

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1303

H.P. 900

House of Representatives, March 15, 2005

### An Act To Register Nonbank Loan Officers

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative GLYNN of South Portland.

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

2  
4           **Sec. 1. 9-A MRSA §1-301, sub-§22-A** is enacted to read:

6           22-A. "Loan officer" means an individual who is employed or  
8           retained and supervised by a licensed supervised lender that is  
10           not a supervised financial organization, or by a registered  
12           credit services organization, whose primary job responsibilities  
14           include direct contact with mortgage applicants and who accepts  
16           applications for and originates, negotiates, solicits, arranges  
              for or obtains mortgage loans. "Loan officer" does not include  
              employees who conduct purely administrative or clerical tasks.  
              "Loan officer" not include a sole proprietor licensed as and  
              acting solely as a supervised lender pursuant to section 2-302,  
              subsection 1 or registered as and acting solely as a credit  
              services organization pursuant to section 10-201.

18           **Sec. 2. 9-A MRSA §2-302, sub-§1-A** is enacted to read:

20           1-A. At the time of application for a license to make  
22           supervised loans and on an ongoing basis during the term of any  
24           such license, the applicant shall apply to the administrator for  
26           registration of all loan officers employed or retained by the  
28           applicant. Applications must be filed in a manner prescribed by  
              the administrator, must include the names, addresses and work  
              locations of the loan officers and such additional information as  
              is reasonably requested by the administrator and must be  
              accompanied by an application fee of \$20 for each loan officer,  
              up to a maximum of \$200.

30           **Sec. 3. 9-A MRSA §2-302, sub-§2,** as amended by PL 1999, c.  
32           184, §2, is further amended to read:

34           2. No A license to make supervised loans or a registration  
36           certificate as a loan officer may not be issued unless the  
38           administrator, upon investigation, finds that the financial  
40           responsibility, character and fitness of the applicant, and of  
42           the members thereof, if the applicant is a copartnership or  
44           association, and of the officers and directors thereof, if the  
46           applicant is a corporation, and of the loan officers thereof, are  
              such as to warrant belief that the business will be operated  
              honestly and fairly within the purposes of this Act. In  
              determining the financial responsibility of an applicant  
              proposing to engage in making insurance premium loans, the  
              administrator shall consider the liabilities the lender may incur  
              for erroneous cancellation of insurance.

48           A. Every applicant shall also, at the time of filing such  
50           application, file with the administrator, if the  
              administrator so requires, a bond satisfactory to the

2 administrator in an amount not to exceed \$50,000. The terms  
of the bond must run concurrent with the period of time  
4 during which the license will be in effect. The bond must  
run to the State for the use of the State and of any person  
6 or persons who may have a cause of action against the  
licensee under this Act. The bond must be conditional that  
8 the licensee will faithfully conform to and abide by the  
provisions of this Act and to all rules lawfully made by the  
10 administrator under this Act and will pay to the State and  
to any such person or persons any and all amounts of money  
12 that may become due or owing to the State or to such person  
or persons from the licensee under and by virtue of this Act  
14 during the period for which the bond is given.

16 B. As used in this section, the term "financial  
responsibility" means that the applicant has available for  
the operation of the licensed business net assets of at  
18 least \$25,000 and upon issuance of a license, each licensee  
shall maintain net assets of at least \$25,000 which that are  
20 either used or readily available for use in the conduct of  
the business of each office of the licensee in which  
22 supervised loans are made.

24 D. In determining the financial responsibility of a  
nonprofit organization engaged in the financing of housing  
26 for low-income people under a program specifically designed  
for that purpose, the administrator may waive the  
28 requirement of a bond and availability of \$25,000 of net  
assets, if the applicant submits appropriate additional  
30 evidence of financial responsibility.

