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An Act Relating to Mortgage Lending and Credit Availability

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

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

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

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

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

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

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

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

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

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

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

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

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

T. "Nontraditional mortgage" has the same meaning as those mortgages 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 "nontraditional mortgage" does not include a mortgage that does not allow a borrower to defer repayment of principal or interest.

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

U. "Points and fees" means:

- (1) All items included in the definition of "finance charge" in 12 Code of Federal Regulations, Section 226.4(a) and 226.4(b) except interest or the time price differential;
- (2) All items described in 12 Code of Federal Regulations, Section 226.32(b)(1)(iii);
- (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;
- (4) The cost of all premiums financed by a creditor directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums, including private mortgage insurance or debt cancellation or suspension fees calculated and paid on a monthly basis or through regularly scheduled periodic payments, may not be considered financed by the creditor;
- (5) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents; and

(6) All prepayment fees or 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.

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

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

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

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

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

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

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

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

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

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

BB. "Subprime mortgage loan" means a residential mortgage loan that is either a nontraditional mortgage as defined in paragraph ST or a rate spread home loan as defined in paragraph UV.

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

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

- A. The amount of the loans and whether the disclosures, right of rescission and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the administrator;
- B. The extent to which the requirements of this Title complicate, hinder or make more expensive the credit process for the class of transactions;
- C. The status of the borrowers, including:
 - (1) Any related financial arrangements of the borrowers, as determined by the administrator;
 - (2) The financial sophistication of the borrowers relative to the type of transaction; and
 - (3) The importance to the borrowers of the credit, related supporting property and coverage under this Title, as determined by the administrator;
- D. Whether a loan is secured by the principal residence of the consumer; and
- E. Whether the goal of consumer protection would be undermined by such an exemption.

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

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

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

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

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

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

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

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

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

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

(a) The borrower's income;

(b) The borrower's credit history;

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

(d) The borrower's employment status;

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

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

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

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

(b) The verification of income by:

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

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

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

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

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

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

(c) Expanded Guidance for Subprime Lending Programs; and

(d) Interagency Guidance on Subprime Lending.

Sec. 13. 9-A MRSA §8-208, sub-§1, as corrected by RR 1995, c. 2, §18, is amended to read:

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

A. Any actual damage sustained by such person as a result of the failure;

B. In an individual action:

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

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

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

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

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

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

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

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

Sec. 16. 9-A MRSA §8-209, sub-§5, ¶A, as enacted by PL 1995, c. 614, Pt. A, §14, is amended to read:

A. Except as otherwise provided in this Title, any civil action against a creditor for a violation of this Title and any proceeding under section 8-108 against a creditor, with respect to a consumer credit transaction secured by real property, may be maintained against any assignee of that creditor only if:

(i) The violation for which the action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with the transaction pursuant to ~~this Title~~section 8-206, subsection 1; and

(ii) The assignment to the assignee was voluntary.

Sec. 17. 9-A MRSA §8-209, sub-§5, ¶B, as enacted by PL 1995, c. 614, Pt. A, §14, is amended to read:

B. For the purposes of this subsection, a violation is apparent on the face of the disclosure statement if:

(i) The disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement provided pursuant to section 8-206, subsection 1, any itemization of the amount financed, the note or any other disclosure of disbursement; or

(ii) The disclosure statement provided pursuant to section 8-206, subsection 1 does not use the terms or format required under this Title.

Sec. 18. Retroactivity. This Act applies retroactively to January 1, 2008.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

Public Law 2007, chapter 273 enacted into law, effective January 1, 2008, changes to the truth in lending laws of the Maine Consumer Credit Code to protect homeowners from predatory lending practices.

This bill clarifies that law by:

1. Amending definitions in the current law such as "nontraditional mortgage," "points and fees" and "residential mortgage loan" and adding other definitions to aid in the implementation and enforcement of the law;

2. Specifying that a subprime mortgage loan is a type of residential mortgage loan;

3. Specifying what reasonable alternatives may be used by a creditor to verify a borrower's income, requiring the determination to be documented and removing language that allowed the creditor to consider and disregard statements submitted by or on behalf of the borrower regarding the borrower's income;

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