

MAINE STATE LEGISLATURE

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE

SENATE

125TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 415, L.D. 1338, Bill, "An Act To Amend the Maine Consumer Credit Code To Conform with Federal Law"

Amend the bill by striking out all of Part A and inserting the following:

'PART A

Sec. A-1. 9-A MRSA §1-301, sub-§11, as amended by PL 1997, c. 122, §1, is further amended to read:

11. "Consumer credit sale":

A. A "consumer credit sale" is a sale of goods, services or an interest in land in which:

(i) (1) Credit is granted either pursuant to a credit card other than a lender credit card or by a seller who regularly engages as a seller in credit transactions of the same kind;

(ii) (2) The buyer is a person other than an organization;

(iii) (3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose;

(iv) (4) Either the debt is payable in installments or a finance charge is made;

(v) (5) With respect to a sale of goods or services, not including manufactured housing or a motor vehicle, the amount financed does not exceed ~~\$25,000~~ \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203; and

(vi) (6) With respect to a sale of a motor vehicle as defined in Title 29-A, section 101, subsection 42, the amount financed does not exceed ~~\$35,000~~ \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203.

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1 The amounts set out in subparagraphs (5) and (6) are automatically adjusted to
2 correspond with any inflation adjustment made to the exempt transaction amount
3 referenced in the Federal Truth in Lending Act, Section 104, subsection (3) and any
4 rules adopted pursuant to that Act.

5 **Sec. A-2. 9-A MRSA §1-301, sub-§13**, as repealed and replaced by PL 1987, c.
6 129, §20, is amended to read:

7 **13.** A "consumer lease" is a lease of goods:

8 A. ~~Which~~ That a lessor regularly engaged in the business of leasing makes to a
9 person, other than an organization, who takes under the lease primarily for a personal,
10 family or household purpose;

11 B. In which the amount payable under the lease does not exceed ~~\$25,000~~ \$50,000,
12 consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer
13 Protection Act, Public Law 111-203. The exempt transaction amount in this
14 paragraph is automatically adjusted to correspond with any inflation adjustment made
15 to the exempt transaction amount referenced in the Federal Truth in Lending Act,
16 Section 181, subsection (1) and any rules adopted pursuant to that Act;

17 C. ~~Which~~ That is for a term exceeding 4 months; and

18 D. ~~Which~~ That is not made pursuant to a lender credit card.

19 A person is regularly engaged in the business of leasing if ~~he~~ the person enters into
20 consumer leases more than 25 times in the preceding calendar year. If a person did
21 not meet this numerical test in the preceding calendar year, the numerical standard
22 shall must be applied to the current calendar year.

23 **Sec. A-3. 9-A MRSA §1-301, sub-§14, ¶A**, as amended by PL 1997, c. 727, Pt.
24 B, §2, is further amended to read:

25 A. Except as provided in paragraph B, a "consumer loan" is a loan made by a person
26 regularly engaged in the business of making loans in which:

27 ~~(i) the~~ (1) The debtor is a person other than an organization;

28 ~~(ii) the~~ (2) The debt is incurred primarily for a personal, family or household
29 purpose;

30 ~~(iii) either~~ (3) Either the debt is payable in installments or a finance charge is
31 made; and

32 ~~(iv) for~~ (4) For loans made by:

33 (a) A supervised financial organization, either the amount financed does not
34 exceed ~~\$25,000~~ \$50,000, consistent with Title X of the federal Dodd-Frank
35 Wall Street Reform and Consumer Protection Act, Public Law 111-203, or
36 the debt is secured by manufactured housing or an interest in land; or

37 (b) A supervised lender other than a supervised financial organization, either
38 the amount financed does not exceed ~~\$35,000~~ \$50,000, consistent with Title
39 X of the federal Dodd-Frank Wall Street Reform and Consumer Protection

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Act, Public Law 111-203, or the debt is secured by manufactured housing or an interest in land.

The exempt transaction amount in divisions (a) and (b) are automatically adjusted to correspond with any inflation adjustment made to the exempt transaction amount referenced in the Federal Truth in Lending Act, Section 104, subsection (3) and any rules adopted pursuant to that Act.

Sec. A-4. 9-A MRSA §1-301, sub-§17, as amended by PL 2005, c. 274, §1, is repealed and the following enacted in its place:

17. "Creditor" means a person who both:

A. Regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit that is payable by agreement in more than 4 installments or for which the payment of a finance charge is or may be required; and

B. Is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement; except that, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount that is a finance charge are creditors.

For the purpose of the requirements imposed under Article 8-A for credit billing pursuant to 15 United States Code, Section 1666 et seq. and for open-end consumer credit pursuant to 15 United States Code, Section 1637(a)(5), (a)(6), (a)(7), (b)(1), (b)(2), (b)(3), (b)(8) and (b)(10), "creditor" also includes card issuers whether or not the amount due is payable by agreement in more than 4 installments or the payment of a finance charge is or may be required and the administrator shall by regulation apply these requirements to those card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

For the purposes of this Title, "creditor" also includes any person who originates 2 or more mortgages referred to as high-cost mortgage loans under Article 8-A, section 8-506 in any 12-month period or any person who originates one or more such mortgage loans through a mortgage broker as defined in Article 8-A, section 8-506, subsection 1, paragraph J, or a loan broker as defined in Article 10.

For purposes of this Title, "creditor" also includes a private educational lender as that term is defined in 15 United States Code, Section 1650.

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

Sec. A-5. 9-A MRSA §2-202, sub-§7, as amended by PL 1999, c. 184, §1, is further amended to read:

7. ~~With~~ Unless otherwise provided for in Article 8-A, with respect to consumer credit sales made pursuant to a credit card, other than a lender credit card, a creditor may

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1 not impose a finance charge if it is in excess of that set forth in the agreement between the
2 consumer and the creditor.

3 **Sec. A-6. 9-A MRSA §2-402, sub-§5**, as amended by PL 2005, c. 484, §2, is
4 further amended to read:

5 5. ~~With~~ Unless otherwise provided for in Article 8-A, with respect to loans made
6 pursuant to a lender credit card, a creditor may not impose a finance charge if it is in
7 excess of that set forth in the agreement between the consumer and the creditor. This
8 subsection does not apply to open-end credit plans secured by a consumer's principal
9 dwelling or by a 2nd or vacation home of the consumer.

10 **Sec. A-7. 9-A MRSA §2-501, sub-§3**, as amended by PL 1995, c. 84, §6, is
11 further amended to read:

12 3. ~~Charges~~ Unless otherwise provided for in Article 8-A, charges permitted under
13 this section and any other charges specifically excluded from the definition of "finance
14 charge" in section 1-301, subsection 19, are permissible charges in addition to, and
15 excluded from the calculation of, maximum finance charges set forth in Parts 2 and 4.
16 Unless otherwise expressly prohibited by this Act, including prohibitions found in Article
17 8-A, and except on retail credit card accounts, a creditor may contract for and receive
18 additional charges not authorized by this section or by section 1-301, subsection 19, if
19 such additional charges, together with all other finance charges applicable to a consumer
20 credit transaction, do not exceed the applicable maximum finance charge under this Act.

