

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1869

H.P. 1301

House of Representatives, April 24, 2007

An Act To Protect Maine Homeowners from Predatory Lending

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Speaker CUMMINGS of Portland.

Cosponsored by Senator DOW of Lincoln and

Representatives: ADAMS of Portland, BABBIDGE of Kennebunk, BARSTOW of Gorham, BEAUDETTE of Biddeford, BEAULIEU of Auburn, BERRY of Bowdoinham, BLISS of South Portland, BOLAND of Sanford, BRAUTIGAM of Falmouth, BURNS of Berwick, CAIN of Orono, CANAVAN of Waterville, CARTER of Bethel, CASAVANT of Biddeford, CHASE of Wells, CLARK of Millinocket, CONNOR of Kennebunk, CONOVER of Oakland, CROCKETT of Augusta, DRISCOLL of Westbrook, DUCHESNE of Hudson, DUNN of Bangor, EBERLE of South Portland, FINCH of Fairfield, FINLEY of Skowhegan, FISHER of Brewer, FLETCHER of Winslow, FLOOD of Winthrop, GERZOFKY of Brunswick, GILES of Belfast, GROSE of Woolwich, HAMPER of Oxford, HANLEY of Gardiner,

HASKELL of Portland, HILL of York, HINCK of Portland, HOTHAM of Dixfield, JACKSON of Allagash, JACOBSEN of Waterboro, KNIGHT of Livermore Falls, KOFFMAN of Bar Harbor, LORING of the Penobscot Nation, MacDONALD of Boothbay, MAKAS of Lewiston, MARLEY of Portland, McKANE of Newcastle, McLEOD of Lee, MILLER of Somerville, MILLS of Farmington, MIRAMANT of Camden, NORTON of Bangor, PATRICK of Rumford, PERCY of Phippsburg, PERRY of Calais, PIEH of Bremen, PILON of Saco, PINGREE of North Haven, PINKHAM of Lexington Township, PIOTTI of Unity, PLUMMER of Windham, PRATT of Eddington, PRESCOTT of Topsham, PRIEST of Brunswick, RAND of Portland, RECTOR of Thomaston, RICHARDSON of Carmel, RICHARDSON of Warren, RINES of Wiscasset, SAMSON of Auburn, SAVAGE of Falmouth, SILSBY of Augusta, SIROIS of Turner, SMITH of Monmouth, STRANG BURGESS of Cumberland, TREAT of Farmingdale, TRINWARD of Waterville, TUTTLE of Sanford, VAUGHAN of Durham, WATSON of Bath, WEBSTER of Freeport, WEDDELL of Frankfort, WHEELER of Kittery, WOODBURY of Yarmouth, Senators: BENOIT of Sagadahoc, BOWMAN of York, President EDMONDS of Cumberland, HASTINGS of Oxford, MARRACHÉ of Kennebec, MARTIN of Aroostook, MILLS of Somerset, MITCHELL of Kennebec, ROSEN of Hancock, ROTUNDO of Androscoggin, SAVAGE of Knox, SCHNEIDER of Penobscot, SNOWE-MELLO of Androscoggin, STRIMLING of Cumberland, SULLIVAN of York, TURNER of Cumberland.

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

2 **Sec. 1. 9-A MRSA §3-315** is enacted to read:

3 **§3-315. Real estate settlement procedures**

4 A creditor and its loan officers shall comply with the provisions of the federal Real
5 Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq.
6 and its implementing regulation, Regulation X, 24 Code of Federal Regulations, Section
7 3500 et seq.

8 **Sec. 2. 9-A MRSA §6-105-A** is enacted to read:

9 **§6-105-A. Uniform multistate automated licensing system**

10 For the purposes of participating in the establishment and implementation of a
11 uniform multistate automated licensing system, referred to in this section as "the
12 system," for loan brokers, supervised lenders that are not supervised financial
13 organizations and individual loan officers thereof, the administrator may undertake the
14 following actions.

15 1. The administrator may establish new rules that are necessary for the State to
16 participate in the system, including rules authorizing the system to collect license fees on
17 behalf of the State and remit those fees to the State, authorizing collection fees by the
18 system to pay for its services, authorizing the system to process and maintain license
19 records and authorizing use of the system's uniform forms, upon the director's finding that
20 each new rule is consistent with the public interest and the purposes of this Act. Rules
21 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
22 chapter 375, subchapter 2-A.

23 2. The administrator may require a credit and background investigation of each
24 applicant for a license as a loan broker, a supervised lender that is not a supervised
25 financial organization or a loan officer of a loan broker or a supervised lender, by means
26 including fingerprint checks for state and national criminal histories, commencing at the
27 time the State joins the system pursuant to this section. The cost of the investigations
28 must be charged to the applicants. Information obtained or held by the administrator
29 pursuant to this subsection is nonpublic pursuant to section 6-116 and not subject to
30 disclosure.

31 **Sec. 3. 9-A MRSA §8-103, sub-§1,** as amended by PL 2003, c. 49, §1, is
32 repealed.

33 **Sec. 4. 9-A MRSA §8-103, sub-§1-A** is enacted to read:

34 **1-A.** As used in this Article, unless the context otherwise indicates, the following
35 words have the following meanings.

