

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1439

S.P. 523

In Senate, April 7, 2009

### An Act To Conform State Mortgage Laws with Federal Laws

(EMERGENCY)

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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 BOWMAN of York.  
Cosponsored by Senator: McCORMICK of Kennebec, Representatives: FOSSEL of Alna,  
LEGG of Kennebunk, RICHARDSON of Warren.

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,** certain changes to federal mortgage laws and regulations will become  
4 effective sooner than 90 days after adjournment; and

5 **Whereas,** failure to begin implementation of corresponding changes to state laws  
6 would result in disruption of mortgage lending in this State; 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 **PART A**

13 **Sec. A-1. 9-A MRSA §8-103, sub-§1-A, ¶L,** as enacted by PL 2007, c. 273, Pt.  
14 A, §4 and affected by §§37 and 41, is repealed and the following enacted in its place:

15 L. "Creditor" has the same meaning as set forth in section 1-301, subsection 17, and  
16 in addition includes those entities defined as "lender" as set forth in 24 Code of  
17 Federal Regulations, Section 3500.2 and includes a mortgage broker.

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

19 Q-1. "Higher-priced mortgage loan" means either:

20 (1) A residential mortgage loan that is a "nontraditional mortgage" as defined in  
21 paragraph T; or

22 (2) A "rate spread home loan" as defined in paragraph V.

23 **Sec. A-3. 9-A MRSA §8-103, sub-§1-A, ¶S,** as enacted by PL 2007, c. 273, Pt.  
24 A, §4 and affected by §§37 and 41, is amended to read:

25 S. "Mortgage broker" has the same meaning as set forth in 24 Code of Federal  
26 Regulations, Section 3500.2, except as otherwise provided in this Article.

27 **Sec. A-4. 9-A MRSA §8-103, sub-§1-A, ¶U,** as amended by PL 2007, c. 471,  
28 §5 and affected by §18, is repealed and the following enacted in its place:

29 U. "Points and fees" has the same meaning as set forth in 12 Code of Federal  
30 Regulations, Section 226.32(b)(1). In addition, "points and fees" includes:

31 (1) The maximum prepayment fees and penalties that may be charged or  
32 collected under the terms of the loan documents; and

33 (2) All prepayment fees and penalties that are incurred by the borrower if the  
34 loan refinances a previous loan made or currently held by the same creditor or an  
35 affiliate of the creditor.

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

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

V. "Rate spread home loan" means any loan for which the rate spread must be reported under the Home Mortgage Disclosure Act of 1975, Regulation C, has the same meaning as set forth for "higher-priced mortgage loans" in 12 Code of Federal Regulations, Section 203.4(a)(12) 226.35(a); and in addition means any loan that meets the criteria of a high-rate, high-fee mortgage.

**Sec. A-6. 9-A MRSA §8-103, sub-§1-A, ¶BB**, as amended by PL 2007, c. 471, §7 and affected by §18, is repealed.

**Sec. A-7. 9-A MRSA §8-104, sub-§1**, as amended by PL 1989, c. 502, Pt. D, §4, is repealed and the following enacted in its place:

1. The administrator shall adopt rules to carry out the purposes of this Article.

A. The rules may contain classifications, differentiations or other provisions, and may provide for those adjustments and exceptions for any class of transactions, that in the judgment of the administrator are necessary or proper to effectuate the purposes of this Article, to prevent circumvention or evasion of this Article and to facilitate compliance with this Article. Rules adopted pursuant to this Article are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. The administrator is authorized to adopt rules substantially similar to, or that afford more protection for consumers than, those codified in 12 Code of Federal Regulations, Part 226, except where this Article expressly directs otherwise. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-8. 9-A MRSA §8-206, sub-§3**, as amended by PL 2007, c. 273, Pt. A, §5 and affected by §41, is repealed and the following enacted in its place:

3. The following provisions apply to an extension of credit secured by the consumer's dwelling, other than an open-end credit plan:

A. Except as provided in paragraph G, in the case of any extension of credit that is secured by the dwelling of a consumer, which is also subject to the Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq., good faith estimates of the disclosures required under subsection 1 must be made in accordance with rules of the administrator under section 8-201, subsection 3 and must be delivered or placed in the mail not later than 3 business days after the creditor

1 receives the consumer's bona fide application, which must be at least 7 business days  
2 before consummation of the transaction.

3 B. If the disclosure statement furnished within 3 days of the bona fide application  
4 indicates that the consumer will not be assessed a prepayment penalty, and if that  
5 statement is subsequently rendered inaccurate, the creditor shall notify the consumer  
6 of that change as soon as practicable and shall also furnish a corrected statement prior  
7 to the time of settlement or consummation.

8 C. In the case of an extension of credit that is secured by the dwelling of a consumer,  
9 the disclosures provided under paragraph A are in addition to the other disclosures  
10 required by subsection 1, and must:

11 (1) Include in conspicuous type size and format, the following statement: "You  
12 are not required to complete this agreement merely because you have received  
13 these disclosures or signed a loan application."; and

14 (2) Be provided in the form of final disclosures at the time of consummation of  
15 the transaction, in the form and manner prescribed by this section.

16 D. Beginning December 30, 2010, in the case of an extension of credit that is secured  
17 by the dwelling of a consumer, under which the annual rate of interest is variable or  
18 with respect to which the regular payments may otherwise be variable, in addition to  
19 the other disclosures required by subsection 1, the disclosures provided under this  
20 subsection must:

21 (1) Label the payment schedule as follows: "Payment Schedule: Payments Will  
22 Vary Based on Interest Rate Changes."; and

23 (2) State in conspicuous type size and format examples of adjustments to the  
24 regular required payment on the extension of credit based on the change in the  
25 interest rates specified by the contract for such extension of credit. Among the  
26 examples required to be provided under this subparagraph is an example that  
27 reflects the maximum payment amount of the regular required payments on the  
28 extension of credit, based on the maximum interest rate allowed under the  
29 contract, in accordance with the rules of the administrator. Prior to issuing any  
30 rules pursuant to this subparagraph, the administrator shall review consumer  
31 testing conducted by the Board of Governors of the Federal Reserve System to  
32 determine the appropriate format for providing the disclosures required under this  
33 subparagraph to consumers so that such disclosures can be easily understood,  
34 including the fact that the initial regular payments are for a specific time period  
35 that will end on a certain date, that payments will adjust afterwards potentially to  
36 a higher amount and that there is no guarantee that the borrower will be able to  
37 refinance to a lower amount.

38 E. In any case in which the disclosure statement under paragraph A contains an  
39 annual percentage rate of interest that is no longer accurate, as determined under  
40 section 8-106, subsection 3, the creditor shall furnish an additional, corrected  
41 statement to the borrower, not later than 3 business days before the date of  
42 consummation of the transaction.

1 F. The consumer must receive the disclosures required under this subsection before  
2 paying any fee to the creditor or other person in connection with the consumer's  
3 application for an extension of credit that is secured by the dwelling of a consumer.  
4 If the disclosures are mailed to the consumer, the consumer is considered to have  
5 received them 3 business days after they are mailed. A creditor or other person may  
6 impose a fee for obtaining the consumer's credit report before the consumer has  
7 received the disclosures under this subsection, provided the fee is bona fide and  
8 reasonable in amount.

9 G. To expedite consummation of a transaction, if the consumer determines that the  
10 extension of credit is needed to meet a bona fide personal financial emergency, the  
11 consumer may waive or modify the timing requirements for disclosures under  
12 paragraph A, as long as:

13 (1) The term "bona fide personal emergency" may be further defined in rules  
14 issued by the administrator;

15 (2) The consumer provides to the creditor a dated, written statement describing  
16 the emergency and specifically waiving or modifying those timing requirements,  
17 which statement must bear the signature of all consumers entitled to receive the  
18 disclosures required by this subsection; and

19 (3) The creditor provides to the consumer at or before the time of such waiver or  
20 modification the final disclosures required by subsection 1.