21 **Sec. A-8. 9-A MRSA §2-501, sub-§4**, as amended by PL 1995, c. 614, Pt. A, §4,
22 is further amended to read:

23 4. ~~In~~ Unless otherwise provided for in Article 8-A, in addition to or in lieu of
24 interest at a periodic rate or rates as provided in section 2-402, and in addition to any
25 other charges permitted under this Act, a supervised financial organization or supervised
26 lender may, if the agreement with the consumer governing an open-end credit plan
27 involving the use of a lender credit card so provides, charge and collect as an additional
28 finance charge or interest, in such manner or form as the plan may provide, one or more
29 of the following:

30 A. A daily, weekly, monthly, annual or other periodic charge in such amount as the
31 agreement may provide for the privileges made available to the consumer under the
32 plan;

33 B. A transaction charge or charges in such amount or amounts as the agreement may
34 provide for each separate purchase or loan under the plan;

35 C. A minimum charge for each daily, weekly, monthly, annual or other scheduled
36 billing period under the plan during any portion of which there is an outstanding,
37 unpaid indebtedness under the plan;

38 D. Reasonable fees for services rendered or for reimbursement of expenses incurred
39 in good faith by the creditor or its agents in connection with the plan, or other
40 reasonable fees incident to the application for and the opening, administration and
41 termination of the plan, including, without limitation, commitment, application and
42 processing fees, official fees and taxes, and filing fees, but excluding costs of
43 collections after default, other than reasonable attorney's fees not in excess of 15% of

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- 1 the unpaid debt incurred in connection with a legal action brought by an attorney who
- 2 is not a salaried employee of the creditor;
- 3 E. A late or delinquency charge upon any outstanding, unpaid installment payments
- 4 or portions of those payments under the plan that are not paid in full within 15 days
- 5 after the scheduled or deferred due date;
- 6 F. Return-payment charges;
- 7 G. Documentary evidence charges;
- 8 H. Stop-payment fees;
- 9 I. Over-the-limit charges; and
- 10 J. Automated teller machine charges or similar electronic or interchange fees or
- 11 charges.

12 This subsection does not apply to open-end credit plans secured by a consumer's principal
13 dwelling or by any 2nd or vacation home of the consumer.

14 **Sec. A-9. 9-A MRSA §3-204, sub-§2**, as amended by PL 1999, c. 150, §2, is
15 further amended to read:

16 **2.** A Unless otherwise provided for in Article 8-A, a creditor may change the terms
17 of an open-end credit account whether or not the change is authorized by prior agreement.
18 Except as provided in subsections 3 and 3-A, the creditor shall give to the consumer
19 written notice of any change of terms relating to penalties, interest or other charges at
20 least 30 days before the effective date of the change. Except in the case of an unsecured
21 open-end credit account involving the use of a credit card, a A change of terms that
22 would increase any penalty, interest or other charges may not affect outstanding balances
23 incurred prior to the effective date of any such change unless:

- 24 A. The creditor includes in the notice of change an offer to finance by a separate loan
- 25 arrangement the outstanding unpaid balance as of the effective date of the change at
- 26 the same rate of interest with the same repayment schedule as applies to that open-
- 27 end credit account;
- 28 B. The consumer may accept the offer of a separate loan arrangement with respect to
- 29 the then existing unpaid balance anytime prior to 7 days before the change is to
- 30 become effective;
- 31 C. The creditor has legal authority to make such a loan; and
- 32 D. No minimum finance charge is assessed nor prepayment penalty charged on the
- 33 loan.

34 **Sec. A-10. 9-A MRSA §3-310, sub-§1, ¶D**, as amended by PL 1999, c. 150, §3,
35 is further amended to read:

36 D. With respect to an open-end credit plan other than one described in paragraph B,
37 the information required by 12 Code of Federal Regulations, ~~226.6(a)(2)~~ Section
38 226.6(a)(1)(ii) must be disclosed before the first transaction under the plan.

39 **Sec. A-11. 9-A MRSA §6-104, sub-§1, ¶H**, as amended by PL 1995, c. 309, §8
40 and affected by §29, is further amended to read:

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1 H. Maintain a public file of all enforcement proceedings instituted and of their
2 disposition, including all assurances of voluntary compliance accepted and their
3 terms and the pleadings and briefs in all actions in which the administrator is a party;
4 and

5 **Sec. A-12. 9-A MRSA §6-104, sub-§1, ¶I**, as enacted by PL 1995, c. 309, §9
6 and affected by §29, is amended to read:

7 I. Convene meetings of individuals representing various segments of the public and
8 the consumer credit industry to advise and consult with the administrator concerning
9 the exercise of powers under this Act and to make recommendations to the
10 administrator. The administrator may authorize reimbursement of reasonable
11 expenses incurred in attending the meetings; and

12 **Sec. A-13. 9-A MRSA §6-104, sub-§1, ¶J** is enacted to read:

13 J. To the extent permitted in Title X of the federal Dodd-Frank Wall Street Reform
14 and Consumer Protection Act, Public Law 111-203, Section 1042, enforce the
15 provisions of Title X of the federal Dodd-Frank Wall Street Reform and Consumer
16 Protection Act, Public Law 111-203 or regulations issued under those provisions with
17 respect to entities that are state-chartered, incorporated, licensed or otherwise
18 authorized to do business under the laws of this State and secure remedies under
19 provisions of Title X of the federal Dodd-Frank Wall Street Reform and Consumer
20 Protection Act, Public Law 111-203 or remedies otherwise provided under other
21 provisions of law with respect to entities that are state-chartered, incorporated,
22 licensed or otherwise authorized to do business under the laws of this State.

23 **Sec. A-14. 9-A MRSA Art. 8**, as amended, is repealed.

24 **Sec. A-15. 9-A MRSA Art. 8-A** is enacted to read:

25 **ARTICLE 8-A**

26 **MAINE TRUTH-IN-LENDING**

27 **§8-501. Short title**

28 This Article may be known and cited as the "Maine Consumer Credit Code - Truth-
29 in-Lending."

30 **§8-502. Findings and declaration of purpose**

31 The Legislature finds that economic stabilization would be enhanced and the
32 competition among the various financial institutions and other firms engaged in the
33 extension of consumer credit would be strengthened by the informed use of credit. The
34 informed use of credit results from an awareness of the cost thereof by consumers. It is
35 the purpose of this Article to ensure a meaningful disclosure of credit terms so that the
36 consumer will be able to compare more readily the various credit terms available to the
37 consumer and avoid the uninformed use of credit and to protect the consumer against
38 inaccurate and unfair credit billing and credit card practices.

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§8-503. Conformity with federal law

Unless the context otherwise indicates, any word or phrase that is not defined in this Article but that is defined in the Federal Truth in Lending Act, Title I of the federal Consumer Credit Protection Act, 15 United States Code, Section 1601 et seq. or its implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section 226.1 et seq., has the meaning set forth in the Federal Truth in Lending Act and its implementing regulations.

§8-504. Maine Consumer Credit Code - Truth-in-Lending

1. Compliance with Federal Truth in Lending Act. Notwithstanding any other law, a creditor shall comply with the Federal Truth in Lending Act, Title I of the federal Consumer Credit Protection Act, 15 United States Code, Section 1601 et seq. and its implementing regulations, Regulation Z, 12 Code of Federal Regulations, Section 226.1 et seq. and Regulation M, 12 Code of Federal Regulations, Section 213.1 et seq., including any final regulations issued on or before July 21, 2011.