- 1 A. "Accepted credit card" means any credit card that the cardholder has requested
2 and received or has signed or has used or authorized another to use for the purpose of
3 obtaining money, property, labor or services on credit.
- 4 B. "Adequate notice" as used in section 8-302 means a printed notice to a cardholder
5 that sets forth the pertinent facts clearly and conspicuously so that a person against
6 whom it is to operate could reasonably be expected to have noticed it and understood
7 its meaning. That notice may be given to a cardholder by printing the notice on any
8 credit card, on each periodic statement of account issued to the cardholder or by any
9 other means reasonably ensuring the receipt by the cardholder.
- 10 C. "Affiliate" has the same meaning as set forth in 12 United States Code, Section
11 1841.
- 12 D. "Annual percentage rate" means the annual percentage rate for a loan calculated
13 according to the provisions of 12 Code of Federal Regulations, Part 226.
- 14 E. "Bona fide discount points" means an amount knowingly paid by a borrower for
15 the express purpose of reducing, and which in fact does result in a bona fide
16 reduction of, the interest rate applicable to a residential mortgage loan, as long as the
17 undiscounted interest rate for the residential mortgage loan does not exceed the
18 conventional mortgage rate by more than 2 percentage points for a residential
19 mortgage loan secured by a first lien or by 3 1/2 percentage points for a residential
20 mortgage loan secured by a subordinated lien.
- 21 F. "Borrower" means any natural person obligated to repay a loan, including a
22 coborrower, cosigner or guarantor.
- 23 G. "Cardholder" means any person to whom a credit card is issued or any person
24 who has agreed with the card issuer to pay obligations arising from the issuance of a
25 card to another person.
- 26 H. "Card issuer" means any person who issues a credit card or the agent of that
27 person with respect to that card.
- 28 I. "Conventional mortgage rate" means the most recently published annual yield on
29 conventional mortgages published by the Board of Governors of the Federal Reserve
30 System, as published in statistical release H.15 or any superseding publication, as of
31 the applicable time set forth in 12 Code of Federal Regulations, Section
32 226.32(a)(1)(i).
- 33 J. "Conventional prepayment penalty" means any prepayment penalty or fee that
34 may be collected or charged in a residential mortgage loan and that is authorized by
35 law other than this section, as long as the residential mortgage loan does not have an
36 annual percentage rate that exceeds the conventional mortgage rate by more than 2
37 percentage points and does not permit any prepayment fees or penalties that exceed
38 2% of the amount prepaid.
- 39 K. "Creditor" has the same meaning as "lender" as set forth in 24 Code of Federal
40 Regulations, Section 3500.2 and includes a mortgage broker.
- 41 L. "Discount" as used in section 8-303 means a reduction made from the regular
42 price. The term "discount" does not mean a surcharge.

1 M. "Dwelling" means a residential structure or mobile home that contains one to 4
2 family housing units, or individual units of condominiums or cooperatives.

3 N. "Excluded points and fees" means, in connection with a residential mortgage loan,
4 1% of the total loan amount attributable to bona fide fees paid to a federal or state
5 government agency that insures payment of some portion of a residential mortgage
6 loan plus an amount not to exceed 2% of the total loan amount attributable to bona
7 fide discount points or a conventional prepayment penalty.

8 O. "Flipping a residential mortgage loan" means the making of a residential
9 mortgage loan to a borrower that refinances an existing residential mortgage loan
10 when the new loan does not have reasonable, tangible net benefit to the borrower
11 considering all of the circumstances, including, but not limited to, the terms of both
12 the new and refinanced loans, the cost of the new loan and the borrower's
13 circumstances.

14 P. "High-rate, high-fee mortgage" means a residential mortgage loan in which the
15 terms of the loan meet or exceed one or more of the thresholds defined in paragraph
16 CC.

17 Q. "Material disclosures" means the disclosure, as required by this Article, of the
18 annual percentage rate, the method of determining the finance charge and the balance
19 upon which a finance charge will be imposed, the amount of the finance charge, the
20 amount to be financed, the total of payments, the number and amount of payments
21 and the due dates or periods of payments scheduled to repay the indebtedness.

22 R. "Mortgage broker" has the same meaning as set forth in 24 Code of Federal
23 Regulations, Section 3500.2.

24 S. "Nontraditional mortgage" has the same meaning as those mortgages described in
25 the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued
26 September 29, 2006 and published in 71 Federal Register, 58609 on October 4, 2006
27 and as updated from time to time.

28 T. "Points and fees" means:

29 (1) All items included in the definition of "finance charge" in 12 Code of Federal
30 Regulations, Section 226.4(a) and 226.4(b) except interest or the time price
31 differential;

32 (2) All items described in 12 Code of Federal Regulations, Section
33 226.32(b)(1)(iii);

34 (3) All compensation paid directly or indirectly to a mortgage broker from any
35 source, including a mortgage broker that originates a loan in its own name in a
36 table-funded transaction;

37 (4) The cost of all premiums financed by a creditor directly or indirectly for any
38 credit life, credit disability, credit unemployment or credit property insurance or
39 any other life or health insurance, or any payments financed by the creditor
40 directly or indirectly for any debt cancellation or suspension agreement or
41 contract, except that insurance premiums, including private mortgage insurance
42 or debt cancellation or suspension fees calculated and paid on a monthly basis or

1 through regularly scheduled periodic payments, may not be considered financed
2 by the creditor;

3 (5) The maximum prepayment fees and penalties that may be charged or
4 collected under the terms of the loan documents; and

5 (6) All prepayment fees or penalties that are incurred by the borrower if the loan
6 refinances a previous loan made or currently held by the same creditor or an
7 affiliate of the creditor.

8 "Points and fees" does not include taxes, filing fees, recording fees and other charges
9 and fees paid or to be paid to public officials for determining the existence of or for
10 perfecting, releasing or satisfying a security interest or bona fide and reasonable
11 charges and fees paid to a person other than the creditor or an affiliate of the creditor
12 as follows: fees for tax payment services; fees for flood certification; fees for pest
13 infestation and flood determination; appraisal fees; fees for inspections performed
14 prior to closing; fees for credit reports; fees for surveys; attorney's fees; notary fees;
15 escrow charges not otherwise included under subparagraph (1); title insurance
16 premiums; and fire and hazard insurance and flood insurance premiums, as long as
17 the conditions in 12 Code of Federal Regulations, Section 226.4(d)(2) are met.

18 For open-end loans, the points and fees are calculated by adding the total points and
19 fees known at or before closing, including the maximum prepayment penalties that
20 may be charged or collected under the terms of the loan documents and the minimum
21 additional fees the borrower would be required to pay to draw down an amount equal
22 to the total credit line.

23 U. "Rate spread home loan" means any loan for which the rate spread must be
24 reported under the Home Mortgage Disclosure Act of 1975, Regulation C, 12 Code
25 of Federal Regulations, Section 203.4(a)(12); and any loan that meets the criteria of a
26 high-rate, high-fee mortgage.