21 H. The requirements of paragraphs C to G do not apply to extensions of credit  
22 relating to time-share estates as described in Title 33, section 591, subsection 7, or  
23 time-share plans as described in 11 United States Code, Section 101(53D).

24 **Sec. A-9. 9-A MRSA §8-206-C**, as corrected by RR 2007, c. 1, §4, is repealed.

25 **Sec. A-10. 9-A MRSA §8-206-D**, as amended by PL 2007, c. 471, §§11 and 12  
26 and affected by §18, is repealed.

27 **Sec. A-11. 9-A MRSA §8-206-E**, as corrected by RR 2007, c. 1, §5, is amended  
28 to read:

29 **§8-206-E. Special liability for violations of residential mortgage loan, higher-priced**  
30 **mortgage loan and high-rate, high-fee mortgage loan requirements**

31 1. This section applies to any violation of section 8-206-A, ~~8-206-C~~ 8-206-H,  
32 8-206-I or ~~8-206-D~~ 8-206-J in connection with the origination, brokering or servicing of a  
33 residential mortgage loan. This section does not apply to a purchaser or assignee of a  
34 residential mortgage loan except as permitted in section ~~8-206-C~~ 8-206-H, subsection 2.

35 2. Any person who has been found in violation of section 8-206-A, ~~8-206-C~~  
36 8-206-H, 8-206-I or ~~8-206-D~~ 8-206-J by a court may be liable to the borrower for the  
37 following:

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

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B. Statutory damages as follows:

- (1) For violations described in section ~~8-206-C~~ 8-206-H, statutory damages equal to 2 times the finance charge paid under the loan and forfeiture of the remaining interest under the loan; and
- (2) For violations described in section ~~8-206-D~~ 8-206-J, statutory damages in the amount of \$5,000 per violation;

C. Punitive damages for violations of section ~~8-206-C~~ 8-206-H or section ~~8-206-D~~ 8-206-I, subsection 1, paragraph B D when the violation was malicious or reckless; and

D. Costs, including reasonable attorney's fees.

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

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

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

6. Any person who knowingly violates section 8-206-A or ~~8-206-C~~ 8-206-H is guilty of a Class E crime.

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

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

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

1 malfunction and programming and printing errors. An error of legal judgment with  
2 respect to a person's obligations under this section is not a bona fide error.

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

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

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

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

23 Sec. A-12. 9-A MRSA §8-206-H is enacted to read:

24 **§8-206-H. High-rate, high-fee mortgages**

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

29 A. High-rate, high-fee mortgages are subject to the following restrictions.

30 (1) A high-rate, high-fee mortgage may not include payment terms under which  
31 the outstanding principal balance or accrued interest will increase at any time  
32 over the course of the loan because the regularly scheduled periodic payments do  
33 not cover the full amount of interest due.

34 (2) A high-rate, high-fee mortgage may not contain a provision that increases the  
35 interest rate after default. This subparagraph does not apply to interest rate  
36 changes in a variable rate loan otherwise consistent with the provisions of the  
37 loan documents, as long as the change in the interest rate is not triggered by the  
38 event of default or the acceleration of the indebtedness.

39 (3) If the date of maturity of a high-rate, high-fee mortgage is accelerated due to  
40 default and the consumer is entitled to a rebate of interest, that rebate must be



1 computed by a method that is not less favorable than the actuarial method, as that  
2 term is defined in the federal Housing and Community Development Act of  
3 1992, Public Law No. 102-550, Section 933(d)106 Stat. 3672, 3892 (1992) and  
4 15 United States Code, Section 1615.

5 (4) A high-rate, high-fee mortgage may not include terms under which more than  
6 2 periodic payments required under the loan are consolidated and paid in advance  
7 from the loan proceeds provided to the borrower.

8 (5) A creditor may not make a payment to a contractor under a home  
9 improvement contract from amounts extended as credit under a high-rate, high-  
10 fee mortgage except:

11 (a) In the form of an instrument that is payable to the consumer or jointly to  
12 the consumer and the contractor; or

13 (b) At the election of the consumer, by a 3rd-party escrow agent in  
14 accordance with terms established in a written agreement signed by the  
15 consumer, the creditor and the contractor before the date of payment.

16 (6) All high-rate, high-fee mortgage documents that create a debt or pledge  
17 property as collateral must contain the following notice on the first page in a  
18 conspicuous manner: "Notice: This is a mortgage subject to special rules under  
19 the federal Truth in Lending Act. Purchasers or assignees of this mortgage could  
20 be liable for all claims and defenses with respect to the mortgage that the  
21 borrower could assert against the creditor. Maine law also provides for the  
22 liability of purchasers or assignees of this high-rate, high-fee loan."

23 (7) For a high-rate, high-fee mortgage loan with a term of less than 5 years, the  
24 payment schedule may not include regular payments that when aggregated do not  
25 fully amortize the outstanding principal balance.

26 (8) A high-rate, high-fee mortgage loan may not include a demand feature that  
27 permits the creditor to terminate the loan in advance of the original maturity date  
28 and to demand repayment of the entire outstanding balance except in the  
29 following circumstances:

30 (a) There is fraud or material misrepresentation by the consumer in  
31 connection with the loan;

32 (b) The consumer fails to meet the repayment terms of the agreement for any  
33 outstanding balance; or

34 (c) There is any action or inaction by the consumer that adversely affects the  
35 creditor's security for the loan or any right of the creditor in such security.

36 (9) A creditor may not extend a high-rate, high-fee mortgage to a consumer  
37 based on the value of the consumer's collateral without regard to the consumer's  
38 ability to pay as described in section 8-206-I, subsection 1, paragraph A.

39 (10) High-rate, high-fee mortgages are subject to rules relating to escrows as  
40 described in section 8-206-I, subsection 1, paragraph C.

41 B. High-rate, high-fee mortgages are subject to the following enhanced restrictions.

1 (1) In connection with a high-rate, high-fee mortgage, a creditor may not directly  
2 or indirectly finance any points or fees.

3 (2) In addition to the limitation found in paragraph A, subparagraph (7), a high-  
4 rate, high-fee mortgage may not contain a scheduled payment that is more than  
5 twice as large as the average of earlier scheduled payments. This subparagraph  
6 does not apply when the payment schedule is adjusted to the seasonal or irregular  
7 income of the borrower.

8 (3) A creditor may not make a high-rate, high-fee mortgage without first  
9 receiving certification from a counselor with a 3rd-party, nonprofit organization  
10 approved by the United States Department of Housing and Urban Development, a  
11 housing financing agency of this State or the Bureau of Consumer Credit  
12 Protection that the borrower has received counseling on the advisability of the  
13 loan transaction.

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

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

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

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

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

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

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

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. A-13. 9-A MRSA §8-206-I is enacted to read:**

24 **§8-206-I. Higher-priced mortgage loans**

25 1. Higher-priced mortgage loans are subject to the following restrictions:

26 A. A creditor may not extend a higher-priced mortgage to a consumer based on the  
27 value of the consumer's collateral without regard to the consumer's repayment ability  
28 as of consummation, including the consumer's current and reasonably expected  
29 income, employment, assets other than the collateral, current obligations and  
30 mortgage-related obligations.

31 (1) For purposes of this paragraph, mortgage-related obligations are expected  
32 property taxes, premiums for mortgage-related insurance required by the creditor  
33 as set forth in paragraph C, and similar expenses.

34 (2) Under this paragraph, a creditor must verify the consumer's repayment ability  
35 as follows.

36 (a) A creditor must verify amounts of income or assets that it relies on to  
37 determine repayment ability, including expected income or assets, by the  
38 consumer's federal Internal Revenue Service Form W-2, tax returns, payroll  
39 receipts, financial institution records or other 3rd-party documents that  
40 provide reasonably reliable evidence of the consumer's income or assets.