2. Rule-making authority. Consistent with the purposes of Title X and Title XIV of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 and with the purposes set forth in sections 1-102 and 8-502 and notwithstanding other law, the administrator may adopt rules substantially similar to or that afford more protection for consumers than those codified in 12 Code of Federal Regulations, Part 226 and 12 Code of Federal Regulations, Part 213. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. In adopting rules pursuant to this subsection, the administrator shall specifically consider whether there is a substantial impact on consumer protection before adopting rules affecting the following provisions of section 8-506:

- A. The rate thresholds pertaining to high-cost mortgage loans in section 8-506, subsection 1, paragraph H;
- B. The prepayment penalties for high-cost mortgage loans in section 8-506, subsection 2, paragraph D;
- C. The assignee liability for high-cost mortgage loans in section 8-506, subsection 3;
- D. The ability to repay in section 8-506, subsection 4;
- E. The prohibition against flipping and the principles of tangible net benefit in section 8-506, subsection 5; or
- F. The enhanced penalties for violations in section 8-506, subsection 6.

The rules may contain classifications, differentiations or other provisions and may provide for adjustments and exceptions for any class of transactions subject to this Title that in the judgment of the administrator are necessary or proper to effectuate the purposes of this Title, or to prevent circumvention or evasion of or to facilitate compliance with, the provisions of this Title.

3. Compliance with rules prior to effective date. A creditor may comply with any rules adopted by the administrator pursuant to subsection 2 prior to the effective date of those rules.

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§8-505. Enforcement

1. Enforcement under Article 6. The administrator shall enforce this Article under the provisions of Article 6. When the Superintendent of Financial Institutions is acting as administrator, the superintendent may, in addition to the enforcement authority under Article 6, use any authority provided in Title 9-B for the supervision of financial institutions.

2. Reimbursement. The administrator may adopt by rule a reimbursement program such that creditors subject to an administrative order under section 6-108 may be ordered to make whatever adjustments are necessary to ensure that any person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. In determining any readjustment, the administrator shall apply, with respect to the annual percentage rate, a tolerance allowed under the Federal Truth in Lending Act, 15 United States Code, Section 1607 and its implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section 226.1 et seq. and, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance allowed by the Federal Truth in Lending Act and its implementing regulations for the annual percentage rate. The administrator may order partial adjustment or partial payments over an extended period if the administrator determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to the Federal Deposit Insurance Act.

3. Criminal liability for willful and knowing violation. Whoever willfully and knowingly gives false or inaccurate information or fails to provide information that the person is required to disclose under the provisions of this Article or any regulation issued thereunder, uses any chart or table authorized by the administrator under this Article in such a manner as to consistently understate the annual percentage rate determined under this Article or otherwise fails to comply with any requirement imposed under this Article is guilty of a Class D crime.

4. Penalties inapplicable to governmental agencies. A civil or criminal penalty provided under this Article for any violation thereof may not be imposed upon the United States or any agency thereof, or upon any state or political subdivision thereof, or any agency of any state or political subdivision thereof.

5. Civil liability. Except as otherwise provided for transactions subject to section 8-506, subsection 6, any creditor that fails to comply with the requirements imposed under this Article with respect to any person is liable to that person as provided for in the Federal Consumer Credit Protection Act, 15 United States Code, Section 1640.

6. Liability of assignees. Except as otherwise provided for transactions subject to section 8-506, subsection 3, any civil action for a violation of this Article that may be brought against a creditor may be maintained against any assignee of such creditor as provided for in the federal Consumer Credit Protection Act, 15 United States Code, Section 1641.

7. Attorney General. The Attorney General has jurisdiction to enforce this Article against mortgage brokers as defined in section 8-506, subsection 1, paragraph J and supervised lenders that are not supervised financial organizations through their general

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1 regulatory powers and through civil process. The administrator, through the Attorney
2 General, may bring a civil action to restrain any person from violating this Article.

3 **§8-506. Enhanced restrictions on certain creditors**

4 In addition to the compliance requirements of section 8-504, subsection 1, unless
5 otherwise required by rules adopted pursuant to section 8-504, subsection 2, a creditor
6 shall comply with the following enhanced restrictions.

7 **1. Definitions.** The following definitions apply to the enhanced restrictions set forth
8 in this section.

9 A. "Administrator" has the same meaning as set forth in section 1-301.

10 B. "Bona fide discount points" means an amount knowingly paid by a borrower for
11 the express purpose of reducing, and that in fact does result in a bona fide reduction
12 of, the interest rate applicable to a residential mortgage loan, as long as the
13 undiscounted interest rate for the residential mortgage loan does not exceed the
14 conventional mortgage rate by more than 2 percentage points for a residential
15 mortgage loan secured by a first lien or by 3 1/2 percentage points for a residential
16 mortgage loan secured by a subordinated lien.

17 C. "Borrower" means any natural person obligated to repay a loan, including a
18 coborrower, cosigner or guarantor.

19 D. "Conventional mortgage rate" means the most recently published annual yield on
20 conventional mortgages published by the Board of Governors of the Federal Reserve
21 System, as published in statistical release H.15 or any superseding publication, as of
22 the applicable time set forth in 12 Code of Federal Regulations, Section
23 226.32(a)(1)(i).

24 E. "Conventional prepayment penalty" means any prepayment penalty or fee that
25 may be collected or charged in a residential mortgage loan and that is authorized by
26 law other than this section, as long as the residential mortgage loan does not have an
27 annual percentage rate that exceeds the conventional mortgage rate by more than 2
28 percentage points and does not permit any prepayment fees or penalties that exceed
29 2% of the amount prepaid.

30 F. "Creditor" has the same meaning as set forth in section 1-301, subsection 17. For
31 purposes of this section, "creditor" also includes an entity defined as a lender as set
32 forth in 24 Code of Federal Regulations, Section 3500.2, including a mortgage
33 broker.

34 G. "Excluded points and fees" means, in connection with a residential mortgage loan,
35 all bona fide fees paid to a federal or state government agency that insures payment
36 of some portion of a residential mortgage loan plus an amount not to exceed 2% of
37 the total loan amount attributable to bona fide discount points or a conventional
38 prepayment penalty.

39 H. "High-cost mortgage loan" means a residential mortgage loan in which the terms
40 of the loan meet or exceed one or more of the following thresholds:

- 41 (1) Rate threshold, which, for a residential mortgage loan, is the point at which
42 the annual percentage rate equals or exceeds the rate set forth in 12 Code of

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Federal Regulations, Section 226.32(a)(1)(i) without regard to whether the residential mortgage loan may be considered a "residential mortgage transaction" or an extension of "open-end credit" as those terms are set forth in 12 Code of Federal Regulations, Section 226.2; or

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

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

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

I. "Higher-priced mortgage loan" has the same meaning as set forth in the Federal Truth in Lending Act and its implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section 226.35(a). "Higher-priced mortgage loan" also includes a residential mortgage loan that is a nontraditional mortgage as described in the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued September 29, 2006 and published in 71 Federal Register, 58609 on October 4, 2006 and as updated from time to time, except that "higher-priced mortgage loan" does not include a mortgage that does not allow a borrower to defer repayment of principal or interest.

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

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

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

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

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

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.