27 V. "Residential mortgage loan" means an extension of credit, including an open-end
28 credit plan, in which:

29 (1) The loan does not exceed the maximum original principal obligation as set
30 forth in and from time to time adjusted according to the provisions of 12 United
31 States Code, Section 1454(a)(2);

32 (2) The loan is considered a federally related mortgage loan as set forth in 24
33 Code of Federal Regulations, Section 3500.2; and

34 (3) The loan is not a reverse mortgage transaction or a loan made primarily for
35 business, agricultural or commercial purposes.

36 W. "Residential mortgage transaction" means a transaction in which a mortgage,
37 deed of trust, purchase money security interest arising under an installment sales
38 contract or equivalent consensual security interest is created or retained against the
39 consumer's dwelling to finance the acquisition or initial construction of that dwelling.

40 X. "Reverse mortgage transaction" means a nonrecourse transaction in which a
41 mortgage, deed of trust or equivalent consensual security interest is created against
42 the consumer's principal dwelling to secure one or more advances and with respect to

1 which the payment of any principal, interest and shared appreciation or equity is due
2 and payable, other than in the case of default, only after the transfer of the dwelling,
3 after the consumer ceases to occupy the dwelling as a principal dwelling or after the
4 death of the consumer.

5 Y. "Servicer" has the same meaning as set forth in 24 Code of Federal Regulations,
6 Section 3500.2.

7 Z. "Servicing" has the same meaning as set forth in 24 Code of Federal Regulations,
8 Section 3500.2 and includes any other activities or responsibilities undertaken in
9 connection with a residential mortgage loan by a person who acts as a servicer with
10 respect to that residential mortgage loan, including collection and default
11 management functions.

12 AA. "Surcharge" means any means of increasing the regular price to a cardholder
13 that is not imposed upon customers paying by cash, check or similar means.

14 BB. "Tax refund loan," also known as "refund anticipation loan," means a
15 transaction in which a creditor lends an amount less than or equal to a consumer's
16 expected tax refund.

17 CC. "Threshold" means either:

18 (1) Rate threshold, which is, for a residential mortgage loan, the point at which
19 the annual percentage rate equals or exceeds the rate set forth in 12 Code of
20 Federal Regulations, Section 226.32(a)(1)(i), without regard to whether the
21 residential mortgage loan may be considered a "residential mortgage transaction"
22 or an extension of "open-end credit" as those terms are set forth in 12 Code of
23 Federal Regulations, Section 226.2; or

24 (2) The total points and fees threshold, which is:

25 (a) For loans in which the total loan amount is \$40,000 or more, the point at
26 which the total points and fees payable in connection with the residential
27 mortgage loan less any excluded points and fees exceed 5% of the total loan
28 amount; and

29 (b) For loans in which the total loan amount is less than \$40,000, the point at
30 which the total points and fees payable in connection with the residential
31 mortgage loan less any excluded points and fees exceed 6% of the total loan
32 amount.

33 DD. "Total loan amount" means the principal of a loan minus those points and fees
34 that are included in the principal amount of the loan. For open-end loans, the total
35 loan amount must be calculated using the total line of credit allowed under the
36 residential mortgage loan at closing.

37 EE. "Unauthorized use," as used in section 8-303, means a use of a credit card by a
38 person other than the cardholder who does not have actual, implied or apparent
39 authority for such use and from which the cardholder receives no benefit.

40 **Sec. 5. 9-A MRSA §8-206, sub-§3, as enacted by PL 1981, c. 243, §25, is**
41 **amended to read:**

1 **3.** ~~In the case of~~ a residential mortgage transaction, ~~which is also~~ subject to the Real
2 Estate Settlement Procedures Act of 1974, 12 United States Code, Title 12, Section 2601,
3 et seq., good faith estimates of the disclosures required under subsection 1 shall must be
4 made in accordance with ~~regulations~~ rules of the administrator under section 8-201,
5 subsection 3, before the credit is extended, or ~~shall must~~ be delivered or placed in the
6 mail not later than 3 business days after the creditor receives the consumer's ~~written bona~~
7 fide application, whichever is earlier. If the disclosure statement furnished within 3 days
8 of the ~~written bona fide~~ application contains an annual percentage rate ~~which that~~ is
9 subsequently rendered inaccurate within the meaning of section 8-106, subsection 3, the
10 creditor shall furnish another statement at the time of settlement or consummation. If the
11 disclosure statement furnished within 3 days of the bona fide application indicates that
12 the consumer will not be assessed a prepayment penalty, and if that statement is
13 subsequently rendered inaccurate, the creditor shall notify the consumer of that change as
14 soon as practicable and shall also furnish a corrected statement prior to the time of
15 settlement or consummation.

16 **Sec. 6.** 9-A MRSA §8-206-A, sub-§6, as enacted by PL 1995, c. 326, §5, is
17 repealed.

18 **Sec. 7.** 9-A MRSA §8-206-A, sub-§7, as enacted by PL 1995, c. 326, §5, is
19 repealed.

20 **Sec. 8.** 9-A MRSA §8-206-A, sub-§8, as amended by PL 2003, c. 49, §2, is
21 repealed.

22 **Sec. 9.** 9-A MRSA §8-206-A, sub-§9, as enacted by PL 1995, c. 326, §5, is
23 repealed.

24 **Sec. 10.** 9-A MRSA §8-206-A, sub-§11, as enacted by PL 1995, c. 326, §5, is
25 repealed.

26 **Sec. 11.** 9-A MRSA §8-206-A, sub-§12, as enacted by PL 1995, c. 326, §5, is
27 repealed.

28 **Sec. 12.** 9-A MRSA §8-206-A, sub-§12-A, as enacted by PL 2003, c. 49, §4, is
29 repealed.

30 **Sec. 13.** 9-A MRSA §8-206-A, sub-§13, as enacted by PL 1995, c. 326, §5, is
31 repealed.

32 **Sec. 14.** 9-A MRSA §8-206-A, sub-§13-B, as enacted by PL 2003, c. 49, §5, is
33 repealed.

34 **Sec. 15.** 9-A MRSA §8-206-A, sub-§13-C, as enacted by PL 2003, c. 49, §5, is
35 repealed.

36 **Sec. 16.** 9-A MRSA §8-206-A, sub-§16-A, as enacted by PL 2003, c. 49, §6, is
37 repealed.