1                   (b) Notwithstanding division (a), a creditor has not violated this section if  
2                   the amounts of income and assets that the creditor relied upon in determining  
3                   repayment ability are not materially greater than the amounts of the  
4                   consumer's income or assets that the creditor could have verified pursuant to  
5                   division (a) at the time the loan was consummated.

6                   (c) A creditor must verify the consumer's current obligations.

7                   (3) A creditor is presumed to have complied with this paragraph with respect to a  
8                   transaction if the creditor:

9                   (a) Verifies the consumer's repayment ability as provided in subparagraphs 1  
10                   and 2;

11                   (b) Determines the consumer's repayment ability using the largest payment  
12                   of principal and interest scheduled in the first 7 years following  
13                   consummation and taking into account current obligations and mortgage-  
14                   related obligations; and

15                   (c) Assesses the consumer's repayment ability taking into account at least  
16                   one of the following:

17                   (i) The ratio of total debt obligations to income; and

18                   (ii) The income the consumer will have after paying debt obligations.

19                   (4) Notwithstanding subparagraph (3), no presumption of compliance is  
20                   available for a transaction for which:

21                   (a) The regular periodic payments for the first 7 years would cause the  
22                   principal balance to increase; or

23                   (b) The term of the loan is less than 7 years and the regular periodic  
24                   payments when aggregated do not fully amortize the outstanding principal  
25                   balance.

26                   (5) This paragraph does not apply to a temporary or so-called "bridge" loan with  
27                   a term of 12 months or less, such as a loan to purchase a new dwelling when the  
28                   consumer plans to sell a current dwelling within 12 months.

29                   B. Beginning October 1, 2009, except as allowed under subparagraph (1), and except  
30                   for high-rate, high-fee mortgage subject to section 8-206-H, subsection 1, paragraph  
31                   B, subparagraph (4) and a nontraditional mortgage that is not a rate spread home  
32                   loan, a higher-priced mortgage loan may not include a penalty for paying all or part  
33                   of the principal before the date on which the principal is due. A prepayment penalty  
34                   includes computing a refund of unearned interest by a method that is less favorable to  
35                   the consumer than the actuarial method, as defined by federal Housing and  
36                   Community Development Act of 1992, Public Law No. 102-550, Section 933(d)106  
37                   Stat. 3672, 3892 (1992) and 15 United States Code, Section 1615.

38                   (1) A higher-priced mortgage loan may provide for a prepayment penalty,  
39                   including a refund calculated according to the sum of the balances method, as  
40                   defined in section 2-503, subsection 7, under the terms of the loan if:

1           (a) The penalty will not apply after the 2-year period following  
2           consummation;

3           (b) The penalty will not apply if the source of the prepayment funds is a  
4           refinancing by the creditor or an affiliate of the creditor; and

5           (c) The amount of the periodic payment of principal or interest or both may  
6           not change during the 4-year period following consummation.

7           C. Beginning April 1, 2010, higher-priced loans are subject to the following  
8           requirements relating to escrow accounts:

9           (1) A creditor may not extend a loan secured by a first lien on a principal  
10           dwelling unless an escrow account is established before consummation for  
11           payment of property taxes and premiums for mortgage-related insurance required  
12           by the creditor, such as insurance against loss of or damage to property, or  
13           against liability arising out of the ownership or use of the property or insurance  
14           protecting the creditor against the consumer's default or other credit loss.

15           (2) Notwithstanding the requirements set forth in subparagraph (1):

16           (a) Escrow accounts need not be established for loans secured by shares in a  
17           cooperative; and

18           (b) Insurance premiums described in subparagraph (1) need not be included  
19           in escrow accounts for loans secured by condominium units when the  
20           condominium association has an obligation to the condominium unit owners  
21           to maintain a master policy insuring condominium units.

22           (3) A creditor or servicer may permit a consumer to cancel the escrow account  
23           required in subparagraph (1) only in response to a consumer's dated written  
24           request to cancel the escrow account that is received no earlier than 365 days  
25           after consummation.

26           (4) For purposes of this paragraph, "escrow account" has the same meaning set  
27           forth in 24 Code of Federal Regulations, Section 3500.17(b).

28           D. A creditor may not knowingly or intentionally engage in the act or practice of  
29           flipping a residential mortgage loan when making a higher-priced mortgage loan.  
30           The administrator is authorized to adopt rules defining with reasonable specificity the  
31           requirements for compliance with this paragraph. Rules adopted pursuant to this  
32           paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

33           Sec. A-14. 9-A M RSA §8-206-J is enacted to read:

34           §8-206-J. Residential mortgage loan requirements

35           1. Beginning October 1, 2009, residential mortgage loans are subject to the following  
36           restrictions.

37           A. In connection with a consumer credit transaction secured by a consumer's  
38           principal dwelling, no creditor or mortgage broker, and no affiliate of a creditor or  
39           mortgage broker, shall directly or indirectly coerce, influence or otherwise encourage  
40           an appraiser to misstate or misrepresent the value of such dwelling.

1 (1) In connection with a consumer credit transaction secured by a consumer's  
2 principal dwelling, a creditor who knows, at or before loan consummation, of a  
3 violation of this paragraph in connection with an appraisal may not extend credit  
4 based on such appraisal unless the creditor documents that it has acted with  
5 reasonable diligence to determine that the appraisal does not materially misstate  
6 or misrepresent the value of such dwelling.

7 (2) For purposes of this paragraph, "mortgage broker" means a person, other than  
8 an employee of a lender, who for compensation or other monetary gain, or in  
9 expectation of compensation or other monetary gain, arranges, negotiates or  
10 otherwise obtains an extension of consumer credit for another person. "Mortgage  
11 broker" includes a person meeting this definition, even if the consumer credit  
12 obligation is initially payable to such person, unless the person provides the funds  
13 for the transaction at consummation out of the person's own resources, out of  
14 deposits held by the person or by drawing on a bona fide warehouse line of  
15 credit.

16 (3) For the purposes of this paragraph, "appraiser" means a person who engages  
17 in the business of providing assessments of the value of dwellings. "Appraiser"  
18 includes a person that employs, refers or manages appraisers and affiliates of  
19 such persons.

20 B. In connection with a consumer credit transaction secured by a consumer's  
21 principal dwelling, a servicer may not:

22 (1) Fail to credit a payment to the consumer's loan account as of the date of  
23 receipt, except when a delay in crediting does not result in any charge to the  
24 consumer or in the reporting of negative information to a consumer reporting  
25 agency or except as provided in subparagraph (4);

26 (2) Impose on the consumer any late fee or delinquency charge in connection  
27 with a payment, when the only delinquency is attributable to late fees or  
28 delinquency charges assessed on an earlier payment and the payment is otherwise  
29 a full payment for the applicable period and is paid on its due date or within any  
30 applicable grace period;

31 (3) Fail to provide, within a reasonable time after receiving a request from the  
32 consumer or any person acting on behalf of the consumer, an accurate statement  
33 of the total outstanding balance that would be required to satisfy the consumer's  
34 obligation in full as of a specified date; or

35 (4) Fail to credit a payment as of 5 days after receipt if a servicer specifies in  
36 writing requirements for the consumer to follow in making payments, but accepts  
37 a payment that does not conform to the requirements.

38 For purposes of this paragraph, "servicer" and "servicing" have the same meanings as  
39 provided in 24 Code of Federal Regulations, Section 3500.2(b).

40 C. This subsection does not apply to a home equity line of credit subject to section  
41 8-205.

42 2. Residential mortgage loans are subject to the following enhanced restrictions.

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

4 B. A borrower may not be charged for a late payment unless the loan documents  
5 specifically authorize the charge, the charge is not imposed unless the payment is past  
6 due for 10 days or more and the charge does not exceed 5% of the amount of the late  
7 payment. A creditor or servicer may apply any payment made in the order of  
8 maturity to a prior period's payment due even if the result is late payment charges  
9 accruing on subsequent payments due.

10 C. A residential mortgage loan may not contain a provision that permits the creditor,  
11 in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit  
12 the acceleration of the loan in good faith due to the borrower's failure to abide by the  
13 material terms of the loan.