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

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- 1 (1) The loan does not exceed the maximum original principal obligation as set
- 2 forth in and from time to time adjusted according to the provisions of 12 United
- 3 States Code, Section 1454(a)(2);
- 4 (2) The loan is considered a federally related mortgage loan as set forth in 24
- 5 Code of Federal Regulations, Section 3500.2;
- 6 (3) The loan is not a reverse mortgage transaction or a loan made primarily for
- 7 business, agricultural or commercial purposes;
- 8 (4) The loan is not a construction loan; and
- 9 (5) The loan is secured by the borrower's principal dwelling.

10 M. "Servicing" has the same meaning as set forth in 24 Code of Federal Regulations,

11 Section 3500.2 and includes any other activities or responsibilities undertaken in

12 connection with a residential mortgage loan by a person who acts as a servicer with

13 respect to that residential mortgage loan, including collection and default

14 management functions.

15 N. "Total loan amount" means the principal of a loan minus those points and fees

16 that are included in the principal amount of the loan. For open-end loans, the total

17 loan amount must be calculated using the total line of credit allowed under the

18 residential mortgage loan at closing.

19 **2. High-cost mortgage loans; restrictions.** A high-cost mortgage loan is subject to

20 the provisions applying to certain closed-end home mortgages covered by Regulation Z,

21 12 Code of Federal Regulations, Section 226.32 and the following restrictions.

22 A. In connection with a high-cost mortgage loan, a creditor may not directly or

23 indirectly finance any points or fees.

24 B. In addition to the limitation on balloon payments found in Regulation Z, 12 Code

25 of Federal Regulations, Section 226.32, a high-cost mortgage loan may not contain a

26 scheduled payment that is more than twice as large as the average of earlier

27 scheduled payments. This paragraph does not apply when the payment schedule is

28 adjusted to the seasonal or irregular income of the borrower.

29 C. A creditor may not make a high-cost mortgage loan without first receiving

30 certification from a counselor with a 3rd-party, nonprofit organization approved by

31 the United States Department of Housing and Urban Development, a housing

32 financing agency of this State or the Department of Professional and Financial

33 Regulation, Bureau of Consumer Credit Protection that the borrower has received

34 counseling on the advisability of the loan transaction.

35 D. A prepayment fee or penalty may not be included in the loan documents or

36 charged under the terms of a high-cost mortgage loan.

37 **3. High-cost mortgage loans; assignee liability.** The following provisions apply to

38 a claim made by a borrower against a purchaser or assignee of a high-cost mortgage loan.

39 A. Any person who purchases or is otherwise assigned a high-cost mortgage loan is

40 subject to all affirmative claims and any defenses with respect to the loan that the

41 borrower may assert against a creditor of the loan, except that this paragraph does not

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apply if the purchaser or assignee demonstrates by a preponderance of the evidence that it:

(1) Has in place, at the time of the purchase or assignment of the subject loan, policies that expressly prohibit the purchaser or assignee's purchase or acceptance of assignment of any high-cost mortgage loan;

(2) Requires by contract that a seller or assignor of residential high-cost mortgage loans to the purchaser or assignee represent and warrant to the purchaser or assignee that neither the seller or assignor will sell or assign any high-cost mortgage loans to the purchaser or assignee, nor that the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and

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

B. Notwithstanding paragraph A, liability pursuant to this subsection may not accrue to a purchaser or assignee of a high-cost mortgage loan as a result of an alleged violation by a creditor of subsection 5.

4. Ability to repay. A creditor may not extend a high-cost mortgage loan or a higher-priced mortgage loan to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, employment, assets other than the collateral, credit history, debt-to-income ratio, current obligations and mortgage-related obligations.

A. For purposes of this subsection, mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property or against liability arising out of the ownership or use of the property or insurance protecting the creditor against the consumer's default or other credit loss, and similar expenses.

B. Under this subsection, a creditor must verify the consumer's repayment ability as follows.

(1) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's federal Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records or other 3rd-party documents that provide reasonably reliable evidence of the consumer's income or assets. For the purposes of this subparagraph, "reasonably reliable evidence of the consumer's income or assets" includes, but is not limited to, statements from investment advisors, broker-dealers and others in a fiduciary relationship with the consumer as long as the statements reflect the consumer's actual income and not estimated, projected

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1 or anticipated income or a range of earnings for a consumer's type or class of
2 employment.

3 (2) A creditor must verify the consumer's current obligations.

4 C. A creditor is presumed to have complied with this subsection with respect to a
5 transaction if the creditor:

6 (1) Verifies the consumer's repayment ability as provided in paragraph B;

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

10 (3) Assesses the consumer's repayment ability taking into account at least one of
11 the following:

12 (a) The ratio of total debt obligations to income; and

13 (b) The income the consumer will have after paying debt obligations.

14 D. Notwithstanding paragraph C, no presumption of compliance is available for a
15 transaction for which:

16 (1) The regular periodic payments for the first 7 years would cause the principal
17 balance to increase; or

18 (2) The term of the loan is less than 7 years and the regular periodic payments
19 when aggregated do not fully amortize the outstanding principal balance.

20 E. This subsection does not apply to a temporary or so-called "bridge" loan with a
21 term of 12 months or less, such as a loan to purchase a new dwelling when the
22 consumer plans to sell a current dwelling within 12 months.

23 **5. Flipping.** A creditor or a mortgage broker may not knowingly or intentionally
24 engage in the act or practice of flipping a residential mortgage loan when making a
25 high-cost mortgage loan or higher-priced mortgage loan. The administrator may adopt
26 rules defining with reasonable specificity the requirements for compliance with this
27 subsection. Rules adopted pursuant to this subsection are routine technical rules pursuant
28 to Title 5, chapter 375, subchapter 2-A. For the purposes of this subsection, "flipping a
29 residential mortgage loan" means the making of a residential mortgage loan to a borrower
30 that refinances an existing residential mortgage loan when the new loan does not have
31 reasonable, tangible net benefit to the borrower considering all the circumstances,
32 including, but not limited to, the terms of both the new and refinanced loans, the cost of
33 the new loan and the borrower's circumstances.

34 **6. Special liability.** This subsection applies to any violation of this section in
35 connection with the origination, brokering or servicing of a residential mortgage loan.
36 This subsection does not apply to a purchaser or assignee of a residential mortgage loan
37 except as permitted in subsection 3.

38 A. Any person who has been found in violation of this section with regard to
39 residential mortgage loans may be liable to the borrower for the following:

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1 (1) Actual damages, including consequential and incidental damages. The
2 borrower may not be required to demonstrate reliance in order to receive actual
3 damages;

4 (2) Punitive damages for violations of subsections 2 and 5, when the violation
5 was malicious or reckless;

6 (3) Costs, including reasonable attorney's fees; and

7 (4) Statutory damages as follows:

8 (a) For violations described in subsection 2, statutory damages equal to 2
9 times the finance charge paid under the loan and forfeiture of the remaining
10 interest under the loan; and

11 (b) For any other violations of this section, statutory damages in the amount
12 of \$5,000 per violation.

13 B. A borrower may be granted injunctive, declaratory and other equitable relief that
14 the court determines appropriate in an action to enforce compliance with this section.

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

24 D. The remedies provided in this subsection are not intended to be the exclusive
25 remedies available to a borrower, nor must the borrower exhaust any administrative
26 remedies provided under this subsection or any other applicable law before
27 proceeding under this subsection.