1 **Sec. 17. 9-A MRSA §8-206-A, sub-§16-B**, as enacted by PL 2003, c. 49, §6, is
2 repealed.

3 **Sec. 18. 9-A MRSA §8-206-A, sub-§17**, as enacted by PL 1995, c. 326, §5, is
4 repealed.

5 **Sec. 19. 9-A MRSA §8-206-C** is enacted to read:

6 **§8-206-C. High-rate, high-fee mortgages; additional requirements**

7 1. The making of a high-rate, high-fee mortgage is subject to the following
8 prohibitions, except that, notwithstanding any other provision of law, a residential
9 mortgage loan made by the Maine State Housing Authority pursuant to Title 30, chapter
10 201 is not subject to the following prohibitions.

11 A. In connection with a high-rate, high-fee mortgage, a creditor may not directly or
12 indirectly finance any points or fees.

13 B. A prepayment fee or penalty may not be included in the loan documents or
14 charged under the terms of a high-rate, high-fee mortgage.

15 C. A high-rate, high-fee mortgage may not contain a scheduled payment that is more
16 than twice as large as the average of earlier scheduled payments. This paragraph
17 does not apply when the payment schedule is adjusted to the seasonal or irregular
18 income of the borrower.

19 D. A high-rate, high-fee mortgage may not include payment terms under which the
20 outstanding principal balance or accrued interest will increase at any time over the
21 course of the loan because the regularly scheduled periodic payments do not cover
22 the full amount of interest due.

23 E. A high-rate, high-fee mortgage may not contain a provision that increases the
24 interest rate after default. This paragraph does not apply to interest rate changes in a
25 variable rate loan otherwise consistent with the provisions of the loan documents, as
26 long as the change in the interest rate is not triggered by the event of default or the
27 acceleration of the indebtedness.

28 F. A high-rate, high-fee mortgage may not include terms under which more than 2
29 periodic payments required under the loan are consolidated and paid in advance from
30 the loan proceeds provided to the borrower. If the date of maturity of such a
31 mortgage is accelerated due to default and the consumer is entitled to a rebate of
32 interest, that rebate must be computed by a method that is not less favorable than the
33 actuarial method, as that term is defined in the federal Housing and Community
34 Development Act of 1992, Public Law No. 102-550, Section 933(d) 106 Stat. 3672,
35 3892 (1992).

36 G. A creditor may not make a high-rate, high-fee mortgage without first receiving
37 certification from a counselor with a 3rd-party, nonprofit organization approved by
38 the United States Department of Housing and Urban Development, a housing
39 financing agency of this State or the regulatory agency that has jurisdiction over the
40 creditor that the borrower has received counseling on the advisability of the loan
41 transaction.

1 H. A creditor may not make a payment to a contractor under a home improvement
2 contract from amounts extended as credit under a high-rate, high-fee mortgage
3 except:

4 (1) In the form of an instrument that is payable to the consumer or jointly to the
5 consumer and the contractor; or

6 (2) At the election of the consumer, by a 3rd-party escrow agent in accordance
7 with terms established in a written agreement signed by the consumer, the
8 creditor and the contractor before the date of payment.

9 I. All high-rate, high-fee mortgage documents that create a debt or pledge property
10 as collateral must contain the following notice on the first page in a conspicuous
11 manner: "Notice: This is a high-rate, high-fee mortgage subject to special rules
12 under state law. Purchasers or assignees of this high-rate, high-fee mortgage may be
13 liable for all claims and defenses by the borrower with respect to the high-rate, high-
14 fee mortgage."

15 2. The following provisions apply to a claim made by a borrower against a
16 purchaser or assignee of a high-rate, high-fee mortgage.

17 A. Any person who purchases or is otherwise assigned a high-rate, high-fee
18 mortgage is subject to all affirmative claims and any defenses with respect to the loan
19 that the borrower could assert against a creditor of the loan, except that this paragraph
20 does not apply if the purchaser or assignee demonstrates by a preponderance of the
21 evidence that it:

22 (1) Has in place, at the time of the purchase or assignment of the subject loan,
23 policies that expressly prohibit its purchase or acceptance of assignment of any
24 high-rate, high-fee mortgages;

25 (2) Requires by contract that a seller or assignor of residential mortgage loans to
26 the purchaser or assignee represent and warrant to the purchaser or assignee that
27 either the seller or assignor will not sell or assign any high-rate, high-fee
28 mortgages to the purchaser or assignee or the seller or assignor is a beneficiary of
29 a representation and warranty from a previous seller or assignor to that effect;
30 and

31 (3) Exercises reasonable due diligence, at the time of purchase or assignment of
32 residential mortgage loans or within a reasonable period of time after the
33 purchase or assignment of such residential mortgage loans, intended by the
34 purchaser or assignee to prevent the purchaser or assignee from purchasing or
35 taking assignment of any high-rate, high-fee mortgages. For purposes of this
36 subsection, reasonable due diligence must provide for sampling and may not
37 require loan-by-loan review.

38 Notwithstanding this paragraph, liability pursuant to this subsection may not accrue
39 to a purchaser or assignee of a high-rate, high-fee mortgage as a result of an alleged
40 violation by a creditor of section 8-206-D, subsection 1, paragraph B.

1 B. A borrower acting only in an individual capacity may assert claims that the
2 borrower could assert against a creditor of the high-rate, high-fee mortgage against
3 any subsequent holder or assignee of the high-rate, high-fee mortgage as follows:

4 (1) Within 5 years of the closing of a high-rate, high-fee mortgage, the borrower
5 may assert a violation of this section in connection with the loan as an original
6 action; and

7 (2) Within 10 years of the closing of a high-rate, high-fee mortgage, after an
8 action to collect on the residential mortgage loan or foreclose on the collateral
9 securing the residential mortgage loan has been initiated or the debt arising from
10 the residential mortgage loan has been accelerated or the residential mortgage
11 loan has become 60 days in default, the borrower may assert any defense, claim
12 or counterclaim or action to enjoin foreclosure or preserve or obtain possession of
13 the property that secures the loan.

14 A claim asserted by a borrower under this paragraph is limited to amounts required to
15 reduce or extinguish the borrower's liability under the high-rate, high-fee mortgage
16 plus amounts required to recover costs, including reasonable attorney's fees.