14 D. A creditor making a residential mortgage loan may not finance directly or  
15 indirectly any credit life insurance, credit disability insurance, credit unemployment  
16 insurance or credit property insurance or any other life or health insurance or any  
17 payments directly or indirectly for any debt cancellation or suspension agreement or  
18 contract, except that insurance premiums or debt cancellation or suspension fees  
19 calculated and paid on a monthly basis or through regularly scheduled periodic  
20 payments may not be considered financed by the creditor.

21 E. A borrower may not be charged a fee in addition to the actual public discharge fee  
22 to provide a release upon prepayment. Payoff balances must be provided in  
23 accordance with section 9-305-B.

24 F. The following provisions apply with respect to a right to cure default of a  
25 residential mortgage loan.

26 (1) If all defaults in connection with a residential mortgage loan are cured after  
27 the initiation of any action to foreclose, the creditor or the servicer shall take  
28 steps as necessary to terminate the foreclosure proceeding or other action. The  
29 borrower shall pay any reasonable costs incurred by the creditor or servicer  
30 before the cure of default. Cure of default reinstates the borrower to the same  
31 position as if the default had not occurred and nullifies, as of the date of the cure,  
32 any acceleration of any obligation under the security instrument or note arising  
33 from the default.

34 (2) A borrower has the right to cure a default once in a 12-month period.

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

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

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

1 4. The Attorney General has jurisdiction to enforce this section against loan brokers  
2 and supervised lenders who are not supervised financial organizations through their  
3 general regulatory powers and through civil process. The administrator, through the  
4 Attorney General, may bring a civil action to restrain any person from violating this  
5 section.

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

8 **Sec. A-15. 9-A MRSA §8-208, sub-§1, ¶B, as corrected by RR 1995, c. 2, §18,**  
9 **is amended to read:**

10 B. In an individual action:

11 (i) Twice the amount of any finance charge in connection with the transaction; or

12 (ii) In the case of a consumer lease, 25% of the total amount of monthly  
13 payments under the lease.

14 Liability under this paragraph may not be less than \$100 nor greater than \$1,000;  
15 except that in the case of a credit transaction not under an open-end credit plan that is  
16 secured by real property or a dwelling, liability under this paragraph may not be less  
17 than ~~\$200~~ \$400 nor greater than ~~\$2,000~~ \$4,000;

18 **Sec. A-16. Effective date.** Those sections of this Act that amend the Maine  
19 Revised Statutes, Title 9-A, section 8-206, subsection 3 and section 8-208, subsection 1,  
20 paragraph B take effect July 30, 2009.

## 21 PART B

22 **Sec. B-1. 9-A MRSA Art. 13 is enacted to read:**

### 23 ARTICLE 13

#### 24 MAINE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE 25 LICENSING ACT OF 2009

##### 26 §13-101. Short title

27 This Article may be known and cited as "the Maine Secure and Fair Enforcement for  
28 Mortgage Licensing Act of 2009."

##### 29 §13-102. Definitions

30 As used in this Article, unless the context otherwise indicates, the following terms  
31 have the following meanings.

32 1. Clerical or support duties. "Clerical or support duties" may include subsequent  
33 to the receipt of an application:



1           A. The receipt, collection, distribution and analysis of information common for the  
2           processing or underwriting of a residential mortgage loan; and

3           B. Communicating with a consumer to obtain the information necessary for the  
4           processing or underwriting of a loan, to the extent that such communication does not  
5           include offering or negotiating loan rates or terms or counseling consumers about  
6           residential mortgage loan rates or terms.

7           2. Depository institution. "Depository institution" has the same meaning as in  
8           Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

9           3. Dwelling. "Dwelling" has the same meaning as in the federal Truth in Lending  
10           Act, Section 103(v).

11           4. Immediate family member. "Immediate family member" means a spouse, child,  
12           sibling, parent, grandparent or grandchild. "Immediate family member" includes  
13           stepparents, stepchildren, stepsiblings and adoptive relationships.

14           5. Individual. "Individual" means a natural person.

15           6. Loan processor or underwriter. "Loan processor or underwriter" means an  
16           individual who performs clerical or support duties as an employee at the direction of and  
17           subject to the supervision and instruction of a person licensed or exempt from licensing  
18           under the provisions of this Title. An individual engaging solely in loan processor or  
19           underwriter activities may not represent to the public, through advertising or other means  
20           of communicating or providing information, including the use of business cards,  
21           stationery, brochures, signs, rate lists or other promotional items, that such individual can  
22           or will perform any of the activities of a mortgage loan originator.

23           7. Mortgage loan originator. "Mortgage loan originator" means an individual who  
24           for compensation or gain or in the expectation of compensation or gain takes a residential  
25           mortgage loan application or offers or negotiates terms of a residential mortgage loan.  
26           "Mortgage loan originator" does not include:

27           A. An individual engaged solely as a loan processor or underwriter except as  
28           otherwise provided in section 13-103, subsection 3, paragraph A;

29           B. A person or entity that only performs real estate brokerage activities and is  
30           licensed or registered in accordance with the laws of this State, unless the person or  
31           entity is compensated by a lender, a mortgage broker or other mortgage loan  
32           originator or by any agent of such lender, mortgage broker or other mortgage loan  
33           originator; or

34           C. A person or entity solely involved in extensions of credit relating to time-share  
35           plans, as that term is defined in Title 11 United States Code, Section 101(53D).

36           8. Nationwide mortgage licensing system and registry. "Nationwide mortgage  
37           licensing system and registry" means a mortgage licensing system developed and  
38           maintained by a national organization dedicated to advancing the state banking system  
39           and a national association of residential mortgage regulators for the licensing and  
40           registration of licensed mortgage loan originators.

1           **9. Nontraditional mortgage product.** "Nontraditional mortgage product" means  
2 any mortgage product other than a 30-year fixed rate mortgage.

3           **10. Person.** "Person" means a natural person, corporation, company, limited liability  
4 company, partnership or association.

5           **11. Real estate brokerage activity.** "Real estate brokerage activity" means any  
6 activity that involves offering or providing real estate brokerage services to the public,  
7 including:

8           **A. Acting as a real estate agent or real estate broker for a buyer, seller, lessor or**  
9 **lessee of real property;**

10           **B. Bringing together parties interested in the sale, purchase, lease, rental or exchange**  
11 **of real property;**

12           **C. Negotiating, on behalf of any party, any portion of a contract relating to the sale,**  
13 **purchase, lease, rental or exchange of real property, other than in connection with**  
14 **providing financing with respect to any such transaction;**

15           **D. Engaging in any activity for which a person engaged in the activity is required to**  
16 **be registered or licensed as a real estate agent or real estate broker under any**  
17 **applicable law; and**

18           **E. Offering to engage in any activity or act in any capacity, described in this**  
19 **subsection.**

20           **12. Registered mortgage loan originator.** "Registered mortgage loan originator"  
21 means an individual who:

22           **A. Meets the definition of mortgage loan originator and is an employee of:**

23                   **(1) A depository institution;**

24                   **(2) A subsidiary that is:**

25                           **(a) Owned and controlled by a depository institution; and**

26                           **(b) Regulated by a federal banking agency; or**

27                   **(3) An institution regulated by the federal Farm Credit Administration; and**

28           **B. Is registered with, and maintains a unique identifier through the nationwide**  
29 **mortgage licensing system and registry.**

30           **13. Residential mortgage loan.** "Residential mortgage loan" means any loan  
31 primarily for personal, family or household use that is secured by a mortgage, deed of  
32 trust or other equivalent consensual security interest on a dwelling or residential real  
33 estate upon which is constructed or intended to be constructed a dwelling.

34           **14. Residential real estate.** "Residential real estate" means any real property  
35 located in the State, upon which is constructed or intended to be constructed a dwelling.

1           **15. Unique identifier.** "Unique identifier" means a number or other identifier  
2 assigned by protocols established by the nationwide mortgage licensing system and  
3 registry.