32 **Sec. 4. 9-A MRS §2-302, sub-§3**, as enacted by PL 1973, c.  
762, §1, is amended to read:

34  
36 3. Upon written request, the applicant is entitled to a  
hearing on the question of his the applicant's qualifications for  
a license or registration if (a) the administrator has notified  
38 the applicant in writing that his the application has been  
denied, or (b) the administrator has not issued a license or  
40 registration within 60 days after the application for the license  
or registration was filed. A request for a hearing may not be  
42 made more than 15 days after the administrator has mailed a  
writing to the applicant notifying him the applicant that the  
44 application has been denied and stating in substance the  
administrator's findings supporting denial of the application.

46 **Sec. 5. 9-A MRS §2-302, sub-§5-A** is enacted to read:

48 5-A. A licensee may conduct the business of making  
50 supervised loans only through a loan officer who possesses a

2 current, valid registration certificate. A loan officer may not  
3 be employed or retained simultaneously by more than one  
4 licensee. A loan officer must be registered at the loan  
5 officer's principal licensed work location and may then work from  
6 any licensed location of the supervised lender. The registration  
7 of a loan officer is valid only when that person is employed or  
8 retained and supervised by a licensed supervised lender. When a  
9 loan officer ceases to be employed by a licensed supervised  
10 lender, the loan officer and the supervised lender shall promptly  
11 notify the administrator in writing.

12 **Sec. 6. 9-A MRSA §2-303**, as amended by PL 1985, c. 763, Pt.  
13 A, §26 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is  
14 further amended to read:

15 **§2-303. Revocation or suspension of license or registration**

16  
17 1. The administrator may file a complaint with the District  
18 Court to suspend or revoke a license to make supervised loans or  
19 a registration as a loan officer if the administrator finds  
20 reason to believe, after investigation or hearing, or both, that:

21

22 A. The licensee or registrant has violated this Act or any  
23 rule or order made pursuant to this Act; or

24  
25 B. Facts or conditions exist which that would clearly have  
26 justified the administrator in refusing to grant a license  
27 or registration had these facts or conditions been known to  
28 exist at the time the application for the license or  
29 registration was made.

30  
31 An affirmative finding by the District Court of either cause  
32 shall--be is sufficient to suspend or revoke the license or  
33 registration.

34  
35 1-A. The administrator may refuse to renew a license or  
36 registration, after notice and opportunity for a hearing has been  
37 provided to the licensee or registrant, for any of the reasons  
38 set forth in subsection 1.

39

40 2. No revocation or suspension of a license shall--impair or  
41 registration impairs or affect affects the obligation of any  
42 preexisting lawful contract between the licensee or registrant  
43 and any debtor.

44  
45 3. The administrator may reinstate a license, terminate a  
46 suspension or grant a new license or registration to a person  
47 whose license or registration has been revoked if no fact or  
48 condition then exists which that clearly would have justified the  
49 administrator in refusing to grant a license or registration.

50

2           4. No revocation, suspension, annulment or withdrawal of a  
4           license or registration is lawful unless, prior to the  
6           institution of proceedings by the administrator, he the  
8           administrator gave notice by mail to the licensee or registrant  
          of facts or conduct which that warrant the intended action, and  
          the licensee or registrant was given an opportunity to show  
          compliance with all lawful requirements for the retention of the  
          license or registration.

10                   **Sec. 7. 9-A MRSA §2-303-A**, as enacted by PL 2001, c. 371, §4,  
12           is amended to read:

14           **§2-303-A. Temporary suspension of license or registration**

16           Notwithstanding Title 5, sections 10003 and 10004 and Title  
18           10, section 8003, if the public interest or the protection of  
20           borrowers so requires, the administrator may, by order, suspend a  
22           license to make supervised loans or registration as a loan  
24           officer or postpone the effective date of such a license or  
26           registration. Upon entry of the order, the administrator shall  
          promptly notify the applicant or, licensee or registrant that an  
          order has been entered, of the reasons for the order and that,  
          within 15 days after the receipt of a written request by the  
          applicant or, licensee or registrant, the matter must be  
          scheduled for hearing. Section 2-303 applies to all subsequent  
          proceedings.