17 3. This section applies notwithstanding any other provision of law, except that
18 nothing in this section may be construed to limit the substantive rights, remedies or
19 procedural rights available to a borrower against any creditor, assignee or holder of a
20 high-rate, high-fee mortgage under any other law. The rights conferred on borrowers in
21 subsection 2, paragraphs A and B are independent of each other and do not limit each
22 other.

23 **Sec. 20. 9-A MRSA §8-206-D is enacted to read:**

24 **§8-206-D. Residential mortgage loan requirements**

25 1. The following acts and practices are prohibited in the making of a residential
26 mortgage loan.

27 A. A creditor may not recommend or encourage default on an existing loan or other
28 debt prior to and in connection with the closing or planned closing of a residential
29 mortgage loan that refinances all or any portion of the existing loan or debt.

30 B. A creditor may not knowingly or intentionally engage in the act or practice of
31 flipping a residential mortgage loan.

32 C. A borrower may not be charged for a late payment unless the loan documents
33 specifically authorize the charge, the charge is not imposed unless the payment is past
34 due for 10 days or more and the charge does not exceed 5% of the amount of the late
35 payment. A late payment charge may not be imposed more than once with respect to
36 a particular late payment. If a late payment charge is deducted from a payment made
37 on the residential mortgage loan and that deduction results in a subsequent default on
38 a subsequent payment, a late payment charge may not be imposed for that default. A
39 creditor or servicer may apply any payment made in the order of maturity to a prior
40 period's payment due even if the result is late payment charges accruing on
41 subsequent payments due.

1 D. A residential mortgage loan may not contain a provision that permits the creditor,
2 in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit
3 the acceleration of the loan in good faith due to the borrower's failure to abide by the
4 material terms of the loan.

5 E. A creditor making a residential mortgage loan may not finance directly or
6 indirectly any credit life, credit disability, credit unemployment or credit property
7 insurance or any other life or health insurance or any payments directly or indirectly
8 for any debt cancellation or suspension agreement or contract, except that insurance
9 premiums or debt cancellation or suspension fees calculated and paid on a monthly
10 basis or through regularly scheduled periodic payments may not be considered
11 financed by the creditor.

12 F. A borrower may not be charged a fee in addition to the actual public discharge fee
13 to provide a release upon prepayment. Payoff balances must be provided in
14 accordance with section 9-305-B.

15 G. A residential mortgage loan may not be extended to a borrower unless a
16 reasonable creditor would believe at the time the loan is closed that the borrower
17 residing in the home will be able to make the scheduled payments associated with the
18 loan.

19 (1) The determination of a borrower's reasonable ability to repay a loan must
20 include, but may not be limited to, consideration of the borrower's income,
21 including statements submitted by or on behalf of the borrower in their loan
22 application, except that a creditor may not disregard facts and circumstances that
23 indicate that the income statements submitted by or on behalf of the borrower are
24 inaccurate or incomplete, credit history, current obligations and employment
25 status; the debt-to-income ratio of the borrower's monthly gross income,
26 including the costs of property taxes and insurance; and other available financial
27 resources other than the borrower's equity in the principal dwelling that secures
28 or would secure the residential mortgage loan.

29 (2) The calculation assumptions used in evaluating the ability to repay for
30 nontraditional mortgages and rate spread home loans must include:

31 (a) The monthly payment amounts based on, at a minimum, the fully indexed
32 rate, assuming a fully amortizing repayment schedule;

33 (b) Verification of all sources of income by tax returns, payroll receipts, bank
34 records, reasonable alternative or reasonable 3rd-party verification; and

35 (c) For products that permit negative amortization, the repayment analysis
36 based upon the initial loan amount plus any balance increase that may accrue
37 from the negative amortization provision.

38 (3) The administrator shall adopt, amend and repeal routine technical rules in
39 accordance with Title 5, chapter 375, subchapter 2-A defining with reasonable
40 specificity the requirements set forth in subparagraphs (1) and (2). In adopting
41 rules under this subparagraph, the administrator shall give due consideration and
42 weight to the following federal regulations and guidelines, as amended from time
43 to time:

1 (a) Final Interagency Guidance on Nontraditional Mortgage Product Risks;

2 (b) Credit Risk Management Guidance for Home Equity Lending;

3 (c) Expanded Guidance for Subprime Lending Programs; and

4 (d) Interagency Guidance on Subprime Lending.

5 2. The following provisions apply with respect to a right to cure default of a
6 residential mortgage loan.

7 A. If all defaults in connection with a residential mortgage loan are cured after the
8 initiation of any action to foreclose, the creditor or the servicer shall take steps as
9 necessary to terminate the foreclosure proceeding or other action. Cure of default
10 reinstates the borrower to the same position as if the default had not occurred and
11 nullifies, as of the date of the cure, any acceleration of any obligation under the
12 security instrument or note arising from the default.

13 B. A borrower has the right to cure a default prior to commencing a foreclosure
14 proceeding under this section once in a 12-month period.

15 3. The administrator, by rule or order, shall prohibit acts or practices in connection
16 with:

17 A. Residential mortgage loans that the administrator finds unfair, deceptive or
18 designed to evade the provisions of this section; and

19 B. Refinancing of residential mortgage loans that the administrator finds are
20 associated with abusive lending practices or that are otherwise not in the interest of
21 the borrowing public.

22 4. The Attorney General of this State has jurisdiction to enforce this section against
23 loan brokers and supervised lenders who are not supervised financial organizations
24 through their general regulatory powers and through civil process. The administrator,
25 through the Attorney General, may bring a civil action to restrain any person from
26 violating this section.

27 5. The rights conferred by this section are independent of and in addition to any other
28 rights under this Title and other state and federal laws.

29 **Sec. 21. 9-A MRSA §8-206-E is enacted to read:**

30 **§8-206-E. Violations of residential mortgage loan and high-rate, high-fee mortgage**
31 **requirements**

32 1. This section applies to any violation of section 8-206-A, 8-206-C or 8-206-D in
33 connection with the origination, brokering or servicing of a residential mortgage loan.

