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

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

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.

The amounts set out in subparagraphs (5) and (6) 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 A-2. 9-A MRSA §1-301, sub-§13, as repealed and replaced by PL 1987, c. 129, §20, is amended to read:

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

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

B. In which the amount payable under the lease 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. The exempt transaction amount in this paragraph is automatically adjusted to correspond with any inflation adjustment made to the exempt transaction amount referenced in the Federal Truth in Lending Act, Section 181, subsection (1) and any rules adopted pursuant to that Act;

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

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

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

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

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

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

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

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

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

(a) A supervised financial organization, either 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, or the debt is secured by manufactured housing or an interest in land; or

(b) A supervised lender other than a supervised financial organization, either 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, 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 not impose a finance charge if it is in excess of that set forth in the agreement between the consumer and the creditor.

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

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

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

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

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

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

- A. A daily, weekly, monthly, annual or other periodic charge in such amount as the agreement may provide for the privileges made available to the consumer under the plan;
- B. A transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;
- C. A minimum charge for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding, unpaid indebtedness under the plan;

D. Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the creditor or its agents in connection with the plan, or other reasonable fees incident to the application for and the opening, administration and termination of the plan, including, without limitation, commitment, application and processing fees, official fees and taxes, and filing fees, but excluding costs of collections after default, other than reasonable attorney's fees not in excess of 15% of the unpaid debt incurred in connection with a legal action brought by an attorney who is not a salaried employee of the creditor;

E. A late or delinquency charge upon any outstanding, unpaid installment payments or portions of those payments under the plan that are not paid in full within 15 days after the scheduled or deferred due date;

F. Return-payment charges;

G. Documentary evidence charges;

H. Stop-payment fees;

I. Over-the-limit charges; and

J. Automated teller machine charges or similar electronic or interchange fees or charges.

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

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

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

A. The creditor includes in the notice of change an offer to finance by a separate loan arrangement the outstanding unpaid balance as of the effective date of the change at the same rate of interest with the same repayment schedule as applies to that open-end credit account;

B. The consumer may accept the offer of a separate loan arrangement with respect to the then existing unpaid balance anytime prior to 7 days before the change is to become effective;

C. The creditor has legal authority to make such a loan; and

D. No minimum finance charge is assessed nor prepayment penalty charged on the loan.

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

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

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

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

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

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

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

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

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

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

ARTICLE 8-A

MAINE TRUTH-IN-LENDING

§ 8-501. Short title

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

§ 8-502. Findings and declaration of purpose

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

§ 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.

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

§ 8-506. Enhanced restrictions on certain creditors

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

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

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

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

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

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

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

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

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

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

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

(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;

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

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

M. "Servicing" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2 and includes any other activities or responsibilities undertaken in connection with a residential mortgage loan by a person who acts as a servicer with respect to that residential mortgage loan, including collection and default management functions.

N. "Total loan amount" means the principal of a loan minus those points and fees that are included in the principal amount of the loan. For open-end loans, the total loan amount must be calculated using the total line of credit allowed under the residential mortgage loan at closing.

2. High-cost mortgage loans; restrictions. A high-cost mortgage loan is subject to the provisions applying to certain closed-end home mortgages covered by Regulation Z, 12 Code of Federal Regulations, Section 226.32 and the following restrictions.

A. In connection with a high-cost mortgage loan, a creditor may not directly or indirectly finance any points or fees.

B. In addition to the limitation on balloon payments found in Regulation Z, 12 Code of Federal Regulations, Section 226.32, a high-cost mortgage loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This paragraph does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

C. A creditor may not make a high-cost mortgage loan without first receiving certification from a counselor with a 3rd-party, nonprofit organization approved by the United States Department of Housing and Urban Development, a housing financing agency of this State or the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection that the borrower has received counseling on the advisability of the loan transaction.

D. A prepayment fee or penalty may not be included in the loan documents or charged under the terms of a high-cost mortgage loan.

3. High-cost mortgage loans; assignee liability. The following provisions apply to a claim made by a borrower against a purchaser or assignee of a high-cost mortgage loan.

A. Any person who purchases or is otherwise assigned a high-cost mortgage loan is subject to all affirmative claims and any defenses with respect to the loan that the borrower may assert against a creditor of the loan, except that this paragraph does not 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 or anticipated income or a range of earnings for a consumer's type or class of employment.

