

MAINE STATE LEGISLATURE

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Legislative Document

No. 2125

H.P. 1505

House of Representatives, January 3, 2008

An Act Relating to Mortgage Lending and Credit Availability

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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 SULLIVAN of York and
Representatives: BRAUTIGAM of Falmouth, SAMSON of Auburn.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** some provisions of Public Law 2007, chapter 273, which enacted
4 restrictions on predatory lending practices, took effect January 1, 2008; and

5 **Whereas,** there are a number of questions regarding the intent of that Act that need
6 to be clarified as quickly as possible to avoid future problems in lending practices; and

7 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
8 the meaning of the Constitution of Maine and require the following legislation as
9 immediately necessary for the preservation of the public peace, health and safety; now,
10 therefore,

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

12 **Sec. 1. 9-A MRSA §1-202, sub-§8, ¶A,** as amended by PL 2007, c. 273, Pt. C,
13 §1, is further amended to read:

14 A. With respect to advances of additional funds on the loan or credit sale made
15 more than 30 days after the initial advance, this exclusion applies only to advances
16 made:

- 17 (1) Pursuant to the terms of a construction financing agreement;
- 18 (2) To protect the security or to perform the covenants of the consumer;
- 19 (3) As negative amortization of principal under the terms of the financing
20 agreement;
- 21 (4) From funds withheld at consummation pending the resolution of matters that
22 otherwise would tend to delay or prevent closing, including, without limitation,
23 remedy of title defects or repairs to meet appraisal standards; or
- 24 (5) Pursuant to the terms of a reverse mortgage transaction, as defined in section
25 8-103, subsection 1-A, paragraph ~~X~~ Y, if the transaction is made pursuant to a
26 commitment to purchase issued by, or is in a form approved for purchase by, any
27 state or federal agency, instrumentality or government-sponsored enterprise,
28 including, without limitation, the Federal National Mortgage Association or the
29 Federal Home Loan Mortgage Corporation;

30 **Sec. 2. 9-A MRSA §8-103, sub-§1-A, ¶P-1** is enacted to read:

31 P-1. "Fully amortizing payment schedule" means a schedule based on the term of the
32 loan. For a balloon mortgage that contains an option for an extended amortization
33 period, the fully amortizing payment schedule may be based on the full term
34 available to the borrower.

35 **Sec. 3. 9-A MRSA §8-103, sub-§1-A, ¶P-2** is enacted to read:

36 P-2. "Fully indexed rate" means the index rate prevailing at origination plus the
37 margin that will apply after the expiration of an introductory interest rate.

1 **Sec. 4. 9-A MRSA §8-103, sub-§1-A, ¶T**, as enacted by PL 2007, c. 273, Pt. A,
2 §4 and affected by §§37 and 41, is amended to read:

3 T. "Nontraditional mortgage" has the same meaning as those mortgages described in
4 the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued
5 September 29, 2006 and published in 71 Federal Register, 58609 on October 4, 2006
6 and as updated from time to time, except that "nontraditional mortgage" does not
7 include a mortgage that does not allow a borrower to defer repayment of principal or
8 interest.

9 **Sec. 5. 9-A MRSA §8-103, sub-§1-A, ¶U**, as enacted by PL 2007, c. 273, Pt. A,
10 §4 and affected by §37 and 41, is amended to read:

11 U. "Points and fees" means:

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

15 (2) All items described in 12 Code of Federal Regulations, Section
16 226.32(b)(1)(iii);

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

20 (4) The cost of all premiums financed by a creditor directly or indirectly for any
21 credit life, credit disability, credit unemployment or credit property insurance or
22 any other life or health insurance, or any payments financed by the creditor
23 directly or indirectly for any debt cancellation or suspension agreement or
24 contract, except that insurance premiums, including private mortgage insurance
25 or debt cancellation or suspension fees calculated and paid on a monthly basis or
26 through regularly scheduled periodic payments, may not be considered financed
27 by the creditor;

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

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

33 "Points and fees" does not include taxes, per diem or odd days interest paid at
34 closing, filing fees, recording fees and other charges and fees paid or to be paid to
35 public officials for determining the existence of or for perfecting, releasing or
36 satisfying a security interest or bona fide and reasonable charges and fees paid to a
37 person other than the creditor or an affiliate of the creditor as follows: fees for tax
38 payment services; fees for flood certification; fees for pest infestation and flood
39 determination; appraisal fees; fees for inspections performed prior to closing; fees for
40 credit reports; fees for surveys; attorney's fees; notary fees; escrow charges not
41 otherwise included under subparagraph (1); title insurance premiums; and fire and

1 hazard insurance and flood insurance premiums, as long as the conditions in 12 Code
2 of Federal Regulations, Section 226.4(d)(2) are met.