28 E. Any person who knowingly violates a provision of this section is guilty of a Class
29 E crime.

30 F. A creditor in a residential mortgage loan who, when acting in good faith, fails to
31 comply with any provision of this section related to residential mortgage loans is
32 deemed not to have violated this section if the creditor establishes that either:

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

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

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

G. The remedies provided in this subsection are cumulative.

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

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

J. It is a violation of this section for any person to attempt in bad faith to avoid the application of this section by dividing any loan transaction into separate parts or structuring a residential mortgage loan transaction as an open-end loan for the purpose of evading the provisions of this section when the loan would have been a high-cost mortgage loan if the loan had been structured as a closed-end loan or by engaging in any other subterfuge with the intent of evading any provision of this section.

7. Exemption for supervised financial organizations and the Maine State Housing Authority. This section does not apply to any supervised financial organization as defined in section 1-301, subsection 38-A or to the Maine State Housing Authority.

§8-507. Exemption from the Federal Truth in Lending Act

1. Preservation of federal exemption. As required by the Federal Truth in Lending Act, 15 United States Code, Section 1633 and its implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section 226.29, the administrator may take any action necessary to apply for or to preserve a determination by the Federal Reserve Board or its successor agency that under the laws of this State any class of credit transactions within this State is subject to requirements substantially similar to federal requirements and that there are adequate provisions for enforcement of such requirements.

2. Application. This Article does not apply to any class of credit transactions within this State that is subject to the requirements of the Federal Truth in Lending Act, Title I of the federal Consumer Credit Protection Act unless any such class of transactions has first been exempted by a regulation of the Board of Governors of the Federal Reserve Board and that exemption remains in effect.

§8-508. Authority of administrator

The administrator, by rule or order, shall prohibit acts or practices in connection with:

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1. Unfair or deceptive mortgage loans. The making of a residential mortgage loan that the administrator finds unfair, deceptive or designed to evade the provisions of section 8-506; and

2. Refinancing; abusive lending practices. The refinancing of a residential mortgage loan that the administrator finds is associated with abusive lending practices or that is otherwise not in the interest of the borrowing public.

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

§8-509. Credit card and debit card surcharge prohibition

1. Surcharge prohibited. A seller in a sales transaction may not impose a surcharge on a cardholder who elects to use a credit card or debit card in lieu of payment by cash, check or similar means. For purposes of this section, "surcharge" means any means of increasing the regular price to a cardholder that is not imposed on a customer paying by cash, check or similar means. A discount or reduction from the regular price is not a surcharge.

2. Surcharge permitted for governmental entity. Notwithstanding subsection 1, a governmental entity may impose a surcharge for payments made with a credit card or debit card for taxes, fines, charges, utility fees, regulatory fees, license or permit fees or the provision of a specific service provided by that governmental entity if the surcharge:

A. Is disclosed clearly to the consumer prior to payment; and

B. Does not exceed the costs associated with providing the credit card or debit card service that are directly incurred by the governmental entity or assessed by an authorized 3rd-party payment service provider for a credit card or debit card transaction. If there is not a cost assessed by an authorized 3rd-party payment service provider for a debit card transaction, the governmental entity may not impose a surcharge associated with a debit card transaction.

A governmental entity shall disclose to the consumer that the surcharge may be avoided if the consumer makes payments by cash, check or other means not a credit card or debit card. A governmental entity is not subject to any liability to the issuer of a credit card or an authorized 3rd-party payment service provider for nonpayment of credit card charges by the consumer. As used in this subsection, "governmental entity" includes, but is not limited to, a county established or governed by Title 30-A, Part 1, a municipality as defined in Title 30-A, section 2001, subsection 8, a quasi-municipal corporation as defined in Title 30-A, section 2604, subsection 3, the Judicial Department as described in Title 4, the University of Maine System, the Maine Community College System and the Maine Maritime Academy.

§8-510. Disclosure of lists of the names, addresses and account numbers of credit card holders

1. Disclosure prohibited. Except as provided in subsection 2, it is unlawful for a person, business, corporation, partnership, agency, financial institution, credit card registration service or other entity to rent, sell, exchange or otherwise disclose or make available to another person or entity a list containing the names, addresses and account

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numbers of credit card holders without the express, written permission of the credit card holders.

2. Exceptions. The following disclosures of lists containing the names, addresses and account numbers of credit card holders are not prohibited:

A. Disclosure to or from a consumer reporting agency, as defined in Title 10, section 1312, subsection 4, as long as the transfer is for purposes of compliance with and in a manner consistent with the terms of the Fair Credit Reporting Act;

B. Disclosure between a parent corporation and a subsidiary or affiliate of that corporation or between subsidiaries or affiliates of a parent corporation;

C. Disclosure in connection with the sale or pledge, or negotiation of the sale or pledge, of any portion of a business or the assets of a business, as long as the party to whom disclosure is made maintains the confidentiality of the information disclosed;

D. Disclosure in connection with authorization, processing, billing, collection, charge-back, fraud prevention or credit card recovery; and

E. Disclosure pursuant to state or federal law or at the direction of a governmental entity pursuant to law or in response to a court order.

3. Violation. A violation of this section constitutes a violation of the Maine Consumer Credit Code and the Maine Unfair Trade Practices Act.

§8-511. Recurring charges to credit card or charge card accounts

If a sale of goods, services or insurance is charged to a credit card or charge card account on an annual basis without substantially contemporaneous authorizations by the consumer, the seller shall inform the consumer of the voluntary nature of the charge to the credit card or charge card account and of the steps necessary to prevent this charge at least 30 days prior to the annual charge. The card issuer may provide the notice on behalf of the seller. This section does not apply to insurance subject to notice and cancellation rights pursuant to section 4-204.

Sec. A-16. 9-A MRSA §10-307-A is enacted to read:

§10-307-A. Application of truth in lending limits

A loan broker and its mortgage loan originators shall comply with the provisions of the Federal Truth in Lending provisions of Article 8-A and any rules adopted in accordance with that Article.

Sec. A-17. Application. This Part applies to any application for consumer credit, including a residential mortgage loan, received by a creditor on or after the effective date of this Part.'

Amend the bill in Part B by inserting after section 1 the following:

'Sec. B-2. 9-A MRSA §1-301, sub-§24-B is enacted to read:

24-B. "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan

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application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

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

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

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

For the purposes of Articles 2, 3, 6, 9 and 10, mortgage loan originator does not include a registered mortgage loan originator as defined in section 13-102, subsection 12.

Sec. B-3. 9-A MRSA §2-302, sub-§1, as amended by PL 1989, c. 581, §4, is further amended to read:

1. The administrator shall receive and act on all applications for licenses to make supervised loans under this Act. Applications ~~shall~~ must be filed in the manner prescribed by the administrator and ~~shall~~ must contain the information the administrator requires by rule to make an evaluation of the financial responsibility, character and fitness of the applicant. ~~Initial~~ Except as set forth by regulation governing participation in the nationwide mortgage licensing system and registry for mortgage lender licensing, initial applications for a license ~~shall~~ must be accompanied by a \$500 fee. ~~Renewal and renewal applications shall~~ must include a \$200 fee. ~~Licenses shall be~~ Except as set forth by regulation governing participation in the nationwide mortgage licensing system and registry for mortgage lender licensing, licenses are granted for a 2-year period and shall must expire on September 30th. Initial and renewal applications by nonprofit organizations exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3), and engaged in the financing of housing for low-income people under a program designed specifically for that purpose ~~shall~~ must include a fee of \$20.'