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

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

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

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

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

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

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

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

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

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

E. This subsection 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.

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

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

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

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

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

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

(4) Statutory damages as follows:

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

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

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

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

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

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

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

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

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

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 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.

PART B

Sec. B-1. 9-A MRSA §1-301, sub-§22-A, as amended by PL 2005, c. 683, Pt. B, §2, is repealed.

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 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.

Sec. B-4. 9-A MRSA §2-302, sub-§1-A, as amended by PL 2009, c. 243, §1, is repealed.

Sec. B-5. 9-A MRSA §2-302, sub-§2, as amended by PL 2005, c. 164, §3, is further amended to read:

2. A license to make supervised loans or a ~~registration certificate~~ as a mortgage loan officer~~originator~~ may not be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof, if the applicant is a copartnership or association, and of the officers and directors thereof, if the applicant is a corporation, and the character and fitness of the ~~loan officers~~mortgage loan originators thereof, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this Act. In determining the financial responsibility of an applicant proposing to engage in making insurance premium loans, the administrator shall consider the liabilities the lender may incur for erroneous cancellation of insurance.

A. Every applicant shall also, at the time of filing such application, file with the administrator, if the administrator so requires, a bond satisfactory to the administrator in an amount not to exceed \$50,000. The terms of the bond must run concurrent with the period of time during which the license will be in effect. The bond must run to the State for the use of the State and of any person or persons who may have a cause of action against the licensee under this Act. The bond must be conditional that the licensee will faithfully conform to and abide by the provisions of this Act and to all rules lawfully made by the administrator under this Act and will pay to the State and to any such person or persons any and all amounts of money that may become due or owing to the State or to such person or persons from the licensee under and by virtue of this Act during the period for which the bond is given.

B. As used in this section, the term "financial responsibility" means that the applicant has available for the operation of the licensed business net assets of at least \$25,000 and upon issuance of a license, each licensee shall maintain net assets of at least \$25,000 that are either used or readily available for use in the conduct of the business of each office of the licensee in which supervised loans are made.

D. In determining the financial responsibility of a nonprofit organization engaged in the financing of housing for low-income people under a program specifically designed for that purpose, the administrator may waive the requirement of a bond and availability of \$25,000 of net assets, if the applicant submits appropriate additional evidence of financial responsibility.

Sec. B-6. 9-A MRSA §2-302, sub-§5-A, as enacted by PL 2005, c. 164, §5, is amended to read:

5-A. A licensee may conduct the business of making supervised loans only through a loan officer~~mortgage loan originator~~ who possesses a current, valid registration certificate~~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 supervised lender. The registration of a loan officer is valid only when that person is employed or retained and supervised by a licensed supervised lender. When a loan officer ceases to be employed by a licensed supervised lender, the supervised lender shall promptly notify the administrator in writing.~~

Sec. B-7. 9-A MRSA §2-303, as amended by PL 2005, c. 164, §6, is further amended to read:

§ 2-303.Revocation or suspension of license

1. The administrator may file a complaint with the District Court to suspend or revoke a license to make or originate supervised loans ~~or a registration as a loan officer~~ if the administrator finds reason to believe, after investigation or hearing, or both, that:

- A. The licensee ~~or registrant~~ has violated this Act or any rule or order made pursuant to this Act; or
- B. Facts or conditions exist that would clearly have justified the administrator in refusing to grant a license ~~or registration~~ had these facts or conditions been known to exist at the time the application for the license ~~or registration~~ was made.

An affirmative finding by the District Court of either cause is sufficient to suspend or revoke the license ~~or registration~~.

1-A. The administrator may refuse to renew a license ~~or registration~~, after notice and opportunity for a hearing has been provided to the licensee ~~or registrant~~, for any of the reasons set forth in subsection 1.

2. No revocation or suspension of a license ~~or registration~~ impairs or affects the obligation of any preexisting lawful contract between the licensee ~~or registrant~~ and any debtor.

3. The administrator may reinstate a license, terminate a suspension or grant a new license ~~or registration~~ to a person whose license ~~or registration~~ has been revoked if no fact or condition then exists that clearly would have justified the administrator in refusing to grant a license ~~or registration~~.