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

8 **Sec. 6. 9-A MRSA §8-103, sub-§1-A, ¶W**, as amended by PL 2007, c. 273, Pt.
9 A, §4 and affected by §§37 and 41, is amended to read:

10 W. "Residential mortgage loan" means an extension of credit, including an open-end
11 credit plan, in which:

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

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

17 (3) The loan is not a reverse mortgage transaction or a loan made primarily for
18 business, agricultural or commercial purposes; ~~and~~

19 (4) The loan is not a construction loan; and

20 (5) The loan is secured by the borrower's principal dwelling.

21 **Sec. 7. 9-A MRSA §8-103, sub-§1-A, ¶BB**, as enacted by PL 2007, c. 273, Pt.
22 A, §4 and affected by §§37 and 41, is further amended to read:

23 BB. "Subprime mortgage loan" means a residential mortgage loan that is either a
24 nontraditional mortgage as defined in paragraph § T or a rate spread home loan as
25 defined in paragraph U V.

26 **Sec. 8. 9-A MRSA §8-104, sub-§4**, as amended by PL 2007, c. 273, Pt. C, §3, is
27 further amended to read:

28 4. The administrator may exempt, by rule, from all or part of this Title any class of
29 transactions, other than transactions involving a mortgage described in section 8-103,
30 subsection 1-A, paragraph P Q, for which, in the determination of the administrator,
31 coverage under all or part of this Title does not provide a meaningful benefit to
32 consumers in the form of useful information or protection. In determining which classes
33 of transactions to exempt in whole or in part under this subsection, the administrator shall
34 consider the following factors:

35 A. The amount of the loans and whether the disclosures, right of rescission and
36 other provisions provide a benefit to the consumers who are parties to such
37 transactions, as determined by the administrator;

38 B. The extent to which the requirements of this Title complicate, hinder or make
39 more expensive the credit process for the class of transactions;

- 1 C. The status of the borrowers, including:
- 2 (1) Any related financial arrangements of the borrowers, as determined by the
3 administrator;
- 4 (2) The financial sophistication of the borrowers relative to the type of
5 transaction; and
- 6 (3) The importance to the borrowers of the credit, related supporting property
7 and coverage under this Title, as determined by the administrator;
- 8 D. Whether a loan is secured by the principal residence of the consumer; and
- 9 E. Whether the goal of consumer protection would be undermined by such an
10 exemption.

11 **Sec. 9. 9-A MRSA §8-106-A, sub-§1**, as amended by PL 2007, c. 273, Pt. C, §5,
12 is further amended to read:

13 **1.** Beginning 2 years after the effective date of the regulations adopted under the
14 federal Riegle Community Development and Regulatory Improvement Act of 1994,
15 Public Law No. 103-325, Section 155, 108 Stat. 2160, 2197 (1994) and no more often
16 than biennially after the first increase or decrease in the number of percentage points
17 under this section, the administrator may by rule increase or decrease the number of
18 percentage points specified in section 8-103, subsection 1-A, paragraph ~~P~~ FF if the
19 administrator determines that the increase or decrease is:

20 A. Consistent with the consumer protection against abusive lending provided by
21 amendments made by the federal Riegle Community Development and Regulatory
22 Improvement Act of 1994, Title I, subtitle B, Public Law No. 103-325, 108 Stat.
23 2160, 2190 (1994); and

24 B. Warranted by the need for credit.

25 **Sec. 10. 9-A MRSA §8-106-A, next to the last ¶**, as amended by PL 2007, c.
26 273, Pt. C, §5, is further amended to read:

27 The dollar amount specified in section 8-103, subsection 1-A, paragraph ~~P~~ FF must
28 be adjusted annually on January 1st by the annual percentage change in the Consumer
29 Price Index, as reported on June 1st of the year preceding the adjustment.

30 **Sec. 11. 9-A MRSA §8-206-D, sub-§1, ¶B**, as enacted by PL 2007, c. 273, Pt.
31 A, §20 and affected by §§37 and 41, is amended to read:

32 B. A creditor may not knowingly or intentionally engage in the act or practice of
33 flipping a residential mortgage loan when making a subprime mortgage loan. The
34 administrator shall adopt rules defining with reasonable specificity the requirements
35 for compliance with this paragraph. Rules adopted pursuant to this paragraph are
36 routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

37 **Sec. 12. 9-A MRSA §8-206-D, sub-§1, ¶G**, as enacted by PL 2007, c. 273, Pt.
38 A, §20 and affected by §§37 and 41, is repealed and the following enacted in its place:

1 G. A creditor may not extend a subprime mortgage loan to a borrower unless a
2 reasonable creditor would believe at the time the loan is made that the borrower will
3 be able to make the scheduled payments associated with the loan.

