

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

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Legislative Document

No. 686

S.P. 222

In Senate, February 8, 2005

An Act To Amend the Maine Consumer Credit Code - Credit Services Organizations

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BROMLEY of Cumberland.
Cosponsored by Representative GLYNN of South Portland and
Senators: MAYO of Sagadahoc, MITCHELL of Kennebec, Representatives: FISCHER of
Presque Isle, MILLETT of Waterford, MOODY of Manchester.

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

Sec. 1. 9-A MRSA §1-301, sub-§17, as amended by PL 1995, c. 326, §1, is further amended to read:

17. "Creditor" means a person who both:

A. Regularly extends credit in consumer credit transactions; and

B. Is the person to whom the debt arising from the consumer credit transactions is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the previous sentence, a person who regularly arranges for the extension of consumer credit from persons who are not creditors is a creditor and, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount that is a finance charge are creditors.

For the purposes of the requirements imposed under section 8-205, subsection 1, paragraphs E, F, G, and subsection 2, paragraphs A, B, C, D, I, K, and Article VIII 8, Parts 3 and 4, the term "creditor" also includes card issuers whether or not the amount due is payable by agreement in more than 4 installments or the payment of a finance charge is or may be required, and the administrator shall, by regulation, apply these requirements to those card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

A person regularly extends consumer credit only if that person extended credit more than 25 times, or more than 5 times for transactions secured by a dwelling, in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards must be applied to the current calendar year.

Notwithstanding the provisions of this section, any person who originates 2 or more high-rate, high-fee mortgages as defined in section 8-103, subsection F-1 in any 12-month period or any person who originates one or more such mortgages through a ~~credit services-organisation~~ loan broker as defined in Article X 10 of this Act in any 12-month period is considered a creditor.

Sec. 2. 9-A MRSA §10-101, as enacted by PL 1989, c. 70, §3, is amended to read:

§ 10-101. Short title

2 This article shall ~~may~~ be known and ~~may--be~~ cited as the
4 "Maine Consumer Credit Code - ~~Credit-Services-Organizations~~ Loan
Brokers."

6 **Sec. 3. 9-A MRSA §10-102, sub-§1**, as amended by PL 2001, c.
8 509, §§1 and 2, is further amended to read:

10 1. "~~Credit-services-organization~~ Loan broker" is defined as
follows.

12 A. "~~Credit-services-organization~~ Loan broker" means any
14 person who, with respect to the extension of consumer credit
by others, provides or offers to provide, in return for the
16 separate payment of money or other valuable consideration,
any of the following services:

18 (1) Improving a consumer's credit record, history or
rating;

20 (2) Arranging for or obtaining an extension of credit
22 for a consumer; or

24 (3) Providing advice or assistance to a consumer with
respect to subparagraph (1) or (2).

26 B. "~~Credit--services--organization~~ Loan broker" does not
28 include:

30 (1) A supervised financial organization;

32 (2) A supervised lender other than a supervised
34 financial organization, except that, with respect to
any transaction in which a supervised lender other than
36 a ~~credit--services--organization~~ loan broker, section
10-302 applies;

38 (3) A person licensed by the Real Estate Commission to
40 the extent that the person is engaged in activities
regulated by that commission;

42 (4) A person currently admitted to the practice of law
44 in this State;

46 (5) Any nonprofit organization exempt from taxation
48 under the United States Internal Revenue Code, Section
501(c)(3) to the extent that the organization's
activities are consistent with those set forth in its

2 application for tax exemption to the Internal Revenue
3 Service;

4 (6) A consumer reporting agency, as defined in the
5 Fair Credit Reporting Act, Title 10, chapter 210;

6 (7) An affiliate of a supervised lender when the
7 affiliate provides services described in paragraph A,
8 subparagraph (1), (2) or (3) for or on behalf of that
9 supervised lender and when the affiliate is not
10 compensated by the consumer for those services;