Amend the bill in Part B by striking out section 13 and inserting the following:

'Sec. B-13. 9-A MRSA §10-201, as amended by PL 2009, c. 243, §3, is further amended to read:

§10-201. Licensing and biennial relicensing

A Except as set forth by regulation governing participation in the nationwide mortgage licensing system and registry for mortgage lender licensing, a person desiring to engage or continue in business in this State as a loan broker shall apply to the administrator for a license under this article on or before January 31st of each even-numbered year. The application must be in a form prescribed by the administrator. The administrator may refuse the application if it contains erroneous or incomplete information. ~~At the time of application and on an ongoing basis during the term of any such license, the applicant shall apply to the administrator for registration of all loan officers employed or retained by the applicant. An application for registration as a loan~~

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~~officer must be filed in a manner prescribed by the administrator and include the name, address and work location of the loan officer and such additional information as is reasonably requested by the administrator. An applicant's registration of a loan officer within 90 days of the date that registration would otherwise be required does not constitute a violation of this section. A license may not be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant and, where applicable, its partners, officers or directors and the character and fitness of its loan officers mortgage loan originators, warrant belief that the business will be operated honestly and fairly within the purposes of this Title. The administrator may adopt rules requiring that applicants, applicants' partners, officers or directors and employees of applicants satisfy initial and continuing educational requirements. The reasonable costs of meeting such educational requirements are assessed to applicants. Providers of initial and continuing education courses of study shall submit each course to the administrator for approval, and each submission must be accompanied by a \$100 fee. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.~~

~~The Except as set forth by regulation governing participation in the nationwide mortgage licensing system and registry for mortgage lender licensing, the initial application for a license as a loan broker must include a fee of \$600. The and the biennial relicensing application must include a fee of \$300. ~~Initial applicants and biennial relicensing applicants must pay an additional fee of up to \$20 for registration of each loan officer, up to a maximum of \$400 in total.~~ Notwithstanding other remedies available under this Title, applications received after the due date are subject to an additional fee of \$100.~~

~~A licensee may conduct business only at or from a place of business for which the licensee holds a license and not under any other name than that on the license. Except as set forth by regulation governing participation in the nationwide mortgage licensing system and registry for mortgage lender licensing, a license fee of \$300 is imposed for a license issued for a place of business other than that of the first licensed location of the licensee.—A and a biennial relicensing application for each such branch location must include a fee of \$150.~~

~~A licensed loan broker may conduct business only through a loan officer mortgage loan originator who possesses a current, valid registration license. ~~A loan officer must be registered at the loan officer's principal licensed work location and may then work from any licensed location of the loan broker. The registration of a loan officer is valid only when that person is employed or retained and supervised by a licensed loan broker. When a loan officer ceases to be employed by a licensed loan broker, the loan broker shall promptly notify the administrator in writing.~~~~

Amend the bill by inserting after Part B the following:

'PART C

Sec. C-1. Evaluation of ways to streamline the State's foreclosure prevention outreach and housing counseling program. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, referred to

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1 in this Part as "the bureau," shall facilitate meetings and other communications among
2 interested parties to evaluate and determine the ways in which the State's foreclosure
3 prevention outreach and housing counseling program may be streamlined and made more
4 efficient in accordance with this section.

5 1. The bureau shall invite participation from representatives of the following groups:

6 A. State-chartered banks;

7 B. State-chartered credit unions;

8 C. Nondepository licensed mortgage lenders;

9 D. Federally chartered financial institutions;

10 E. Loan servicers;

11 F. Attorneys who represent lenders;

12 G. Attorneys who represent homeowners;

13 H. Nonprofit housing counselors;

14 I. Homeowners;

15 J. The Department of Professional and Financial Regulation, Bureau of Financial
16 Institutions; and

17 K. Two members of the Joint Standing Committee on Insurance and Financial
18 Services, representing each of the 2 parties holding the largest number of seats in the
19 Legislature.

20 The bureau may invite additional interested parties to attend and participate.

21 2. The bureau shall ensure that the interested parties evaluate, at a minimum, the
22 following issues:

23 A. Whether the mailing of informational packages from the State should be delayed,
24 from the current requirement for mailing simultaneously with the notice of right to
25 cure default pursuant to the Maine Revised Statutes, Title 14, section 6111, to a later
26 time, such as after the homeowner is 60 days in default;

27 B. Whether the results of housing counselor efforts should be reported in a
28 standardized format to make evaluation of those results more efficient;

29 C. Whether the informational package mailing process under paragraph A could be
30 carried out by the lenders rather than by the bureau;

31 D. Whether lenders and servicers should be required to make available to regulators,
32 counselors or consumers the names and contact information for individuals within the
33 lenders' and servicers' companies who are authorized to approve loan modifications,
34 short sales or other alternatives to foreclosure;

35 E. Whether joint obligors on a mortgage can be provided with a single informational
36 packet under paragraph A, rather than the current requirement that every mortgagor
37 receive that information;

38 F. Whether the current composition of the informational package under paragraph A
39 can be improved to be clearer, more understandable to and more useable by
40 homeowners;

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1 G. How the outreach and counseling process can best be integrated, when necessary,
2 into the judicial system's foreclosure mediation program pursuant to Title 14, section
3 6321-A; and

4 H. Any other issues, as appropriate.

5 3. The bureau shall provide notice of meetings to all interested parties and to
6 members and staff of the Joint Standing Committee on Insurance and Financial Services.

7 4. The bureau shall report the findings of the interested parties, including any
8 recommendations and suggested legislation, to the Joint Standing Committee on
9 Insurance and Financial Services by December 7, 2011. The committee may submit a bill
10 related to the suggested legislation to the Second Regular Session of the 125th
11 Legislature.

12 **PART D**

13 **Sec. D-1. 9-A MRSA §1-202, sub-§8, ¶A**, as amended by PL 2007, c. 471, §1
14 and affected by §18, is further amended to read:

15 A. With respect to advances of additional funds on the loan or credit sale made more
16 than 30 days after the initial advance, this exclusion applies only to advances 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 Y~~ the Federal Truth in Lending Act, 15 United
26 States Code, Section 1601 et seq., if the transaction is made pursuant to a
27 commitment to purchase issued by, or is in a form approved for purchase by, any
28 state or federal agency, instrumentality or government-sponsored enterprise,
29 including, without limitation, the Federal National Mortgage Association or the
30 Federal Home Loan Mortgage Corporation;

31 **Sec. D-2. 9-A MRSA §1-202, sub-§10**, as enacted by PL 2005, c. 55, §3, is
32 amended to read:

33 10. A no-interest loan or credit sale by a nonprofit organization that assists in
34 building or renovating housing for those in need. The exclusion in this subsection does
35 not apply to Article 6, Part 1; section 6-201; section 6-202; section 6-203, subsection 1;
36 section 6-204; or Article 8 8-A.

37 **Sec. D-3. 9-A MRSA §1-202, last ¶**, as amended by PL 1987, c. 396, §3, is
38 further amended to read:

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The exclusions set forth in subsection 1 relating to extensions of credit to consumers by governments or governmental agencies, instrumentalities or organizations, and in subsections 2, 4, 5, 7 and 8, shall do not apply to the Maine Consumer Credit Code, Truth-in-lending, Article VIII 8-A.