4           **§13-103. License and registration required**

5           **1. Requirement.** An individual, unless specifically exempted from this Article  
6 under subsection 2, may not engage in the business of a mortgage loan originator without  
7 obtaining and maintaining annually a license under this Article. Each licensed mortgage  
8 loan originator must register with and maintain a valid unique identifier issued by the  
9 nationwide mortgage licensing system and registry.

10           **2. Exemption.** The following persons are exempt from this Article.

11           **A. Registered mortgage loan originators, when acting for a depository institution; a**  
12 subsidiary that is owned and controlled by a depository institution and that is  
13 regulated by a federal banking agency; or an institution regulated by the federal Farm  
14 Credit Administration.

15           **B. An individual who offers or negotiates terms of a residential mortgage loan with**  
16 or on behalf of an immediate family member of the individual.

17           **C. An individual who offers or negotiates terms of a residential mortgage loan**  
18 secured by a dwelling that serves as the individual's residence.

19           **D. A licensed attorney who negotiates the terms of a residential mortgage loan on**  
20 behalf of a client as an ancillary matter to the attorney's representation of the client,  
21 unless the attorney is compensated by a lender, a mortgage broker or other mortgage  
22 loan originator or by any agent of such lender, mortgage broker or other mortgage  
23 loan originator.

24           **3. Loan processor or underwriter; license not required.** A loan processor or  
25 underwriter who does not represent to the public, through advertising or other means of  
26 communicating or by providing information, including the use of business cards,  
27 stationery, brochures, signs, rate lists or other promotional items, that the individual can  
28 or will perform any of the activities of a mortgage loan originator is not required to obtain  
29 and maintain a license under subsection 1.

30           **A. An independent contractor may not engage in residential mortgage loan**  
31 origination activities as a loan processor or underwriter unless that independent  
32 contractor obtains and maintains a license under subsection 1. Each independent  
33 contractor loan processor or underwriter licensed as a mortgage loan originator must  
34 have and maintain a valid unique identifier issued by the nationwide mortgage  
35 licensing system and registry.

36           **4. Rules; interim procedures and accept applications.** For the purposes of  
37 implementing an orderly and efficient licensing process, the administrator may establish  
38 licensing rules and interim procedures for licensing and acceptance of applications. For  
39 previously registered or licensed individuals, the administrator may establish expedited  
40 review and licensing procedures. Rules adopted pursuant to this subsection are routine  
41 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1       **§13-104. State license and registration application and issuance**

2           **1. Application form.** An applicant for a license as a mortgage loan originator shall  
3       apply using a form prescribed by the administrator. The form must contain content as set  
4       forth by rule, instruction or procedure of the administrator and may be changed or  
5       updated as necessary by the administrator in order to carry out the purposes of this  
6       Article.

7           **2. Relationships or contracts.** In order to fulfill the purposes of this Article, the  
8       administrator is authorized to establish relationships or contracts with the nationwide  
9       mortgage licensing system and registry or other entities designated by the nationwide  
10       mortgage licensing system and registry to collect and maintain records and process  
11       transaction fees or other fees related to licensees or other persons subject to this Article.

12           **3. Waive or modify requirements.** For the purpose of participating in the  
13       nationwide mortgage licensing system and registry, the administrator is authorized to  
14       waive or modify, in whole or in part, by rule or order, any or all of the requirements of  
15       this Article and to establish new requirements as reasonably necessary to participate in  
16       the nationwide mortgage licensing system and registry.

17           **4. Background checks.** In connection with an application for licensing as a  
18       mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide  
19       mortgage licensing system and registry information concerning the applicant's identity,  
20       including:

21           A. Fingerprints for submission to the Federal Bureau of Investigation and any  
22       governmental agency or entity authorized to receive such information for a state,  
23       national and international criminal history background check; and

24           B. Personal history and experience in a form prescribed by the nationwide mortgage  
25       licensing system and registry, including the submission of authorization for the  
26       nationwide mortgage licensing system and registry and the administrator to obtain:

27               (1) An independent credit report from a consumer reporting agency described in  
28               the federal Fair Credit Reporting Act, Section 603(p); and

29               (2) Information related to any administrative, civil or criminal findings by any  
30               governmental jurisdiction.

31           **5. Agent for purposes of requesting and distributing criminal information.** For  
32       the purposes of this section and in order to reduce the points of contact that the  
33       administrator or the Federal Bureau of Investigation may have to maintain for purposes of  
34       subsection 4, the administrator may use the nationwide mortgage licensing system and  
35       registry as a channeling agent for requesting information from and distributing  
36       information to the Department of Justice or any governmental agency and from any  
37       source directed by the administrator.

38       **§13-105. Issuance of license**

39           The administrator may not issue an applicant a mortgage loan originator license  
40       unless the applicant meets the following requirements.

1           1. No license revocation. The applicant has never had a mortgage loan originator  
2           license revoked in any governmental jurisdiction.

3           2. No felony conviction. The applicant has not been convicted of, or pleaded guilty  
4           or nolo contendere to, a felony in a domestic, foreign or military court:

5           A. During the 7-year period preceding the date of the application for licensing and  
6           registration; or

7           B. At any time preceding the date of application, if the felony involved an act of  
8           fraud, dishonesty or a breach of trust or money laundering.

9           3. Character and fitness. The applicant has demonstrated financial responsibility,  
10           good character and general fitness commanding the confidence of the community and  
11           warranting a determination that the mortgage loan originator will operate honestly, fairly  
12           and efficiently in accordance with this Article.

13           4. Prelicensing education. The applicant has completed the prelicensing education  
14           requirement described in section 13-106.

15           5. Written test. The applicant has passed a written test that meets the requirement  
16           described in section 13-107.

17           6. Surety bond or minimum net worth requirement. The applicant has met the  
18           surety bond requirement or the net worth requirement as required pursuant to section  
19           13-113.

20           **§13-106. Prelicensing education for mortgage loan originators**

21           1. Minimum education requirements. In order to meet the prelicensing education  
22           requirement set forth in section 13-105, subsection 4, a person must complete at least 20  
23           hours of education approved in accordance with subsection 2, which must include at  
24           least:

25           A. Three hours of instruction in federal law and regulations;

26           B. Three hours of ethics, which must include instruction on fraud, consumer  
27           protection and fair lending issues; and

28           C. Two hours of training related to lending standards for the nontraditional mortgage  
29           product marketplace.

30           2. Approved education courses. For purposes of subsection 1, prelicensing  
31           education courses must be reviewed and approved by the nationwide mortgage licensing  
32           system and registry based on reasonable standards. Review and approval of a  
33           prelicensing education course must include review and approval of the course provider.

34           3. Approval of employer and affiliate education courses. Nothing in this section  
35           precludes any prelicensing education course, as approved by the nationwide mortgage  
36           licensing system and registry, that is provided by the employer of the applicant or an  
37           entity that is affiliated with the applicant by an agency contract or any subsidiary or  
38           affiliate of such employer or entity.

1           **4. Venue of education.** Prelicensing education may be offered either in a classroom,  
2 online or by any other means approved by the nationwide mortgage licensing system and  
3 registry.

4           **5. Reciprocity of education.** The completion of the prelicensing education  
5 requirements approved by the nationwide mortgage licensing system and registry under  
6 this section for any state must be accepted as credit towards completion of prelicensing  
7 education requirements in this State.

8           **6. Relicensing education requirements.** A person previously licensed under this  
9 Article who applies to be licensed again must prove that that person has completed all of  
10 the continuing education requirements for the year in which the license was last held.

11           **§13-107. Testing of loan mortgage originators**

12           **1. Written test.** In order to meet the written test requirement required under section  
13 13-105, subsection 5, an individual must pass, in accordance with the standards  
14 established under this section, a qualified written test developed by the nationwide  
15 mortgage licensing system and registry and administered by a test provider approved by  
16 the nationwide mortgage licensing system and registry based upon reasonable standards.