34 2. Any person who has been found in violation of section 8-206-A, 8-206-C or 8-
35 206-D by a court may be liable to the borrower for the following:

36 A. Actual damages, including consequential and incidental damages. The borrower
37 may not be required to demonstrate reliance in order to receive actual damages;

1 B. Statutory damages as follows:

2 (1) For violations described in 8-206-C, statutory damages equal to 2 times the
3 finance charge paid under the loan and forfeiture of the remaining interest under
4 the loan; and

5 (2) For violations described in 8-206-D, statutory damages in the amount of
6 \$5,000 per violation;

7 C. Punitive damages when the violation was malicious or reckless; and

8 D. Costs, including reasonable attorney's fees.

9 3. A borrower may be granted injunctive, declaratory and other equitable relief the
10 court determines appropriate in an action to enforce compliance with this section and
11 sections 8-206-A, 8-206-C and 8-206-D.

12 4. The right of rescission granted under 15 United States Code, Chapter 41,
13 Subchapter I, Part A for a violation of that law is available to a borrower acting only in an
14 individual capacity by way of recoupment as a defense against a party foreclosing on a
15 residential mortgage loan at any time during the term of the loan. Any recoupment claim
16 asserted pursuant to this provision is limited to amounts required to reduce or extinguish
17 the borrower's liability under the residential mortgage loan plus amounts required to
18 recover costs, including reasonable attorney's fees. This section may not be construed to
19 limit recoupment rights available to the borrower under any other law.

20 5. The remedies provided in this section are not intended to be the exclusive
21 remedies available to a borrower, nor must the borrower exhaust any administrative
22 remedies provided under this section or any other applicable law before proceeding under
23 this section.

24 6. Any person who knowingly violates section 8-206-A, 8-206-C or 8-206-D is
25 guilty of a Class E crime and, on conviction, is subject to a fine not exceeding \$5,000,
26 community service for not more than 500 hours or imprisonment not exceeding 6 months,
27 or any combination of the preceding. A person who is convicted of a 2nd or subsequent
28 violation is subject to a fine not exceeding \$10,000, community service for not more than
29 1,000 hours or imprisonment not exceeding 12 months, or any combination of the
30 preceding.

31 7. A creditor in a residential mortgage loan who, when acting in good faith, fails to
32 comply with the provisions of section 8-206-A, 8-206-C or 8-206-D is deemed not to
33 have violated those sections if the creditor establishes that either:

34 A. Within 30 days of the loan closing and prior to receiving any notice of the
35 compliance failure, the creditor has made appropriate restitution to the borrower and
36 appropriate adjustments have been made to the loan; or

37 B. Within 60 days of the loan closing and prior to receiving any notice of the
38 compliance failure, when the compliance failure was not intentional and resulted
39 from a bona fide error notwithstanding the maintenance of procedures reasonably
40 adopted to avoid such errors, the borrower is notified of the compliance failure,
41 appropriate restitution is made to the borrower and appropriate adjustments are made

1 to the loan. Examples of a bona fide error include clerical, calculation, computer
2 malfunction and programming and printing errors. An error of legal judgment with
3 respect to a person's obligations under this section is not a bona fide error.

4 8. The remedies provided in this section are cumulative.

5 9. Notwithstanding any other provision of law, a residential mortgage loan
6 agreement may not include any provision that waives any borrower's remedies available
7 at law or equity, whether acting individually or on behalf of others similarly situated, or
8 the borrower's rights to civil discovery or appeal. Any such provision is unenforceable
9 and void as a matter of law.

10 10. Without regard to whether a borrower is acting individually or on behalf of
11 others similarly situated, any provision of a residential mortgage loan agreement that
12 allows a person to require a borrower to assert any claim or defense in a forum that is less
13 convenient, more costly or more dilatory for the resolution of a dispute than a judicial
14 forum established in this State where the borrower may otherwise properly bring a claim
15 or defense or that limits in any way any claim or defense the borrower may have is
16 unconscionable and void as a matter of law.

17 11. It is a violation of section 8-206-A, 8-206-C or 8-206-D for any person to
18 attempt in bad faith to avoid the application of those sections by dividing any loan
19 transaction into separate parts or structuring a residential mortgage loan transaction as an
20 open-end loan for the purpose of evading the provisions of those sections when the loan
21 would have been a high-rate, high-fee mortgage if the loan had been structured as a
22 closed-end loan or by engaging in any other subterfuge with the intent of evading any
23 provision of this section.

24 **Sec. 22. 9-A MRSA §8-206-F is enacted to read:**

25 **§8-206-F. Investigative and legal compliance personnel**

26 1. The Director of the Office of Consumer Credit Regulation shall establish the
27 following positions:

28 A. A position with the responsibility for promoting compliance with, and
29 investigating alleged violations of, the provisions of this section by entities or
30 individuals subject to the jurisdiction of the Office of Consumer Credit Regulation;
31 and

32 B. A staff attorney position with the responsibility for compliance with and
33 enforcement of the provisions of this section by entities or individuals subject to the
34 jurisdiction of the Office of Consumer Credit Regulation.

35 2. Notwithstanding section 6-203, subsection 3-C, the Director of the Office of
36 Consumer Credit Regulation may by rule adjust the fees paid with respect to creditors
37 that are not supervised financial organizations making residential mortgage loans to
38 support the costs of the positions established in subsection 1. Rules adopted pursuant to
39 this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter
40 2-A.

1 **Sec. 23. 9-A MRSA §9-101**, as enacted by PL 1987, c. 396, §12, is amended to
2 read:

3 **§9-101. Scope**

4 This article applies to all consumer credit transactions made by creditors that are not
5 supervised financial organizations, that are made to finance or refinance the acquisition of
6 real estate or the initial construction of a dwelling or that are secured by a first-lien
7 mortgage on real estate.

8 **Sec. 24. 9-A MRSA §9-311** is enacted to read:

9 **§9-311. Real estate settlement procedures**

10 A creditor and its loan officers shall comply with the provisions of the federal Real
11 Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq.
12 and its implementing regulation and Regulation X, 24 Code of Federal Regulations,
13 Section 3500 et seq.