Sec. D-4. 9-A MRSA §1-301, sub-§5, as repealed and replaced by PL 1981, c. 243, §3, is amended to read:

5. "Amount financed" means the amount of credit of which the consumer has actual use and shall be is computed pursuant to section 2-501 and ~~section 8-206, subsection 1, paragraph B~~ the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

Sec. D-5. 9-A MRSA §1-301, sub-§§6-B and 6-C, as enacted by PL 1987, c. 129, §16, are amended to read:

6-B. "Cardholder" means the same as defined in ~~section 8-103~~ the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

6-C. "Card issuer" means the same as defined in ~~section 8-103~~ the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

Sec. D-6. 9-A MRSA §1-301, sub-§19, ¶A, as repealed and replaced by PL 1987, c. 129, §24, is amended to read:

- A. Except for charges specifically excluded by paragraph B, the term includes:
 - (1) Interest, time price differential and any amount payable under an add-on or discount system of additional charges;
 - (2) Service, transaction, activity and carrying charges and early withdrawal penalties on time deposit accounts, including any charge imposed on a checking or other deposit account to the extent that the charge exceeds the charge for a similar account without a credit feature;
 - (3) Points, loan fees, assumption fees, finder's fees and similar charges;
 - (4) Appraisal, investigation and credit report fees;
 - (5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss;
 - (6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation or as a deduction from the proceeds of the obligation;
 - (7) Premiums or other charges for credit life, accident, health or loss-of-income insurance or insurance against loss of or damage to property or against liability arising out of the ownership or use of property, written in connection with a credit transaction, unless the applicable requirements of section 2-501 and ~~section 8-105, subsections 2 and 3~~ Article 8-A are met; and

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(8) Discounts for the purpose of inducing payment by a means other than the use of credit.

Sec. D-7. 9-A MRSA §1-301, sub-§41, as amended by PL 1981, c. 698, §18, is further amended to read:

41. "Provisions on disclosure" includes Article 8 ~~8-A, regulations issued rules adopted~~ pursuant to that Article, and the Federal Truth in Lending Act, as applicable.

Sec. D-8. 9-A MRSA §2-307, sub-§2, as amended by PL 1997, c. 727, Pt. B, §6, is further amended to read:

2. With respect to a supervised loan in which the amount financed is \$2,800 or less, a lender may not take a security interest in the principal residence of the consumer. This subsection does not apply when the lender holds a first mortgage on the residence at the time the loan is made or when the loan is made pursuant to an open-end credit plan involving a commitment to advance amounts in excess of \$2,800. Notwithstanding Title 14, ~~no~~ a judgment of foreclosure of a mortgage upon the principal residence of a consumer may not be entered on account of the consumer's failure to repay supervised loans under an open-end credit plan, unless the consumer's outstanding balance ~~described in section 8-205, subsection 2, paragraph I, in the account at the end of the statement period~~ has at some time exceeded \$2,800 and the consumer has not paid the account in full subsequent to the date of the last periodic statement showing an outstanding balance in excess of \$2,800.

Sec. D-9. 9-A MRSA §2-509, as amended by PL 2009, c. 362, Pt. C, §1, is further amended to read:

§2-509. Right to prepay

Subject to the provisions on rebate upon prepayment, section 2-510, the consumer may prepay, in full or in part, the unpaid balance of a consumer credit transaction at any time without penalty, except for minimum charges as permitted by law. Notwithstanding any other provision of this Title, a reasonable charge may be assessed upon a consumer related to prepayment of a consumer loan made by a supervised financial organization and secured by an interest in land, other than a ~~high rate, high fee~~ high-cost mortgage loan, as defined in ~~section 8-103, subsection 1-A, paragraph Q, the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.~~ if the charge is reasonably calculated to offset the cost of origination of the loan. The administrator shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. D-10. 9-A MRSA §3-206, sub-§1, ¶B, as amended by PL 1981, c. 638, §3, is further amended to read:

B. The material disclosures required under Article ~~VIII~~ 8-A;

Sec. D-11. 9-A MRSA §3-506, as amended by PL 2005, c. 65, Pt. C, §4, is further amended to read:

R.O.F.S.

1 **§3-506. Limitation**

2 This Part does not apply to any consumer credit transaction covered by ~~section 8-204~~
3 Article 8-A and subject to the right of rescission pursuant to the Federal Truth in Lending
4 Act, 15 United States Code, Section 1601 et seq., nor does it apply to any sale, by any
5 dealer or agent or ~~salesman~~ salesperson of a registered dealer, registered pursuant to Title
6 32, chapter 135, of stocks, bonds, debentures or securities representing stocks, bonds or
7 debentures registered pursuant to Title 32, chapter 135 or expressly exempt from
8 registration thereof.

9 **Sec. D-12. 9-A MRSA §6-113, sub-§1**, as amended by PL 1981, c. 243, §23, is
10 further amended to read:

11 1. After demand, the administrator, through the Attorney General, may bring a
12 civil action against a creditor for any violation listed in section 5-201 or for a violation of
13 Article VIII 8-A. An action may relate to transactions with more than one consumer. If it
14 is found that the creditor has made a violation so listed, the court shall order respondent
15 to grant to each consumer affected the option to recover all excess charges, to have the
16 contract reformed to conform to this Act or to rescind the contract. The court shall order
17 amounts recovered or recoverable under this subsection paid to each consumer or set off
18 against ~~his~~ the consumer's obligation. A consumer's action takes precedence over a prior
19 or subsequent action by the administrator with respect to the claim of that consumer.
20 When an action takes precedence over another action under this subsection, to the extent
21 appropriate, the other action may be stayed while the precedent action is pending and
22 may be dismissed if the precedent action is dismissed with prejudice or results in a final
23 judgment granting or denying the claim asserted in the precedent action. A consumer
24 whose action is dismissed or results in a final judgment denying the claim may not
25 participate in any subsequent recovery on the claim by the administrator.

26 **Sec. D-13. 9-A MRSA §10-102, sub-§7**, as enacted by PL 2009, c. 248, §7, is
27 amended to read:

28 7. "Refund anticipation loan interest rate" or "interest rate" means the interest rate
29 ~~that must be disclosed pursuant to section 8-106, subsection 6~~ based on the creditor's
30 reasonable estimate of the time the refund will be delivered.

31 **Sec. D-14. 9-A MRSA §10-310, sub-§1, ¶¶C and D**, as enacted by PL 2009, c.
32 248, §9, are amended to read:

33 C. At the time a person applies for a refund anticipation loan or refund anticipation
34 check, the facilitator of a refund anticipation loan or refund anticipation check shall
35 disclose, on a form separate from the application, the refund anticipation loan fee or
36 refund anticipation check fee; the fee for tax preparation or any other fee; the time
37 within which the proceeds of the refund anticipation loan or refund anticipation check
38 will be paid if the loan or check is approved; and ~~the interest rate, calculated pursuant~~
39 ~~to section 8-106, subsection 6, if the person is applying for a refund anticipation loan,~~
40 in the case of a refund anticipation loan, if it is the practice of the facilitator to
41 demand repayment upon delivery of the refund, the annual percentage rate based on
42 the facilitator's reasonable estimate of the time the refund will be delivered.