17           **2. Qualified test.** A written test may not be treated as a qualified written test for  
18 purposes of subsection 1 unless the test adequately measures the applicant's knowledge  
19 and comprehension in appropriate subject areas, including:

20           **A. Ethics;**

21           **B. Federal laws and regulations pertaining to mortgage origination;**

22           **C. State laws and rules pertaining to mortgage origination;**

23           **D. Federal and state laws, rules and regulations, including instruction on fraud,**  
24 **consumer protection, the nontraditional mortgage product marketplace and fair**  
25 **lending issues.**

26           **3. Testing location.** Nothing in this section prohibits a test provider approved by the  
27 nationwide mortgage licensing system and registry from providing a test at the location of  
28 the employer of the applicant, or any subsidiary or affiliate of the employer of the  
29 applicant, or any entity with which the applicant holds an exclusive arrangement to  
30 conduct the business of a mortgage loan originator.

31           **4. Minimum competence.** An individual is not considered to have passed a  
32 qualified written test unless the individual achieves a test score of not less than 75%  
33 correct answers to questions.

34           **A. An individual may retake a test 3 consecutive times, undergoing each consecutive**  
35 **test at least 30 days after the preceding test.**

36           **B. After failing 3 consecutive tests, an individual must wait at least 6 months before**  
37 **taking the test again.**

38           **C. A licensed mortgage loan originator who fails to maintain a valid license for a**  
39 **period of 5 years or longer shall retake the test.**

1        **§13-108. Standards for license renewal**

2            **1. Minimum standards.** The minimum standards for license renewal for mortgage  
3            loan originators include the following:

4            **A.** The mortgage loan originator continues to meet the minimum standards for  
5            license issuance under section 13-105, subsections 1 to 5;

6            **B.** The mortgage loan originator has satisfied the annual continuing education  
7            requirements described in section 13-109; and

8            **C.** The mortgage loan originator has paid all required fees for renewal of the license.

9            **2. Failure to satisfy minimum standards of license renewal.** If a mortgage loan  
10            originator fails to satisfy the minimum standards for license renewal, that individual's  
11            license expires. The administrator may adopt procedures for the reinstatement of expired  
12            licenses consistent with the standards established by the nationwide mortgage licensing  
13            system and registry.

14        **§13-109. Continuing education for mortgage loan originators**

15            **1. Requirement.** In order to meet the annual continuing education requirements set  
16            forth in section 13-108, subsection 1, paragraph B, a licensed mortgage loan originator  
17            must complete at least 8 hours of education approved in accordance with subsection 2,  
18            which must include at least:

19            **A.** Three hours of federal laws and regulations;

20            **B.** Two hours of ethics, which must include instruction on fraud, consumer  
21            protection and fair lending issues; and

22            **C.** Two hours of training related to lending standards for the nontraditional mortgage  
23            product marketplace.

24            **2. Approved education courses.** For purposes of subsection 1, continuing  
25            education courses must be reviewed and approved by the nationwide mortgage licensing  
26            system and registry based upon reasonable standards. Review and approval of a  
27            continuing education course includes review and approval of the course provider.

28            **3. Approval of employer and affiliate education courses.** Nothing in this section  
29            precludes any education course, as approved by the nationwide mortgage licensing  
30            system and registry, that is provided by the employer of the mortgage loan originator or  
31            an entity which is affiliated with the mortgage loan originator by an agency contract or  
32            any subsidiary or affiliate of such employer or entity.

33            **4. Venue of education.** Continuing education may be offered either in a classroom,  
34            online or by any other means approved by the nationwide mortgage licensing system and  
35            registry.

36            **5. Calculation of continuing education credits.** A licensed mortgage loan  
37            originator may:

1           A. Notwithstanding subsection 9 and section 13-108, subsection 2, receive credit for  
2           a continuing education course only in the year in which the course is taken; and

3           B. Not repeat an approved course in the same or successive years to meet the annual  
4           requirements for continuing education.

5           6. Instructor credit. A licensed mortgage loan originator who is an instructor of an  
6           approved continuing education course may receive credit for the licensed mortgage loan  
7           originator's own annual continuing education requirement at the rate of 2 hours credit for  
8           every one hour taught.

9           7. Reciprocity of education. The completion of the education requirements  
10          approved by the nationwide mortgage licensing system and registry under this section for  
11          any state must be accepted as credit towards completion of continuing education  
12          requirements in this State.

13          8. Lapse in license. A person previously licensed under this Article as a licensed  
14          mortgage loan originator who subsequently becomes unlicensed must prove that the  
15          person has completed all of the continuing education requirements for the last year in  
16          which the license was held prior to issuance of a new or renewed license.

17          9. Deficiency in continuing education. A person meeting the requirements of  
18          section 13-108, subsection 1, paragraphs A and C may make up any deficiency in  
19          continuing education as established by rule of the administrator.

20          §13-110. Authority to require license

21          In addition to any other duties imposed upon the administrator by law, the  
22          administrator shall require mortgage loan originators to be licensed and registered  
23          through the nationwide mortgage licensing system and registry. In order to carry out this  
24          requirement, the administrator is authorized to participate in the nationwide mortgage  
25          licensing system and registry. For this purpose, the administrator may establish, by rule  
26          or order, requirements as necessary, including but not limited to:

27          1. Background checks. Background checks for:

28               A. Criminal history through fingerprint or other databases;

29               B. Civil or administrative records;

30               C. Credit history; or

31               D. Any other information determined necessary by the nationwide mortgage  
32               licensing system and registry;

33          2. Fees. The payment of fees to apply for or renew licenses through the nationwide  
34          mortgage licensing system and registry;

35          3. Dates. The setting or resetting as necessary of renewal or reporting dates; and



1           **4. Other requirements.** Other requirements for amending or revoking a license or  
2 any other such activities as the administrator considers necessary for participation in the  
3 nationwide mortgage licensing system and registry.

4           **§13-111. Nationwide mortgage licensing system and registry information challenge**  
5           **process**

6           The administrator shall establish a process by which mortgage loan originators may  
7 challenge information entered into the nationwide mortgage licensing system and registry  
8 by the administrator.

9           **§13-112. Enforcement authorities, violations and penalties**

10           **1. Enforcement.** In order to ensure the effective supervision and enforcement of  
11 this Article, the administrator may, pursuant to this Title and the Maine Administrative  
12 Procedure Act:

13           A. Deny, suspend, revoke, condition or decline to renew a license for a violation of  
14 this Article or rules issued under this Article or an order or a directive entered under  
15 this Article;

16           B. Deny, suspend, revoke, condition or decline to renew a license if an applicant or  
17 licensee fails at any time to meet the requirements of section 13-105 or section  
18 13-108, or withholds information or makes a material misstatement in an application  
19 for a license or renewal of a license;

20           C. Order restitution against persons subject to this Article for violations of this  
21 Article;

22           D. Impose fines on persons subject to this Article pursuant to subsections 2 to 4; and

23           E. Issue orders or directives under this Article as follows:

24                   (1) Order or direct persons subject to this article to cease and desist from  
25 conducting business, including immediate temporary orders to cease and desist;

26                   (2) Order or direct persons subject to this article to cease any harmful activities  
27 or violations of this article, including immediate temporary orders to cease and  
28 desist;

29                   (3) Enter immediate temporary orders to cease business under a license issued  
30 pursuant to the authority granted under section 13-103, subsection 4 if the  
31 administrator determines that such a license was erroneously granted or the  
32 licensee is in violation of this Article; and

33                   (4) Order or direct other affirmative action that the administrator considers  
34 necessary.

35           **2. Penalty.** The administrator may impose a civil fine on a mortgage loan originator  
36 or person subject to this Article if the administrator finds on the record after notice and  
37 opportunity for hearing, that such mortgage loan originator or person subject to this  
38 Article has violated or failed to comply with any requirement of this Article or any rule

1 prescribed by the administrator under this Article or order issued under authority of this  
2 Article.