4. No revocation, suspension, annulment or withdrawal of a license ~~or registration~~ is lawful unless, prior to the institution of proceedings by the administrator, the administrator gave notice by mail to the licensee ~~or registrant~~ of facts or conduct that warrant the intended action and the licensee ~~or registrant~~ was given an opportunity to show compliance with all lawful requirements for the retention of the license ~~or registration~~.

Sec. B-8. 9-A MRSA §2-303-A, as amended by PL 2005, c. 164, §7, is further amended to read:

§ 2-303-A.Temporary suspension of license

Notwithstanding Title 5, sections 10003 and 10004 and Title 10, section 8003, if the public interest or the protection of borrowers so requires, the administrator may, by order, suspend a license to make supervised loans or ~~registration~~ a license as a loan officer ~~mortgage loan originator~~ or postpone the effective date of such a license or ~~registration~~. Upon entry of the order, the administrator shall promptly notify the applicant, ~~or licensee or registrant~~ that an order has been entered, of the reasons for the order and that, within 15 days after the receipt of a written request by the applicant, ~~or licensee or registrant~~, the matter must be scheduled for hearing. Section 2-303 applies to all subsequent proceedings.

Sec. B-9. 9-A MRSA §3-316, as enacted by PL 2007, c. 466, Pt. B, §4 and affected by §5, is amended to read:

§ 3-316. Real estate settlement procedures

A creditor and its ~~loan officers~~ mortgage loan originators shall comply with the provisions of the federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq. and its implementing regulation, Regulation X, 24 Code of Federal Regulations, Section 3500 et seq.

Sec. B-10. 9-A MRSA §6-105-A, first ¶, as enacted by PL 2007, c. 273, Pt. A, §2 and affected by §41, is amended to read:

For the purposes of participating in the establishment and implementation of a uniform multistate automated licensing system, referred to in this section as "the system," for loan brokers, supervised lenders that are not supervised financial organizations and individual ~~loan officers~~ mortgage loan originators thereof, the administrator may undertake the following actions.

Sec. B-11. 9-A MRSA §6-105-A, sub-§2, as enacted by PL 2007, c. 273, Pt. A, §2 and affected by §41, is amended to read:

2. The administrator may require a credit and background investigation of each applicant for a license as a loan broker, a supervised lender that is not a supervised financial organization or a ~~loan officer of a loan broker or a supervised lender~~, mortgage loan originator thereof by means including fingerprint checks for state and national criminal histories, commencing at the time the State joins the system pursuant to this section. The cost of the investigations must be charged to the applicants. Information obtained or held by the administrator pursuant to this subsection is nonpublic pursuant to section 6-116 and not subject to disclosure.

Sec. B-12. 9-A MRSA §9-311-A, as enacted by PL 2007, c. 466, Pt. B, §8 and affected by §10, is amended to read:

§ 9-311-A. Real estate settlement procedures

A creditor and its ~~loan officers~~ mortgage loan originators shall comply with the provisions of the federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq. and its implementing regulation, Regulation X, 24 Code of Federal Regulations, Section 3500 et seq.

Sec. B-13. 9-A MRSA §9-312, as enacted by PL 2007, c. 273, Pt. A, §26 and affected by §41, is amended to read:

§ 9-312. False information on application for credit

A supervised lender, or any ~~loan officer~~mortgage loan originator of a supervised lender, may not knowingly permit, encourage or assist a consumer to submit false information on any application for credit, nor may a supervised lender or ~~loan officer~~mortgage loan originator of a supervised lender knowingly falsify such information on a consumer's application.

Sec. B-14. 9-A MRSA §10-102, sub-§3, as enacted by PL 2005, c. 164, §8, is repealed.

Sec. B-15. 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 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. ~~A~~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.~~

Sec. B-16. 9-A MRSA §10-307, as amended by PL 2007, c. 466, Pt. B, §9 and affected by §10, is further amended to read:

§ 10-307. Real estate settlement procedures

A loan broker and its ~~loan officers~~mortgage loan originators shall comply with the provisions of 12 United States Code, Section 2601 et seq., the federal Real Estate Settlement Procedures Act of 1974 and its implementing regulation, Regulation X, 24 Code of Federal Regulations, Section 3500 et seq.

