

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

STATE OF MAINE
123RD LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills and adopted amendments and laws enacted or finally passed during the First Regular Session of the 123rd Maine Legislature coming from the

**JOINT STANDING COMMITTEE ON INSURANCE AND
FINANCIAL SERVICES**

July 2007

STAFF:

COLLEEN MCCARTHY REID
LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670

MEMBERS:

SEN. NANCY B. SULLIVAN, CHAIR
SEN. PETER B. BOWMAN
SEN. LOIS A. SNOWE-MELLO

REP. JOHN R. BRAUTIGAM, CHAIR
REP. MARILYN E. CANAVAN
REP. SHARON ANGLIN TREAT
REP. CHARLES R. PRIEST
REP. JILL M. CONOVER
REP. PATSY GARSIDE CROCKETT
REP. WESLEY E. RICHARDSON
REP. MICHAEL A. VAUGHAN
REP. JONATHAN B. MCKANE
REP. DAVID G. SAVAGE

STATE OF MAINE

123RD LEGISLATURE

FIRST REGULAR SESSION

LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS



This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all bills and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 123rd Maine Legislature, which was in session from December 6, 2006 to June 21, 2007.

The *Digest* is arranged alphabetically by committee, and within each committee by LD number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

CON RES XXX.....	Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE.....	Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES.....	House & Senate disagree; bill died
DIED IN CONCURRENCE.....	One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT.....	Action incomplete when session ended; bill died
EMERGENCY.....	Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE.....	Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE.....	Bill failed to get majority vote
FAILED MANDATE ENACTMENT.....	Bill imposing local mandate failed to get 2/3 vote
NOT PROPERLY BEFORE THE BODY.....	Ruled out of order by the presiding officers; bill died
INDEF PP.....	Bill Indefinitely Postponed
ONTP (or Accepted ONTP report).....	Ought Not To Pass report accepted
OTP-ND.....	Committee report Ought To Pass In New Draft
P&S XXX.....	Chapter # of enacted Private & Special Law
PASSED.....	Joint Order passed in both bodies
PUBLIC XXX.....	Chapter # of enacted Public Law
RESOLVE XXX.....	Chapter # of finally passed Resolve
UNSIGNED.....	Bill held by Governor
VETO SUSTAINED.....	Legislature failed to override Governor's Veto

Please note that the effective date for non-emergency legislation enacted in the First Regular Session is **September 20, 2007**. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

Joint Standing Committee on Insurance and Financial Services

LD 1760 was carried over by joint order, H.P. 1369, to the next special or regular session of the 123rd Legislature.

**LD 1829 An Act To Amend the Banking Laws Regarding the Establishment of
Branches by Financial Institutions with Affiliates That Engage in
Commercial Activity**

PUBLIC 69

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
-------------------	-------------------------	---------------------------

LD 1829 was reported out of committee pursuant to joint order, S.P. 575. The bill adds "commercial activity" to the definitions included in the Maine banking laws and clarifies that out-of-state financial institutions and their affiliates, like Maine financial institutions and their affiliates, are prohibited from conducting any commercial activity at in-state branches and cannot establish a branch within 1.5 miles of the location of an affiliate where the affiliate engages in any commercial activity.

Enacted Law Summary

Public Law 2007, chapter 69 adds "commercial activity" to the definitions included in the Maine banking laws and clarifies that out-of-state financial institutions and their affiliates, like Maine financial institutions and their affiliates, are prohibited from conducting any commercial activity at in-state branches and cannot establish a branch within 1.5 miles of the location of an affiliate where the affiliate engages in any commercial activity.

LD 1865 An Act To Amend the Long-term Care Insurance Law

PUBLIC 232

<u>Sponsor(s)</u> SULLIVAN	<u>Committee Report</u> OTP	<u>Amendments Adopted</u>
-----------------------------------	------------------------------------	---------------------------

LD 1865 qualifies consumers who purchase certain long-term care insurance policies for asset-protection measures under the federal Deficit Reduction Act of 2005, Public Law 109-171. The bill conforms Maine law to recently adopted amendments to the National Association of Insurance Commissioners' long-term care insurance model act. The bill prohibits issuing policies or certificates in the field if a field producer's compensation is based on the number of policies or certificates sold. The bill also imposes training requirements on producers who sell, solicit or negotiate long-term care policies.

Enacted Law Summary

Public Law 2007, chapter 232 qualifies consumers who purchase certain long-term care insurance policies for asset-protection measures under the federal Deficit Reduction Act of 2005, Public Law 109-171. The law conforms Maine law to recently adopted amendments to the National Association of Insurance Commissioners' long-term care insurance model act. The law prohibits issuing policies or certificates in the field if a field producer's compensation is based on the number of policies or certificates sold. The law also imposes training requirements on producers who sell, solicit or negotiate long-term care policies.