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D. Prior to the consummation of the refund anticipation loan or refund anticipation check transaction, the facilitator of a refund anticipation loan or refund anticipation check shall also provide a copy of the completed loan or check application and agreement and, for a refund anticipation loan, the disclosures required by Article 8 8-A.

Sec. D-15. 9-A MRSA §11-106, sub-§1, ¶B, as enacted by PL 1991, c. 787, is amended to read:

B. A "consumer credit sale" as defined in section 1-301, subsection 11; except that the following sections of the Maine Consumer Credit Code apply: section 1-107, waiver, agreement to forego rights, settlement of claims; section 1-111, record retention; section 1-201, territorial application; section 1-202, exclusions; section 1-203, jurisdiction and service of process; section 2-507, attorney's fees and collection costs; section 3-202, notice to consumer; section 3-203, notice of assignment; section 3-305, no assignment of earnings; section 3-306, authorization to confess judgment prohibited; section 3-307, certain negotiable instruments prohibited; section 3-309, referral sales; section 3-403, assignee subject to defenses; section 5-104, no garnishment before judgment; section 5-105, limitation on garnishment; section 5-106, no discharge from employment for garnishment; section 5-112, creditor's right to take possession after default; section 5-113, venue; section 5-114, stay of enforcement of judgment; section 5-115, misrepresentation; section 5-116, illegal, fraudulent or unconscionable conduct in attempted collection of debts; section 5-117, prohibited practices; section 5-201, effect of violations on rights of parties; section 5-202, refunds and penalties as setoff to obligation; section 5-301, violations; Article VI in its entirety, except that the term "original unpaid balances arising from consumer credit transactions" described in section 6-203, subsection 2 means "gross rental receipts from rental-purchase agreements" for purposes of administration of this Article; ~~section 8-104, regulations,~~ Article 8-A requirements related to model forms; and section 8-402, regulation of Federal Truth in Lending Act, 15 United States Code, Section 1666a requirements related to credit reports;

Sec. D-16. 10 MRSA §1141, sub-§1, as amended by PL 2007, c. 695, Pt. B, §2, is further amended to read:

1. Credit card. "Credit card" has the same meaning as "accepted credit card," as defined in ~~Title 9-A, section 8-103, subsection 1-A, paragraph A~~ the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

Sec. D-17. 10 MRSA §1141, sub-§2, as amended by PL 2007, c. 273, Pt. C, §10, is further amended to read:

2. Credit card issuer. "Credit card issuer" has the same meaning as "card issuer," as defined in ~~Title 9-A, section 8-103, subsection 1-A, paragraph H~~ the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

Sec. D-18. 30-A MRSA §3962, sub-§2, as amended by PL 1993, c. 59, §2, is further amended to read:

2. Delivery to consumer. At the time of the pawn transaction, the pawnbroker shall deliver to the consumer a signed, written disclosure complying with the truth-in-lending

COMMITTEE AMENDMENT

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provisions of the Maine Consumer Credit Code, Title 9-A, Article 8-A, containing the items required by subsection 1 and the name and address of the pawnbroker.

Sec. D-19. 30-A MRSA §3964-A, sub-§3, as amended by PL 1995, c. 309, §27 and affected by §29, is further amended to read:

3. Model forms. The Director of Consumer Credit Regulation may issue model disclosure forms and clauses to facilitate compliance with the disclosure and computational requirements of this subchapter, pursuant to the truth-in-lending provisions of the Maine Consumer Credit Code, Title 9-A, Article 8-A.

Sec. D-20. 32 MRSA §6192, sub-§6, as enacted by PL 2007, c. 596, §1, is amended to read:

6. Foreclosure reconveyance. "Foreclosure reconveyance" means a transaction involving:

A. The transfer of title to a residence in foreclosure, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

B. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property. For the purposes of this paragraph, "interest" includes, but is not limited to, an interest in a contract for deed, a land installment contract, a bond for deed, a purchase agreement, an option to purchase or a lease.

"Foreclosure reconveyance" does not include a supervised loan subject to Title 9-A, Article § 8-A or the federal Truth in Lending Act made by a supervised lender or supervised financial organization to refinance any existing mortgage.

Sec. D-21. 32 MRSA §6198, sub-§1, ¶E, as amended by PL 2009, c. 362, Pt. C, §4, is further amended to read:

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

Sec. D-22. 33 MRSA §482, sub-§3, as enacted by PL 1983, c. 368, is amended to read:

3. Other disclosures. Disclosures made by the vendor pursuant to Title 9-A, Article ~~VIII~~ 8-A, Truth-in-Lending, shall be are deemed to comply with subsection 1, paragraphs D to I.

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Sec. D-23. 33 MRS **A §524**, as enacted by PL 1999, c. 145, §1, is amended to read:

§524. Duty of lender

The lender shall cause, at or before loan closing, disbursement of loan funds to the settlement agent; however, in the case of any loan when a right of rescission applies and has not been exercised, the lender shall cause disbursement of loan funds to the settlement agent prior to noon of the first business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 United States Code, Section 1601, et seq. and the state truth-in-lending provisions, Title 9-A, ~~article VIII~~ Article 8-A, as applicable.

Sec. D-24. 33 MRS **A §525**, as enacted by PL 1999, c. 145, §1, is amended to read:

§525. Duty of settlement agent

The settlement agent shall cause recordation of any deed, mortgage or other documents required to be recorded and shall cause disbursement of settlement proceeds within 2 business days of settlement or, when any right of rescission applies pursuant to the federal Truth-in-Lending Act, 15 United States Code, Section 1601 et seq. or the state truth-in-lending provisions, Title 9-A, ~~article VIII~~ Article 8-A, as applicable, at the time that the settlement agent reasonably determines that such right of rescission has not been exercised.

Sec. D-25. 35-A MRS **A §10155, sub-§2**, as enacted by PL 2009, c. 591, §1, is amended to read:

2. Consumer disclosure; truth in lending. A PACE agreement entered into pursuant to a PACE program must provide consumer disclosure consistent with the principles of truth in lending as specified in rules adopted by the trust. In adopting such rules, the trust shall seek advice from the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection and consumer credit industry stakeholders. Notwithstanding Title 9-A, section 1-202, PACE mortgages are not subject to the Maine Consumer Credit Code, Article 8 8-A.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment does the following.

The amendment replaces Part A of the bill. The amendment repeals Article 8 of the Maine Consumer Credit Code and enacts Article 8-A, which requires creditors to comply with federal truth-in-lending laws and regulations. The amendment also retains provisions in current state law that provide more protection for consumers than federal law and makes those provisions applicable only to nondepository lenders. The retained provisions are not applicable to state-chartered financial institutions and credit unions and the Maine State Housing Authority.



125th MAINE LEGISLATURE

LD 1338

LR 366(02)

An Act To Amend the Maine Consumer Credit Code To Conform with Federal Law

Fiscal Note for Bill as Amended by Committee Amendment "A" S-311

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Legislative Cost/Study

Legislative Cost/Study

The expenses associated with the participation of 2 legislators in the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection workgroups are projected to be \$1,000 in fiscal year 2011-12. The Legislature's proposed budget includes \$10,000 in fiscal year 2011-12 for legislative studies. Whether the amount is sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature.

Fiscal Detail and Notes

Additional costs to the Department of Professional and Financial Regulation are expected to be minor and can be absorbed within budgeted resources. The impact on Department of Professional and Financial Regulation revenue is also expected to be minor.