-rate, high-fee mortgage may not include a call
38 provision that permits the lender, in its sole discretion, to
39 accelerate the indebtedness. This subsection does not apply when
40 repayment of the loan is accelerated by a bona fide default,
41 pursuant to a due-on-sale clause provision or pursuant to another
42 provision of the loan agreement unrelated to the payment
43 schedule, including, but not limited to, bankruptcy or
44 receivership.

45
46 18. A political subdivision of this State is prohibited
47 from enacting, issuing and enforcing ordinances, resolutions,
48 rules, regulations, orders, requests for proposals or requests
49 for bids pertaining to the financial lending activities of a
50 person who:

A. Is subject to the jurisdiction of the Office of Consumer Credit Regulation, including activities subject to this article;

B. Is subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission or the United States Department of Housing and Urban Development;

C. Is subject to the jurisdiction or regulatory supervision of a department or agency of another state; or

D. Originates, purchases, sells, assigns, securitizes or services property interests or obligations created by financial transactions or loans made, executed or originated by a person referred to in paragraph A, B or C or assist or facilitate such transactions.

This subsection applies to all ordinances, resolutions, rules, regulations, orders, requests for proposals and request for bids pertaining to financial or lending activities, including any ordinances, resolutions, rules, regulations, orders, requests for proposals and request for bids disqualifying persons from doing business with a political subdivision based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

This subsection applies retroactively to all ordinances, resolutions, rules, regulations, orders, requests for proposals and requests for bids in existence on the effective date of this subsection.

SUMMARY

This bill amends the law related to the provision of high-rate, high-fee mortgages. This bill enhances consumer protections, retains the State's already stringent regulatory oversight by the Office of Consumer Credit Regulation and preserves availability of such mortgages in the marketplace.