LD 1869 An Act To Protect Maine Homeowners from Predatory Lending

PUBLIC 273

<u>Sponsor(s)</u> CUMMINGS DOW	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-354
--	---------------------------------------	--

Joint Standing Committee on Insurance and Financial Services

LD 1869 makes significant changes to current Maine law relating to residential mortgage loans and permissible high-rate, high-fee mortgages. The bill updates and amends current law to address predatory and abusive lending practices and to provide additional protections for Maine consumers.

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

1. It lowers the threshold for fees that can be charged in connection with certain residential home mortgage loans from 8% of the total loan amount to 5% or 6% based upon the total loan amount.
2. It prohibits creditors from recommending or encouraging default on an existing loan in connection with the closing or planned closing on a refinancing.
3. It prohibits creditors from "flipping" loans, which means the refinancing of a loan with no tangible net benefit to the borrower.
4. It places restrictions on the imposition of late payment fees or penalties.
5. It prohibits creditors from financing premiums or payments for credit insurance or debt cancellation agreements as part of the loan.
6. It prohibits the inclusion of a provision in mortgage loan contracts that permits the creditor, in its sole discretion, to accelerate the indebtedness.
7. It prohibits creditors from charging a fee to receive the amount of the payoff balance for a loan or to receive a release upon prepayment and also requires creditors to provide a payoff balance as required by law.
8. It requires that creditors have a reasonable belief at the time of closing that the borrower has the financial ability to make the scheduled payments on the loan.

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

1. It requires that, before making the loan, creditors receive certification that a borrower has received counseling on the advisability of such a loan from a 3rd-party, nonprofit organization approved by the federal housing agency, a state housing financing agency or the state regulatory agency with jurisdiction over the creditor.
2. It prohibits creditors from financing any points or fees in connection with the loan.
3. It prohibits the inclusion of prepayment penalties or fees.
4. It prohibits scheduled payments more than twice as large as the average of earlier scheduled payments unless the payment schedule is adjusted according to the seasonal or irregular income of a borrower.
5. It prohibits payment terms under which outstanding principal or accrued interest will increase at any time because the scheduled payments do not cover the full amount of interest due.
6. It prohibits loan terms that increase the interest rate following a default.
7. It prohibits terms under which more than 2 periodic payments are consolidated and paid in advance from loan proceeds provided to the borrower.
8. It prohibits fees in connection with the modification of the loan or deferral of payments under the terms of the loan.

Joint Standing Committee on Insurance and Financial Services

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

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

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

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

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

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

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

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

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

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

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

The bill applies to all residential mortgage loans and high-rate, high-fee mortgages made in connection with residential property located in this State.

The bill takes effect January 1, 2008, except for the provision establishing 2 positions in the Office of Consumer Credit Regulation, which takes effect 90 days after adjournment.

Committee Amendment "A" (H-354)

This amendment does the following.

1. It clarifies that implementation of the multistate licensing system must reflect principles agreed upon by the Conference of State Bank Supervisors and the American Financial Services Association.

Joint Standing Committee on Insurance and Financial Services

2. It clarifies that records provided to the administrator that are confidential must be maintained as confidential and not disclosed except as authorized.
3. It clarifies that construction loans are excluded from the definition of "residential mortgage loan."
4. It adds a definition of "subprime mortgage loan."
5. It clarifies that counseling organizations must be approved by the United States Department of Housing and Urban Development, the Maine State Housing Authority or the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection.
6. It requires rulemaking to further define tangible net benefit before January 1, 2008.
7. It clarifies that the provision requiring a creditor to determine a borrower's reasonable ability to pay before making a loan applies only to subprime mortgage loans.
8. It clarifies that a borrower must pay the reasonable costs of the lender incurred before cure of default.
9. It clarifies that assignees or purchasers of loans are not subject to the violations provision except as specifically provided.
10. It clarifies that punitive damages are permitted for violations of the high-rate, high-fee mortgage provisions or the flipping provision when the violation is malicious or reckless.
11. It excludes residential mortgage loans from potential criminal liability and clarifies that fines and terms of imprisonment for violations of the bill's provisions are in accordance with the Maine Revised Statutes, Title 17-A.
12. It requires the Superintendent of Consumer Credit Protection to report annually to the Legislature.
13. It adds a requirement of good faith and fair dealing on loan brokers.
14. It establishes the Bureau of Consumer Credit Protection to replace the current Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation.

LD 1869, as amended, was reviewed and evaluated by the Joint Standing Committee on Judiciary pursuant to Maine Revised Statutes, Title 1, section 434, which requires review and evaluation of new exceptions to laws governing public records.