4 (1) The determination of a borrower's reasonable ability to repay a subprime
5 mortgage loan must be documented or otherwise evidenced in writing and must
6 include, without limitation, a consideration of the following:

7 (a) The borrower's income;

8 (b) The borrower's credit history;

9 (c) The borrower's current obligations, including other secured and
10 unsecured debts;

11 (d) The borrower's employment status;

12 (e) The debt-to-income ratio of the borrower's monthly gross income,
13 including the borrower's total monthly housing-related payments including
14 all principal, interest, taxes and insurance; and

15 (f) The borrower's other available financial resources, excluding the
16 borrower's equity in the principal dwelling that secures or would secure the
17 subprime mortgage loan.

18 (2) The evaluation of the borrower's reasonable ability to repay the subprime
19 mortgage loan must include:

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

22 (b) The verification of income by:

23 (i) Review of a borrower's tax returns, payroll receipts or records of
24 accounts from a borrower's financial institution, or reasonable 3rd-party
25 verification of those returns, receipts or records;

26 (ii) Review of reasonable alternatives to the borrower's tax returns,
27 payroll receipts or records of accounts from a borrower's financial
28 institution, including, but not limited to, statements from investment
29 advisors, broker-dealers and others in a fiduciary relationship with the
30 borrower as long as the reasonable alternatives reflect the borrower's
31 actual income and not estimated, projected, anticipated or a range of
32 earnings for a borrower's type or class of employment; and

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

36 (3) The administrator may adopt, amend and repeal routine technical rules in
37 accordance with Title 5, chapter 375, subchapter 2-A defining with reasonable
38 specificity the requirements set forth in subparagraphs (1) and (2). In adopting
39 rules under this subparagraph, the administrator shall give due consideration and
40 weight to the following federal regulations and guidelines, as amended from time
41 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 **Sec. 13. 9-A MRSA §8-208, sub-§1**, as corrected by RR 1995, c. 2, §18, is
6 amended to read:

7 **1.** Except as otherwise provided in this section, and except for transactions subject
8 to section 8-206-E, any creditor who fails to comply with any requirement imposed under
9 this Article, including any requirement under section 8-204, with respect to any person is
10 liable to that person in an amount equal to the sum of:

- 11 A. Any actual damage sustained by such person as a result of the failure;
- 12 B. In an individual action:
 - 13 (i) Twice the amount of any finance charge in connection with the transaction; or
 - 14 (ii) In the case of a consumer lease, 25% of the total amount of monthly
 - 15 payments under the lease.

16 Liability under this paragraph may not be less than \$100 nor greater than \$1,000;
17 except that in the case of a credit transaction not under an open-end credit plan that is
18 secured by real property or a dwelling, liability under this paragraph may not be less
19 than \$200 nor greater than \$2,000;

20 C. In the case of any successful action to enforce the foregoing liability or in any
21 action in which a person is determined to have a right of rescission under section 8-204,
22 the costs of the action, together with a reasonable attorney's fee as determined by the
23 court; and

24 D. In the case of a class action, such amount as the court may allow, except that as
25 to each member of the class no minimum recovery is applicable, and the total
26 recovery for any class action or series of class actions arising out of the same failure
27 to comply by the same creditor shall not be more than the lesser of \$500,000 or 1% of
28 the net worth of the creditor. In determining the amount of award in any class action,
29 the court shall consider, among other relevant factors, the amount of any actual
30 damages awarded, the frequency and persistence of failures of compliance by the
31 creditor, the resources of the creditor, the number of persons adversely affected and
32 the extent to which the creditor's failure of compliance was intentional.

33 **Sec. 14. 9-A MRSA §8-209, sub-§4**, as amended by PL 2007, c. 273, Pt. C, §§8
34 and 9, is repealed.

35 **Sec. 15. 9-A MRSA §8-209, sub-§4-A** is enacted to read:

36 **4-A.** Any person who purchases or is otherwise assigned a high-rate, high-fee
37 mortgage is subject to all claims and defenses with respect to that mortgage that the
38 consumer may assert against the creditor of the mortgage to the extent set forth in section
39 8-206-C, subsection 2.

- 1 4. Providing an exemption from the general civil liability law for those residential
2 mortgage loans that are subject to the penalties imposed specifically for violations of the
3 law regarding residential mortgage loans;
- 4 5. Specifying that the restriction on flipping a loan only applies to a residential
5 mortgage loan when making a subprime mortgage loan; and
- 6 6. Correcting several cross-references.