3 **3. Maximum fine.** A person who violates this section commits a civil violation for  
4 each act or omission described in subsection 2, a fine for which no more than \$25,000  
5 must be adjudged.

6 **4. Separate violation.** Each violation or failure to comply with any directive or  
7 order of the administrator is a separate and distinct violation or failure.

8 **§13-113. Surety bond or minimum net worth requirements**

9 Mortgage loan originators must comply with either subsection 1 or subsection 2.

10 **1. Surety bond.** Unless in compliance with subsection 2, a mortgage loan originator  
11 must be covered by a surety bond in accordance with this subsection.

12 A. In the event that the mortgage loan originator is an employee or exclusive agent  
13 of a person subject to this Article, the surety bond of that person subject to this  
14 Article can be used in lieu of the mortgage loan originator's surety bond requirement.

15 (1) The surety bond must provide coverage for each mortgage loan originator in  
16 an amount prescribed in paragraph B.

17 (2) The surety bond must be in a form prescribed by the administrator.

18 (3) The administrator may adopt rules with respect to the requirements for surety  
19 bonds necessary to accomplish the purposes of this Article.

20 B. The penal sum of the surety bond must be maintained in an amount established by  
21 rule.

22 C. When an action is commenced on a licensee's bond, the administrator may require  
23 the filing of a new bond.

24 D. Immediately on recovery upon any action on the bond the licensee shall file a new  
25 bond.

26 **2. Minimum net worth.** Unless in compliance with subsection 1, a minimum net  
27 worth must be continuously maintained for mortgage loan originators in accordance with  
28 this subsection and section 13-105, subsection 6. In the event that the mortgage loan  
29 originator is an employee or exclusive agent of a person subject to this Article, the net  
30 worth of that person subject to this Article can be used in lieu of the mortgage loan  
31 originator's minimum net worth requirement.

32 A. Minimum net worth must be maintained in an amount determined by the  
33 administrator.

34 B. The administrator may adopt rules with respect to the requirements for minimum  
35 net worth necessary to accomplish the purposes of this Article.

1           **§13-114. Confidentiality**

2           **1. Protections.** Notwithstanding any provision of law to the contrary and except as  
3 otherwise provided in federal Public Law 110-289, Section 1512, the requirements under  
4 any federal or state law regarding the privacy or confidentiality of any information or  
5 material provided to the nationwide mortgage licensing system and registry and any  
6 privilege arising under federal or state law, including the rules of any federal or state  
7 court, with respect to such information or material, continue to apply to that information  
8 or material after the information or material has been disclosed to the nationwide  
9 mortgage licensing system and registry. That information and material may be shared  
10 with all state and federal regulatory officials with mortgage industry oversight authority  
11 without the loss of privilege or the loss of confidentiality protections provided by federal  
12 law or state law.

13           **2. Agreements and sharing arrangements.** The administrator is authorized to  
14 enter agreements or sharing arrangements with other governmental agencies, a national  
15 organization dedicated to advancing the state banking system, a national association of  
16 residential mortgage regulators or other associations representing governmental agencies  
17 as established by rule or order of the administrator.

18           **3. Nonapplicability of certain requirements.** Information or material that is  
19 subject to a privilege or confidentiality under subsection 1 is not subject to:

20           **A. Disclosure under any federal or state law governing the disclosure to the public of**  
21 **information held by an officer or an agency of the Federal Government or the**  
22 **respective state; or**

23           **B. Subpoena, discovery or admission into evidence in any private civil action or**  
24 **administrative process, unless with respect to a privilege held by the nationwide**  
25 **mortgage licensing system and registry regarding that information or material, the**  
26 **person to whom such information or material pertains waives, in whole or in part,**  
27 **that privilege.**

28           **4. Public access to information.** This section does not apply to the information or  
29 material relating to the employment history of, and publicly adjudicated disciplinary and  
30 enforcement actions against, mortgage loan originators that is included in the nationwide  
31 mortgage licensing system and registry for access by the public.

32           **§13-115. Investigation and examination authority**

33           In addition to any authority allowed under this Article, the administrator may conduct  
34 an investigation and examination as follows.

35           **1. Authority to access information.** For purposes of initial licensing, license  
36 renewal, license suspension, license conditioning, license revocation or termination or  
37 general or specific inquiry or investigation to determine compliance with this Article, the  
38 administrator may access, receive and use any books, accounts, records, files, documents,  
39 information or evidence, including but not limited to:

1           A. Criminal, civil and administrative information, including nonconviction data as  
2           defined in Title 16, section 611, subsection 9;

3           B. Personal history and experience information, including independent credit reports  
4           obtained from a consumer reporting agency described in the federal Fair Credit  
5           Reporting Act, Section 603(p); and

6           C. Any other documents, information or evidence the administrator determines  
7           relevant to the inquiry or investigation regardless of the location, possession, control  
8           or custody of those documents, information or evidence.

9           2. Investigation, examination and subpoena authority. For the purposes of  
10          investigating violations or complaints arising under this Article or for the purposes of  
11          examination the administrator may review, investigate or examine any licensee,  
12          individual or person subject to this Article as often as necessary. The administrator may  
13          direct, subpoena or order the attendance of and examine under oath all persons whose  
14          testimony may be required about the loans or the business or subject matter of an  
15          examination or investigation and may direct, subpoena or order those persons to produce  
16          books, accounts, records, files and any other documents the administrator considers  
17          relevant to the inquiry.

18          3. Availability of books and records. Each licensee, individual or person subject to  
19          this Article shall make available to the administrator upon request the books and records  
20          relating to the operations of that licensee, individual or person. The administrator has  
21          access to such books and records and may interview the officers, principals, mortgage  
22          loan originators, employees, independent contractors, agents and customers of the  
23          licensee, individual or person concerning their business.

24          4. Reports and other information as directed. Each licensee, individual or person  
25          subject to this Article shall make or compile reports or prepare other information as  
26          directed by the administrator in order to carry out the purposes of this section, including  
27          but not limited to:

28                A. Accounting compilations;

29                B. Information lists and data concerning loan transactions in a format prescribed by  
30                the administrator; and

31                C. Other information considered necessary to carry out the purposes of this section.

32          5. Control access to records. In making any examination or investigation  
33          authorized by this Article, the administrator may control access to any documents and  
34          records of the licensee or person under examination or investigation. The administrator  
35          may take possession of the documents and records or place a person in exclusive charge  
36          of the documents and records in the place where they are usually kept. During the period  
37          of control, no individual or person may remove or attempt to remove any of the  
38          documents and records except pursuant to a court order or with the consent of the  
39          administrator. Unless the administrator has reasonable grounds to believe the documents  
40          or records of the licensee have been or are at risk of being altered or destroyed for  
41          purposes of concealing a violation of this Article, the licensee or owner of the documents

1 and records may have access to the documents or records as necessary to conduct  
2 ordinary business affairs.

3 **6. Additional authority.** In order to carry out the purposes of this section, the  
4 administrator may:

5 A. Retain attorneys, accountants or other professionals and specialists as examiners,  
6 auditors or investigators to conduct or assist in examinations or investigations;

7 B. Enter into agreements or relationships with other government officials or  
8 regulatory associations in order to improve efficiencies and reduce regulatory burden  
9 by sharing resources, standardized or uniform methods or procedures and documents,  
10 records, information or evidence obtained pursuant to this section;

11 C. Use, hire, contract or employ public analytic methods or privately available  
12 analytic methods or software to examine or investigate the licensee, individual or  
13 person subject to this Article;

14 D. Accept and rely on examination or investigation reports made by other  
15 government officials within or without this State;

16 E. Accept audit reports made by an independent certified public accountant for the  
17 licensee, individual or person subject to this Article in the course of that part of the  
18 examination covering the same general subject matter as the audit and may  
19 incorporate the audit report in the report of the examination, report of investigation or  
20 other writing of the administrator; or

21 F. Assess the cost of the services described in paragraph A against the licensee,  
22 individual or person subject to this Article.