14 **Sec. 25. 9-A MRSA §9-312** is enacted to read:

15 **§9-312. False information on application for credit**

16 A supervised lender, or any loan officer of a supervised lender, may not knowingly
17 permit, encourage or assist a consumer to submit false information on any application for
18 credit, nor may a supervised lender or loan officer of a supervised lender knowingly
19 falsify such information on a consumer's application.

20 **Sec. 26. 9-A MRSA §9-313** is enacted to read:

21 **§9-313. Rate locks**

22 If a supervised lender charges a consumer a fee to lock in a certain interest rate for a
23 certain length of time, that supervised lender shall:

24 1. Take steps that are necessary to actually secure or guarantee the specified rate for
25 the appropriate length of time;

26 2. Select a time period within which the loan can reasonably be expected to close;
27 and

28 3. Use good faith efforts to close the loan within the rate lock period.

29 **Sec. 27. 9-A MRSA §9-314** is enacted to read:

30 **§9-314. Prepayment penalty riders**

31 A supervised lender may not impose a prepayment penalty provision through use of a
32 rider or amendment to the loan contract if the terms of the loan contract state that no such
33 prepayment penalty may be imposed or that such a penalty is not specifically authorized
34 under state law.

1 **Sec. 28. 9-A MRSA §10-302, sub-§2**, as amended by PL 2005, c. 274, §9, is
2 further amended to read:

3 **2.** The terms and conditions of payment, including the total of all payments to be
4 made by the consumer ~~for the service~~ or by any other person or entity, whether to the loan
5 broker or to some other person; and

6 **Sec. 29. 9-A MRSA §10-307** is enacted to read:

7 **§10-307. Real estate settlement procedures**

8 A loan broker and its loan officers shall comply with the provisions of 12 United
9 States Code, Section 2601 et seq., the federal Real Estate Settlement Procedures Act of
10 1974 and its implementing regulation and Regulation X, 24 Code of Federal Regulations,
11 Section 3500 et seq.

12 **Sec. 30. 9-A MRSA §10-308** is enacted to read:

13 **§10-308. False information on application for credit**

14 A loan broker or any loan officer of a loan broker may not knowingly permit,
15 encourage or assist a consumer to submit false information on any application for credit,
16 nor may a loan broker or loan officer of a loan broker knowingly falsify such information
17 on a consumer's application.

18 **Sec. 31. 9-A MRSA §10-309** is enacted to read:

19 **§10-309. Rate locks**

20 If a loan broker collects a fee from a consumer to lock in a certain interest rate for a
21 certain length of time, that loan broker shall:

22 **1.** Take steps that are necessary to actually secure or guarantee the specified rate for
23 the appropriate length of time;

24 **2.** Select a time period within which the loan can reasonably be expected to close;
25 and

26 **3.** Use good faith efforts to close the loan within the rate lock period.

27 **Sec. 32. 10 MRSA §1330** is enacted to read:

28 **§1330. Solicitation using prescreened trigger lead information from consumer**
29 **report**

30 **1. Use of prescreened trigger lead information.** When using prescreened trigger
31 lead information derived from a consumer report to solicit a consumer who has applied
32 for a loan with another lender or loan broker, a lender or loan broker may not use unfair
33 or deceptive practices described in subsection 2.

1 **2. Unfair or deceptive practices.** Without limitation, it is an unfair or deceptive
2 practice to:

3 A. Fail to state in the initial phase of the solicitation from a lender or loan broker that
4 the solicitor is not affiliated with the lender or loan broker with which the consumer
5 initially applied;

6 B. Fail in the initial solicitation to conform to state and federal law relating to
7 prescreened solicitations using consumer reports, including the requirement to make a
8 firm offer of credit to the consumer;

9 C. Knowingly or negligently use information regarding consumers who have opted
10 out of prescreened offers of credit or who have placed their contact information on
11 the federal do-not-call registry; or

12 D. Solicit a consumer with offers of certain rates, terms and costs with intent to
13 subsequently raise the rates or change the terms to the consumer's detriment.

14 **Sec. 33. Authority to submit legislation.** The Director of the Office of
15 Consumer Credit Regulation within the Department of Professional and Financial
16 Regulation may submit legislation to the Second Regular Session of the 123rd Legislature
17 to amend definitions in the Maine Revised Statutes, Title 9-A to conform with the
18 uniform forms used by the system described in this Act and to modify the license renewal
19 dates set forth in Title 9-A, section 2-302, subsection 1 and section 10-201.

20 **Sec. 34. Maine Revised Statutes headnote amended; revision clause.** In
21 the Maine Revised Statutes, Title 9-A, Article 9, in the Article headnote, the words
22 "consumer credit transactions secured by first-lien mortgages" are amended to read
23 "consumer credit transactions made to acquire real estate or secured by first-lien
24 mortgages," and the Revisor of Statutes shall implement this revision when updating,
25 publishing or republishing the statutes.

26 **Sec. 35. Application.** That section of this Act that amends the Maine Revised
27 Statutes, Title 9-A, section 8-206-A and those sections of this Act that enact Title 9-A,
28 section 8-103, subsection 1-A and Title 9-A, sections 8-206-C, 8-206-D and 8-206-E
29 apply to all residential mortgage loans and high-rate, high-fee mortgages originated or
30 entered into on or after the effective date of this Act.

31 **Sec. 36. Revisor's review; cross-references.** The Revisor of Statutes shall
32 review the Maine Revised Statutes and include in the errors and inconsistencies bill
33 submitted to the Second Regular Session of the 123rd Legislature pursuant to Title 1,
34 section 94 any sections necessary to correct and update any cross-references in the
35 statutes to provisions of law repealed in this Act.

36 **Sec. 37. Legislative findings and purposes.**

37 **1. Legislative findings.** The Legislature finds that the proliferation of predatory
38 home lending in this State threatens our economy and the viability of many communities,
39 causes decreases in home ownership, makes many homeowners victims of unprincipled
40 creditors and places responsible Maine lending institutions at a disadvantage.

1 The Legislature further finds that, because competition and self-regulation have not
2 eliminated the predatory terms for home-secured loans, the consumer protection
3 provisions of this Act are necessary to protect Maine consumers, ensure fairness for
4 responsible lenders and ensure responsible lending practices.