Sec. B-17. 9-A MRSA §10-308, as enacted by PL 2007, c. 273, Pt. A, §32 and affected by §41, is amended to read:

§ 10-308. False information on application for credit

A loan broker or any ~~loan officer~~mortgage loan originator of a loan broker may not knowingly permit, encourage or assist a consumer to submit false information on any application for credit, nor may a loan broker or ~~loan officer~~mortgage loan originator of a loan broker knowingly falsify such information on a consumer's application.

Sec. B-18. 9-A MRSA §10-401, first ¶, as repealed and replaced by PL 2005, c. 683, Pt. B, §5, is amended to read:

Any loan broker or ~~loan officers~~mortgage loan originators of any loan broker that violate any provision of this Title or any rule issued by the administrator, or that through any unfair, unconscionable or deceptive practice cause actual damage to a consumer, are subject to the following:

Sec. B-19. 9-A MRSA §10-401, sub-§4, as repealed and replaced by PL 2005, c. 683, Pt. B, §6, is amended to read:

4. A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the loan broker or its ~~loan officers~~mortgage loan originators in an amount determined by the court, plus costs of the action together with reasonable attorney's fees; and

Sec. B-20. 9-A MRSA §13-110, sub-§2, as enacted by PL 2009, c. 362, Pt. B, §1, is amended to read:

2. Fees. The payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry, that fee being initially established in the amount of \$20 to the administrator at application and \$20 for renewal, subject to adjustment pursuant to rule or order as set forth under this section;

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

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

- A. State-chartered banks;
- B. State-chartered credit unions;
- C. Nondepository licensed mortgage lenders;
- D. Federally chartered financial institutions;
- E. Loan servicers;
- F. Attorneys who represent lenders;
- G. Attorneys who represent homeowners;
- H. Nonprofit housing counselors;
- I. Homeowners;
- J. The Department of Professional and Financial Regulation, Bureau of Financial Institutions; and
- K. Two members of the Joint Standing Committee on Insurance and Financial Services, representing each of the 2 parties holding the largest number of seats in the Legislature.

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

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

- A. Whether the mailing of informational packages from the State should be delayed, from the current requirement for mailing simultaneously with the notice of right to cure default pursuant to the Maine Revised Statutes, Title 14, section 6111, to a later time, such as after the homeowner is 60 days in default;
- B. Whether the results of housing counselor efforts should be reported in a standardized format to make evaluation of those results more efficient;
- C. Whether the informational package mailing process under paragraph A could be carried out by the lenders rather than by the bureau;
- D. Whether lenders and servicers should be required to make available to regulators, counselors or consumers the names and contact information for individuals within the lenders' and servicers' companies who are authorized to approve loan modifications, short sales or other alternatives to foreclosure;

- E. Whether joint obligors on a mortgage can be provided with a single informational packet under paragraph A, rather than the current requirement that every mortgagor receive that information;
- F. Whether the current composition of the informational package under paragraph A can be improved to be clearer, more understandable to and more useable by homeowners;
- G. How the outreach and counseling process can best be integrated, when necessary, into the judicial system's foreclosure mediation program pursuant to Title 14, section 6321-A; and
- H. Any other issues, as appropriate.

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

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

PART D

Sec. D-1. 9-A MRSA §1-202, sub-§8, ¶A, as amended by PL 2007, c. 471, §1 and affected by §18, 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 Y~~ the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq., 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. D-2. 9-A MRSA §1-202, sub-§10, as enacted by PL 2005, c. 55, §3, is amended to read:

10. A no-interest loan or credit sale by a nonprofit organization that assists in building or renovating housing for those in need. The exclusion in this subsection does not apply to Article 6, Part 1; section 6-201; section 6-202; section 6-203, subsection 1; section 6-204; or Article ~~88-A~~.

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

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

(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 88-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~~ 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 ~~VHH~~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:

§ 3-506.Limitation

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

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

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

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

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

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

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

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 88-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 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 88-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.

Sec. D-23. 33 MRSA §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 MRSA §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 MRSA §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 ~~88~~ 88-A.

Effective 90 days following adjournment of the 125th
Legislature, First Regular Session, unless otherwise indicated.