28                   **Sec. 8. 9-A MRSA §10-102, sub-§3** is enacted to read:

30                   3. "Loan officer" has the same meaning as in section 1-301,  
32           subsection 22-A.

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

38           **§10-201. Registration and annual reregistration**

40           A person desiring to engage or continue in business in this  
42           State as a credit services organization shall apply to the  
44           administrator for registration under this article on or before  
46           January 31st of each year. The application must be in a form  
48           prescribed by the administrator. The administrator may refuse  
50           the application if it contains erroneous or incomplete  
          information. At the time of application and on an ongoing basis  
          during the term of any such registration, the applicant shall  
          apply to the administrator for registration of all loan officers  
          employed or retained by the applicant. An application for  
          registration as a loan officer must be filed in a manner  
          prescribed by the administrator and include the name, address and

2 work location of the loan officer and such additional information  
3 as is reasonably requested by the administrator. A registration  
4 may not be issued unless the administrator, upon investigation,  
5 finds that the financial responsibility, character and fitness of  
6 the applicant, and where applicable, its partners, officers or  
7 directors or loan officers, warrant belief that the business will  
8 be operated honestly and fairly within the purposes of this Title.

9  
10 The application shall ~~shall~~ must include an initial fee of \$200.  
11 Annual reregistration shall ~~shall~~ must include a fee of \$100.  
12 Applicants and registrants must pay an additional \$20 for each  
13 loan officer, up to a maximum of \$200.

14 A registered credit services organization may conduct  
15 business only through a loan officer who possesses a current,  
16 valid registration certificate. A loan officer may not be  
17 employed or retained simultaneously by more than one registrant.  
18 A loan officer must register at the loan officer's principal  
19 registered work location and may then work from any registered  
20 location of the credit services organization. The registration  
21 of a loan officer is valid only when that person is employed or  
22 retained and supervised by a registered credit services  
23 organization. When a loan officer ceases to be employed by a  
24 registered credit services organization, the loan officer and the  
25 credit services organization shall promptly notify the  
26 administrator in writing.

27  
28 **Sec. 10. 9-A MRSA §10-401, first ¶,** as amended by PL 1993, c.  
29 495, §5, is further amended to read:

30  
31 Any credit services organization or loan officers of any  
32 credit services organization that ~~violates~~ violate any provision  
33 of this Title or any rule issued by the administrator, or that  
34 through any unfair, unconscionable or deceptive practice causes  
35 cause actual damage to a consumer, ~~is~~ are subject to the  
36 following:

37  
38 **Sec. 11. 9-A MRSA §10-401, sub-§4,** as amended by PL 1993, c.  
39 495, §5, is further amended to read:

40  
41 4. A civil action by an aggrieved consumer in which that  
42 consumer has the right to recover actual damages from the credit  
43 services organization or its loan officers in an amount  
44 determined by the court, plus costs of the action together with  
45 reasonable attorney's fees; and  
46

47  
48 **SUMMARY**

2 This bill requires the registration of loan officers both  
for supervised lenders and for credit services organizations.

4 1. The bill defines "loan officer" in a way that exempts  
clerical staff and loan processors. The definition also exempts  
6 sole proprietors and employees of banks and credit unions.

8 2. The bill requires that at the time a supervised lender  
applies for its license to make supervised loans the company  
10 request registration of its loan officers. In addition, those  
loan officer registrations would have to be updated during the  
12 licensing period.

14 3. The bill authorizes the Department of Professional and  
Financial Regulation, Office of Consumer Credit Regulation to  
16 suspend or revoke the registration of a loan officer  
independently of any action against the license or registration  
18 of a supervised lender or credit services organization. In  
effect, this would permit the State to track a specific  
20 individual loan officer.