

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill in Part A by striking out all of section 4 (page 1, lines 27 to 35 and page 2, lines 2 to 6 in L.D.) and inserting the following:

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 A-4. 9-A MRSA §8-103, sub-§1-A, ¶U**, as amended by PL 2007, c. 471, §5 and affected by §18, is repealed and the following enacted in its place:

U. "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.’

Amend the bill in Part A by striking out all of section 5 (page 2, lines 7 to 13 in L.D.) and inserting the following:

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

V. "Rate spread home loan" means any loan for which the rate spread must be reported under the Home Mortgage Disclosure Act of 1975, Regulation C except that, beginning October 1, 2009, "rate spread home loan" has the same meaning as set forth for "higher-priced mortgage loans" in 12 Code of Federal Regulations, Section ~~203.4(a)(12)~~; and 226.35(a). In addition, "rate spread home loan" means any loan that meets the criteria of a high-rate, high-fee mortgage.’

Amend the bill in Part A in section 13 in §8-206-I in subsection 1 by striking out all of paragraph A (page 9, lines 26 to 40 and page 10, lines 1 to 28 in L.D.) and inserting the following:

‘A. A creditor may not extend a higher-priced mortgage 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.

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

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

(a) 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.

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

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

Amend the bill in Part A in section 13 in §8-206-I in subsection 1 in paragraph B by striking out all of the first blocked paragraph (page 10, lines 29 to 37 in L.D.) and inserting the following:

'B. Beginning October 1, 2009, a higher-priced mortgage loan may not include a penalty for paying all or part of the principal before the date on which the principal is due except as allowed under subparagraph (1). The exception under subparagraph (1) does not apply to high-rate, high-fee mortgages, which are subject to section 8-206-H, subsection 1, paragraph B, subparagraph (4), and alternative mortgage transactions, which are subject to section 9-308.'

Amend the bill in Part A in section 14 in §8-206-J in subsection 2 by striking out all of paragraph B (page 13, lines 4 to 9 in L.D.) and inserting the following:

'B. A borrower may not be charged for a late payment unless the loan documents specifically authorize the charge, the charge is not imposed unless the payment is past due for 10 days or more and the charge does not exceed 5% of the amount of the late payment. A late payment charge may not be imposed more than once with respect to a particular late payment. If a late payment charge is deducted from a payment made on the residential mortgage loan and that deduction results in a subsequent default on a subsequent payment, a late payment charge may not be imposed for that default. A creditor or servicer may apply any payment made in the order of maturity to a prior period's payment due even if the result is late payment charges accruing on subsequent payments due.'

Amend the bill in Part B in section 1 in Article 13 in §13-102 in subsection 1 by striking out all of paragraph A (page 15, lines 1 and 2 in L.D.) and inserting the following:

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

Amend the bill in Part B in section 1 in Article 13 in §13-103 in subsection 2 by inserting after paragraph D the following:

‘E. An employee of a nonprofit organization 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, to the extent exempted by the administrator by rule, advisory ruling or interpretation, after taking into consideration any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development.

F. A retail seller of a manufactured home to the extent determined by any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development.’

Amend the bill in Part B in section 1 in Article 13 in §13-104 in subsection 4 in paragraph B by striking out all of subparagraph (1) (page 18, lines 27 and 28 in L.D.) and inserting the following:

‘(1) An independent credit report from a consumer reporting agency described in the federal Fair Credit Reporting Act, Section 603(p) except that information on a credit report may not be used as the sole basis for the denial of a mortgage loan originator license pursuant to section 13-105; and

Amend the bill in Part B in section 1 in Article 13 in §13-105 in subsection 2 by striking out all of the first indented paragraph (page 19, lines 3 and 4 in L.D.) and inserting the following:

‘2. **No felony conviction.** Except if the administrator determines that a conviction as described in paragraph A does not affect the applicant’s demonstration of good character and fitness under subsection 3, the applicant has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic, foreign or military court.’

Amend the bill in Part B in section 1 in Article 13 in §13-116 by striking out all of subsections 13 and 14 (page 28, lines 29 to 33 in L.D.) and inserting the following:

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

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

15. **Good faith and fair dealing.** Fail to comply with the duties of good faith and fair dealing as required in section 10-303-A.’

SUMMARY

This amendment makes clarifying changes to retain existing provisions in Maine law not intended to be changed in the bill. The amendment also removes the presumption of compliance provision in the section of the bill relating to a creditor's obligation to verify a consumer's ability to repay a higher-priced mortgage loan.

The amendment makes changes to Part B of the bill to provide for an exemption from licensing as a mortgage loan originator for nonprofit organizations engaged in financing housing for low-income persons and for retail sellers of manufactured homes to the extent determined by the federal Department of Housing and Urban Development. The amendment clarifies the requirements for licensing related to an applicant's criminal history and credit history. The amendment also includes a provision making the duties of good faith and fair dealing apply to mortgage loan originators.