11 (8) An employee of a supervised lender or an employee
12 of an affiliate of a supervised lender when the
13 employee provides services described in paragraph A,
14 subparagraph (1), (2) or (3) for or on behalf of that
15 supervised lender or affiliate and when the employee or
16 the affiliate is not compensated by the consumer for
17 those services;

18 (9) A person paid by a supervised lender or a consumer
19 to document a loan, attend or conduct a loan closing,
20 disburse loan proceeds or record or file loan documents;

21 (10) A person who performs marketing services for a
22 creditor, such as a telemarketer, an advertising agency
23 or a mailing house, when the person is not compensated
24 by the consumer for those services;

25 (11) A seller of consumer goods or services that
26 provides services described in paragraph A,
27 subparagraph (1), (2) or (3) in connection with a sale
28 or proposed sale of consumer goods or services by that
29 seller when the seller is not compensated by a consumer
30 for those services; or

31 (12) An employee of a seller of consumer goods or
32 services that provides services described in paragraph
33 A, subparagraph (1), (2) or (3) in connection with a
34 sale or proposed sale of consumer goods or services by
35 that seller when the employee or seller is not
36 compensated by a consumer for those services.

37 For the purposes of this paragraph, "affiliate" has the same
38 meaning as defined in Title 9-B, section 131, subsection 1-A.

39 **Sec. 4. 9-A MRSA §10-201**, as amended by PL 1993, c. 495, §2,
40 is further amended to read:

41 **§10-201. Licensing and biennial relicensing**

2 A person desiring to engage or continue in business in this
3 State as a ~~credit-services-organization~~ loan broker shall apply
4 to the administrator for ~~registration~~ a license under this
5 article on or before January 31st of each even-numbered year.
6 The application must be in a form prescribed by the
7 administrator. The administrator may refuse the application if
8 it contains erroneous or incomplete information. A ~~registration~~
9 license may not be issued unless the administrator, upon
10 investigation, finds that the financial responsibility, character
11 and fitness of the applicant, and where applicable, its partners,
12 officers or directors, warrant belief that the business will be
13 operated honestly and fairly within the purposes of this Title.
14 The administrator may adopt rules requiring that applicants, its
15 partners, officers or directors and employees of applicants
16 satisfy initial and continuing educational requirements. The
17 reasonable costs of meeting such educational requirements are
18 assessed to applicants. Rules adopted pursuant to this section
19 are routine technical rules pursuant to Title 5, chapter 375,
20 subchapter 2-A.

21 The initial application shall ~~must~~ include an ~~initial~~ a fee
22 of ~~\$200~~ \$400. ~~Annual--re-registration--shall~~ The biennial
23 relicensing application must include a fee of \$100 \$200.

24 A licensee may conduct business only at or from a place of
25 business for which the licensee holds a license and not under any
26 other name than that on the license.

27 **Sec. 5. 9-A MRSA §10-202**, as amended by PL 1997, c. 727, Pt.
28 B, §21, is further amended to read:

29 **§10-202. Bond**

30 Each application must be accompanied by evidence of a surety
31 bond, in a form approved by the administrator in the aggregate
32 amount of ~~\$10,000~~ \$25,000, to run to the State for use by the
33 State and any person or persons who may have a cause of action
34 against a ~~credit-services-organization~~ loan broker. The terms of
35 the bond must run concurrent with the period of time during which
36 the license ~~will-be~~ is in effect.

37 **Sec. 6. 9-A MRSA §10-301**, as amended by PL 1993, c. 495, §3,
38 is further amended to read:

39 **§10-301. Escrow of funds**

40 Each ~~credit-services-organization~~ loan broker shall place
41 fees from consumers, other than bona fide 3rd-party fees, in an
42 escrow account separate from any operating accounts of the
43

2 business, pending completion of services offered. With respect
to ~~credit-services-organizations~~ loan brokers offering to arrange
4 for or obtain extensions of credit for consumers, or provide
advice or assistance ~~therefor~~ to arrange for or obtain extensions
6 of credit, "completion of services offered" means procurement of
credit under the terms agreed to by the parties.