5 **2. Purposes.** The purposes of this Act are to protect home ownership and individual
6 home equity and prohibit predatory lending practices in this State by addressing
7 fraudulent or abusive lending practices in the mortgage market. Predatory lending
8 practices restricted by this Act include:

9 A. Lending practices that do not consider a borrower's genuine ability to repay,
10 thereby increasing the probability of foreclosure;

11 B. Loan flipping, which is repeatedly refinancing loans for the purpose of charging
12 high fees to the consumer;

13 C. Engaging in fraud or deception to conceal the true nature of the loan obligation, or
14 ancillary products, from an unsuspecting or unsophisticated borrower;

15 D. Adding excessive fees and "packing," which is the practice of adding fees far
16 exceeding those justified on economic grounds, including without limitation
17 financing of excessive points and fees, adding excessive prepayment penalties and
18 financing of unnecessary products.

19 **Sec. 38. Effective date.** That section of this Act that enacts the Maine Revised
20 Statutes, Title 9-A, section 8-206-F takes effect 90 days after adjournment of the 123rd
21 Legislature. The remainder of this Act takes effect January 1, 2008.

22 SUMMARY

23 This bill makes significant changes to current Maine law relating to residential
24 mortgage loans and permissible high-rate, high-fee mortgages. The bill updates and
25 amends current law to address predatory and abusive lending practices and to provide
26 additional protections for Maine consumers.

27 With regard to the making of residential mortgage loans, the bill includes the
28 following provisions.

29 1. It lowers the threshold for fees that can be charged in connection with certain
30 residential home mortgage loans from 8% of the total loan amount to 5% or 6% based
31 upon the total loan amount.

32 2. It prohibits creditors from recommending or encouraging default on an existing
33 loan in connection with the closing or planned closing on a refinancing.

34 3. It prohibits creditors from "flipping" loans, which means the refinancing of a loan
35 with no tangible net benefit to the borrower.

36 4. It places restrictions on the imposition of late payment fees or penalties.

1 5. It prohibits creditors from financing premiums or payments for credit insurance or
2 debt cancellation agreements as part of the loan.

3 6. It prohibits the inclusion of a provision in mortgage loan contracts that permits the
4 creditor, in its sole discretion, to accelerate the indebtedness.

5 7. It prohibits creditors from charging a fee to receive the amount of the payoff
6 balance for a loan or to receive a release upon prepayment and also requires creditors to
7 provide a payoff balance as required by law.

8 8. It requires that creditors have a reasonable belief at the time of closing that the
9 borrower has the financial ability to make the scheduled payments on the loan.

10 With regard to the making of high-rate, high-fee mortgages, the bill includes the
11 following provisions.

12 1. It requires that, before making the loan, creditors receive certification that a
13 borrower has received counseling on the advisability of such a loan from a 3rd-party,
14 nonprofit organization approved by the federal housing agency, a state housing financing
15 agency or the state regulatory agency with jurisdiction over the creditor.

16 2. It prohibits creditors from financing any points or fees in connection with the loan.

17 3. It prohibits the inclusion of prepayment penalties or fees.

18 4. It prohibits scheduled payments more than twice as large as the average of earlier
19 scheduled payments unless the payment schedule is adjusted according to the seasonal or
20 irregular income of a borrower.

21 5. It prohibits payment terms under which outstanding principal or accrued interest
22 will increase at any time because the scheduled payments do not cover the full amount of
23 interest due.

24 6. It prohibits loan terms that increase the interest rate following a default.

25 7. It prohibits terms under which more than 2 periodic payments are consolidated
26 and paid in advance from loan proceeds provided to the borrower.

27 8. It prohibits fees in connection with the modification of the loan or deferral of
28 payments under the terms of the loan.

29 9. It requires certain disclosures related to the purchase or assignment of high-rate,
30 high-fee mortgages and the effect on claims and defenses available to the borrower. The
31 bill makes purchasers or assignees of high-rate, high-fee mortgages subject to all
32 affirmative claims and any defenses that a borrower can assert against the creditor that
33 originated the loan, except claims that the creditor did not have a reasonable belief at
34 closing that the borrower had the financial ability to make scheduled payments, unless
35 certain requirements are satisfied by the purchaser or assignee of the mortgage.

1 10. It prohibits creditors from paying a contractor for home improvements from the
2 proceeds of a high-rate, high-fee mortgage unless the payment instrument is payable
3 jointly to the borrower and the contractor or paid to an escrow account and the creditor
4 has received proof that the home repairs are completed.

5 The bill requires that a consumer be specifically notified if a prepayment penalty
6 provision is added to the consumer's mortgage note just before closing.

7 The bill applies consumer protections to so-called "piggy-back" loans, which are
8 second-lien mortgages used in conjunction with first-lien loans to purchase real estate.
9 This bill prohibits lenders and loan brokers from facilitating submission of false credit
10 application information by a consumer.

11 The bill regulates the sale and issuance of rate locks by lenders and brokers.

12 The bill prohibits inclusion of contradictory information about prepayment penalties
13 in a consumer's closing package.

14 The bill requires disclosure to a consumer of any yield spread premium to be paid to
15 a loan broker by a lender.

16 The bill prevents unfair or deceptive practices with respect to trigger leads derived
17 from consumers' credit reports.

18 The bill increases the accountability of lenders and loan brokers operating across
19 state lines by permitting state mortgage regulators to participate in a uniform automated
20 nationwide mortgage licensing system once the system is developed and implemented.

21 The bill adds 2 positions, an investigator and a staff attorney, within the Office of
22 Consumer Credit Regulation, to implement the provisions.

23 The bill makes creditors who violate the provisions enacted in the bill subject to
24 monetary penalties and enforcement by the Department of Professional and Financial
25 Regulation, Bureau of Financial Institutions, the Office of Consumer Credit Regulation as
26 well as the Attorney General for entities regulated by the Office of Consumer Credit
27 Protection. The bill also gives borrowers the right to bring a private court action against
28 creditors for violations and to recover statutory, actual and punitive damages.

29 The bill applies to all residential mortgage loans and high-rate, high-fee mortgages
30 made in connection with residential property located in this State. The bill takes effect
31 January 1, 2008, except for the provision establishing 2 positions in the Office of
32 Consumer Credit Regulation, which takes effect 90 days after adjournment.