23 **7. Effect of authority.** The authority of this section remains in effect, whether such  
24 a licensee, individual or person subject to this Article acts or claims to act under any  
25 licensing or registration law of this State or claims to act without such authority.

26 **8. Withhold records.** A licensee, individual or person subject to investigation or  
27 examination under this section may not knowingly withhold, abstract, remove, mutilate,  
28 destroy or secrete any books, records, computer records or other information.

29 **§13-116. Prohibited acts and practices**

30 It is a violation of this Article for an individual or a person subject to this Article to:

31 **1. Defraud; mislead.** Directly or indirectly employ any scheme, device or artifice to  
32 defraud or mislead borrowers or lenders or to defraud a person;

33 **2. Unfair or deceptive practice.** Engage in any unfair or deceptive practice toward  
34 a person;

35 **3. Fraud; misrepresentation.** Obtain property by fraud or misrepresentation;

36 **4. Fee despite absence of loan obtained.** Solicit or enter into a contract with a  
37 borrower that provides in substance that the person or individual subject to this Article

1 may earn a fee or commission through best efforts to obtain a loan even though a loan is  
2 not actually obtained for the borrower;

3 **5. Terms available.** Solicit, advertise or enter into a contract for specific interest  
4 rates, points or other financing terms unless the terms are actually available at the time of  
5 soliciting, advertising or contracting;

6 **6. Valid license.** Conduct any business covered by this Article without holding a  
7 valid license as required under this Article or assist or aide and abet any person in the  
8 conduct of business under this Article without a valid license required under this Article;

9 **7. Disclosures.** Fail to make disclosures required by this Article and any other  
10 applicable state laws or rules or federal laws or regulations;

11 **8. Compliance.** Fail to comply with this Article or rules adopted under this Article  
12 or fail to comply with any other state or federal law, including the rules and regulations  
13 applicable to any business authorized or conducted under this Article;

14 **9. False or deceptive statement.** Make any false or deceptive statement or  
15 representation, including with regard to the rates, points or other financing terms or  
16 conditions for a residential mortgage loan, or engage in bait and switch advertising;

17 **10. False statement; material omission.** Negligently make any false statement or  
18 knowingly and willfully make any omission of material fact in connection with any  
19 information or reports filed with a government agency or the nationwide mortgage  
20 licensing system and registry or in connection with any investigation conducted by the  
21 administrator or another government agency;

22 **11. Improper influence.** Make any payment, threat or promise directly or indirectly  
23 to any person for the purposes of influencing the independent judgment of the person in  
24 connection with a residential mortgage loan, or make any payment threat or promise  
25 directly or indirectly to any appraiser of a property, for the purposes of influencing the  
26 independent judgment of the appraiser with respect to the value of the property;

27 **12. Prohibited fee.** Collect, charge, attempt to collect or charge or use or propose  
28 any agreement purporting to collect or charge any fee prohibited by this Article;

29 **13. Excessive insurance.** Cause or require a borrower to obtain property insurance  
30 coverage in an amount that exceeds the replacement cost of the improvements as  
31 established by the property insurer.

32 **14. Account.** Fail to truthfully account for money belonging to a party to a  
33 residential mortgage loan transaction.

34 **§13-117. Report to nationwide mortgage licensing system and registry**

35 The administrator shall regularly report violations of this Article, as well as  
36 enforcement actions and other relevant information, to the nationwide mortgage licensing  
37 system and registry.

1           **§13-118. Unique identifier shown**

2           The unique identifier of any person originating a residential mortgage loan must be  
3 clearly shown on all residential mortgage loan application forms, solicitations or  
4 advertisements, including business cards or publicly accessible websites and any other  
5 documents as established by rule or order of the administrator.

6           **§13-119. Rulemaking**

7           Rules adopted pursuant to this Article are routine technical rules as defined in Title 5,  
8 chapter 375, subchapter 2-A.

9           **§13-120. Effective date**

10           This Article takes effect July 31, 2010.

11                                   **PART C**

12           **Sec. C-1. 9-A MRS §2-509**, as amended by PL 2007, c. 273, Pt. C, §2, is further  
13 amended to read:

14           **§2-509. Right to prepay**

15           Subject to the provisions on rebate upon prepayment, section 2-510, the consumer  
16 may prepay, in full or in part, the unpaid balance of a consumer credit transaction at any  
17 time without penalty, except for minimum charges as permitted by law. Notwithstanding  
18 any other provision of this Title, a reasonable charge may be assessed upon a consumer  
19 related to prepayment of a consumer loan made by a supervised financial organization  
20 and secured by an interest in land, other than a high-rate, high-fee mortgage, as defined in  
21 section 8-103, subsection 1-A, paragraph P Q, if the charge is reasonably calculated to  
22 offset the cost of origination of the loan. The administrator shall adopt rules to  
23 implement this section. Rules adopted pursuant to this section are routine technical rules  
24 as defined in Title 5, chapter 375, subchapter 2-A.

25           **Sec. C-2. 9-A MRS §8-105, sub-§6, ¶B**, as amended by PL 2007, c. 273, Pt.  
26 C, §4, is further amended to read:

27           **B. For purposes of section 8-204:**

28           (i) If, except as provided in subparagraph (ii), the amount disclosed as the finance  
29 charge does not vary from the actual finance charge by more than an amount  
30 equal to 1/2 of 1% of the total amount of credit extended; or

31           (ii) In the case of a transaction, other than a high-rate, high-fee mortgage as  
32 defined in section 8-103, subsection 1-A, paragraph P Q, that:

33                 (a) Is a refinancing of the principal balance then due and any accrued and  
34 unpaid finance charges of a residential mortgage transaction, as defined in  
35 section 8-103, subsection 1-A, paragraph W, or is any subsequent refinancing  
36 of such a transaction; and

1 (b) Does not provide any new consolidation or new advance, if the amount  
2 disclosed as the finance charge does not vary from the actual finance charge  
3 by more than an amount equal to 1% of the total amount of credit extended.

4 **Sec. C-3. 9-A MRSA §8-209, sub-§4-A**, as enacted by PL 2007, c. 471, §15 and  
5 affected by §18, is amended to read:

6 **4-A.** Any person who purchases or is otherwise assigned a high-rate, high-fee  
7 mortgage is subject to all claims and defenses with respect to that mortgage that the  
8 consumer may assert against the creditor of the mortgage to the extent set forth in section  
9 ~~8-206-C~~ 8-206-H, subsection 2.

10 **Sec. C-4. 32 MRSA §6198, sub-§1, ¶E**, as enacted by PL 2007, c. 596, §1, is  
11 amended to read:

12 E. The foreclosure purchaser complies with the requirements for disclosure, loan  
13 terms and conduct in Title 9-A, sections 8-206-A, ~~8-206-C~~ 8-206-I and ~~8-206-D~~  
14 8-206-J for any foreclosure reconveyance in which the foreclosed homeowner obtains  
15 a vendee interest in a contract for deed, land installment contract or bond for deed,  
16 regardless of whether the terms of the contract for deed, land installment contract or  
17 bond for deed meet the annual percentage rate or points and fees requirements for a  
18 covered loan.

19 **Emergency clause.** In view of the emergency cited in the preamble, this  
20 legislation takes effect when approved, except as otherwise indicated.

21 **SUMMARY**

22 Part A of this bill amends several mortgage lending provisions of the Maine  
23 Consumer Credit Code to correct inconsistencies within the law and to conform state law  
24 to federal developments that took place during calendar year 2008, including mandatory  
25 guidance from federal bank regulators; amendments to the mortgage provisions of federal  
26 truth-in-lending laws; and congressional enactment of a federal foreclosure relief law that  
27 contained additional changes to federal lending provisions.

28 Part B of the bill enables the State to participate in the national loan originator  
29 registration program that is also required by the recent federal foreclosure relief law.

30 Part C corrects cross-references.