Enacted Law Summary

Public Law 2007, chapter 273 makes significant changes to current Maine law relating to residential mortgage loans and permissible high-rate, high-fee mortgages. The law updates and amends current law to address predatory and abusive lending practices and to provide additional protections for Maine consumers.

With regard to the making of residential mortgage loans, the law includes the following provisions.

1. It clarifies that construction loans are excluded from the definition of "residential mortgage loan."
2. It lowers the threshold for fees that can be charged in connection with certain residential home mortgage loans from 8% of the total loan amount to 5% or 6% based upon the total loan amount.
3. It prohibits creditors from recommending or encouraging default on an existing loan in connection with the

Joint Standing Committee on Insurance and Financial Services

closing or planned closing on a refinancing.

4. It prohibits creditors from "flipping" loans, which means the refinancing of a loan with no tangible net benefit to the borrower. It also requires rulemaking to further define net tangible benefit before January 1, 2008.
5. It places restrictions on the imposition of late payment fees or penalties.
6. It prohibits creditors from financing premiums or payments for credit insurance or debt cancellation agreements as part of the loan.
7. It prohibits the inclusion of a provision in mortgage loan contracts that permits the creditor, in its sole discretion, to accelerate the indebtedness.
8. It prohibits creditors from charging a fee to receive the amount of the payoff balance for a loan or to receive a release upon prepayment and also requires creditors to provide a payoff balance as required by law.
9. It requires that creditors have a reasonable belief at the time of closing on a subprime mortgage loan that the borrower has the financial ability to make the scheduled payments on the loan.

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

1. It requires that, before making the loan, creditors receive certification that a borrower has received counseling on the advisability of such a loan from a 3rd-party, nonprofit organization approved by the United States Department of Housing and Urban Development, the Maine State Housing Authority or the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection.
2. It prohibits creditors from financing any points or fees in connection with the loan.
3. It prohibits the inclusion of prepayment penalties or fees.
4. It prohibits scheduled payments more than twice as large as the average of earlier scheduled payments unless the payment schedule is adjusted according to the seasonal or irregular income of a borrower.
5. It prohibits payment terms under which outstanding principal or accrued interest will increase at any time because the scheduled payments do not cover the full amount of interest due.
6. It prohibits loan terms that increase the interest rate following a default.
7. It prohibits terms under which more than 2 periodic payments are consolidated and paid in advance from loan proceeds provided to the borrower.
8. It prohibits fees in connection with the modification of the loan or deferral of payments under the terms of the loan.
9. It requires certain disclosures related to the purchase or assignment of high-rate, high-fee mortgages and the effect on claims and defenses available to the borrower. The law makes purchasers or assignees of high-rate, high-fee mortgages subject to all affirmative claims and any defenses that a borrower can assert against the creditor that originated the loan, except claims that the creditor did not have a reasonable belief at closing that the borrower had the financial ability to make scheduled payments, unless certain requirements are satisfied by the purchaser or assignee of the mortgage.
10. It prohibits creditors from paying a contractor for home improvements from the proceeds of a high-rate, high-fee

Joint Standing Committee on Insurance and Financial Services

mortgage unless the payment instrument is payable jointly to the borrower and the contractor or paid to an escrow account and the creditor has received proof that the home repairs are completed.

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

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

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

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

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

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

The law adds a requirement of good faith and fair dealing on loan brokers.

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

The law makes creditors who violate the provisions enacted in the law subject to monetary penalties and enforcement by the Department of Professional and Financial Regulation, Bureau of Financial Institutions, the Office of Consumer Credit Regulation as well as the Attorney General for entities regulated by the Office of Consumer Credit Regulation, except for assignees or purchasers of loans. The law also gives borrowers the right to bring a private court action against creditors for violations and to recover statutory, actual and punitive damages. Punitive damages are permitted for violations of the high-rate, high-fee mortgage provisions or the flipping provision when the violation is malicious or reckless. The law excludes creditors who make residential mortgage loans from potential criminal liability and clarifies that fines and terms of imprisonment for violations of the law's provisions are in accordance with the Maine Revised Statutes, Title 17-A.

The law applies to all residential mortgage loans and high-rate, high-fee mortgages made in connection with residential property located in this State.

The law establishes the Bureau of Consumer Credit Protection to replace the current Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation and adds 2 new positions, an investigator and a staff attorney.

Public Law 2007, chapter 273 takes effect January 1, 2008, except for the provisions establishing the Bureau of Consumer Credit Protection and the 2 new positions, which take effect 90 days after adjournment.

Senate Amendment "A" (S-188)

This amendment is being presented on behalf of the Committee on Bills in the Second Reading to avoid a conflict with duplicate section numbers already enacted in Public Law 2007, chapter 185.

Senate Amendment "A" to LD 1869 was not adopted.