8 **Sec. 7. 9-A MRSA §10-302, first ¶**, as enacted by PL 1989, c. 70,
§3, is amended to read:

10 Each agreement between a consumer and a ~~credit--services~~
12 ~~organization--shall~~ loan broker must be in writing, dated, and
signed by the consumer and ~~shall~~ must include the following:

14 **Sec. 8. 9-A MRSA §10-302, sub-§2**, as enacted by PL 1989, c.
16 70, §3, is amended to read:

18 2. The terms and conditions of payment, including the total
of all payments to be made by the consumer for the service,
20 whether to the ~~credit-services-organization~~ loan broker or to
some other person; and

22 **Sec. 9. 9-A MRSA §10-303, first ¶**, as enacted by PL 1989, c. 70,
24 §3, is amended to read:

26 Before any agreement is entered into, or before any money is
paid by a consumer, whichever occurs first, the ~~credit-services~~
28 ~~organization~~ loan broker shall provide the consumer with written
disclosure of material consumer protections, including the
30 following:

32 **Sec. 10. 9-A MRSA §10-304**, as enacted by PL 1989, c. 70, §3,
is amended to read:

34 **§10-304. Advertising**

36 1. ~~No-credit-services-organization~~ A loan broker may not
38 engage in this State in false or misleading advertising
concerning the terms and conditions of any services or assistance
40 offered.

42 2. This section imposes no liability on the owner or
personnel of any medium in which an advertisement appears or
44 through which it is disseminated.

46 3. A loan broker shall include its license number in all
print advertising in this State.

48 **Sec. 11. 9-A MRSA §10-305**, as enacted by PL 1989, c. 70, §3,
50 is amended to read:

2 **§10-305. Rulemaking**

4 The administrator may adopt reasonable rules pursuant to the
6 Maine Administrative Procedure Act, Title 5, chapter 375, and in
 accordance with this article governing ~~credit---services~~
 ~~organizations~~ loan brokers.

8 **Sec. 12. 9-A MRSA §10-306**, as enacted by PL 2001, c. 262, Pt.
10 A, §3, is amended to read:

12 **§10-306. Privacy of consumer financial information**

14 A ~~credit-services-organization~~ loan broker shall comply with
16 the provisions of the federal Gramm-Leach-Bliley Act, 15 United
 States Code, Section 6801 et seq. (1999) and the applicable
18 implementing federal Privacy of Consumer Information regulations,
 as adopted by the Office of the Comptroller of the Currency, 12
20 Code of Federal Regulations, Part 40 (2001); the Board of
 Governors of the Federal Reserve System, 12 Code of Federal
22 Regulations, Part 216 (2001); the Federal Deposit Insurance
 Corporation, 12 Code of Federal Regulations, Part 332 (2001); the
24 Office of Thrift Supervision, 12 Code of Federal Regulations,
 Part 573 (2001); the National Credit Union Administration, 12
26 Code of Federal Regulations, Part 716 (2001); the Federal Trade
 Commission, 16 Code of Federal Regulations, Part 313 (2001); or
28 the Securities and Exchange Commission, 17 Code of Federal
 Regulations, Part 248 (2001), if the ~~credit-services-organization~~
30 loan broker is a financial institution as defined in those
 regulations. This section is not intended to permit the release
32 of health care information except as permitted by Title 22,
 section 1711-C or Title 24-A, chapter 24.

34 **Sec. 13. 9-A MRSA §10-401**, as amended by PL 1993, c. 495, §5,
36 is further amended to read:

38 **§10-401. Effects of violations on rights of parties**

40 Any ~~credit-services-organization~~ loan broker that violates
42 any provision of this Title or any rule issued by the
 administrator, or that through any unfair, unconscionable or
44 deceptive practice causes actual damage to a consumer, is subject
 to the following:

46 1. After notice and hearing, a cease and desist order from
 the administrator;

48 2. After notice and hearing, forfeiture of such portion of
50 the required bond as proportionately may make aggrieved parties
 whole;

