



# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1651

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S.P. 643

In Senate, December 23, 2013

### **An Act To Update Citations of Recodified Federal Regulations in the Maine Consumer Credit Code**

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 23, 2013. Referred to the Committee on Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator WHITTEMORE of Somerset.  
Cosponsored by Representative TREAT of Hallowell.

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

2 **Sec. 1. 9-A MRSA §3-310, sub-§1**, as amended by PL 2011, c. 427, Pt. A, §10,  
3 is further amended to read:

4 **1.** In connection with a consumer credit transaction in which the interest rate may  
5 vary during the term of the transaction, the creditor shall make ~~the following~~ disclosures  
6 in ~~writing~~ accordance with section 8-504.

7 ~~A. With respect to a closed end transaction secured by the consumer's principal~~  
8 ~~dwelling with a term greater than one year, the information required under 12 Code~~  
9 ~~of Federal Regulations, 226.19(b) must be disclosed at the time an application form is~~  
10 ~~provided or before the consumer pays a nonrefundable fee, whichever is earlier.~~

11 ~~B. With respect to an open end credit plan secured by the consumer's principal~~  
12 ~~dwelling or by any 2nd or vacation home of the consumer, the information required~~  
13 ~~by 12 Code of Federal Regulations, Section 226.5b(d) shall be disclosed at the time~~  
14 ~~provided in 12 Code of Federal Regulations Section 226.5 b (b).~~

15 ~~C. With respect to a closed end transaction other than one described in paragraph A,~~  
16 ~~the information required by 12 Code of Federal Regulations, Section 226.18(f)(1)~~  
17 ~~shall be disclosed before consummation of the transaction.~~

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

21 **Sec. 2. 9-A MRSA §3-316**, as amended by PL 2011, c. 427, Pt. B, §9, is further  
22 amended to read:

23 **§3-316. Real estate settlement procedures**

24 A creditor and its mortgage loan originators shall comply with the provisions of the  
25 federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section  
26 2601 et seq. and its implementing regulation, Regulation X, ~~24~~ 12 Code of Federal  
27 Regulations, Section ~~3500~~ 1024.1 et seq.

28 **Sec. 3. 9-A MRSA §8-503**, as enacted by PL 2011, c. 427, Pt. A, §15, is amended  
29 to read:

30 **§8-503. Conformity with federal law**

31 Unless the context otherwise indicates, any word or phrase that is not defined in this  
32 Article but that is defined in the Federal Truth in Lending Act, Title I of the federal  
33 Consumer Credit Protection Act, 15 United States Code, Section 1601 et seq. or its  
34 implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section ~~226.1~~  
35 1026.1 et seq., has the meaning set forth in the Federal Truth in Lending Act and its  
36 implementing regulations.

37 **Sec. 4. 9-A MRSA §8-504, sub-§§1 and 2**, as enacted by PL 2011, c. 427, Pt. A,  
38 §15, are amended to read:

1           **1. Compliance with Federal Truth in Lending Act.** Notwithstanding any other  
2 law, a creditor shall comply with the Federal Truth in Lending Act, Title I of the federal  
3 Consumer Credit Protection Act, 15 United States Code, Section 1601 et seq. and its  
4 implementing regulations, Regulation Z, 12 Code of Federal Regulations, Section ~~226.1~~  
5 1026.1 et seq. and Regulation M, 12 Code of Federal Regulations, Section ~~213.1~~ 1013.1  
6 et seq., ~~including any final regulations issued on or before July 21, 2011.~~

7           **2. Rule-making authority.** Consistent with the purposes of Title X and Title XIV  
8 of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law  
9 111-203 and with the purposes set forth in sections 1-102 and 8-502 and notwithstanding  
10 other law, the administrator may adopt rules substantially similar to or that afford more  
11 protection for consumers than those codified in 12 Code of Federal Regulations, Part ~~226~~  
12 1026 and 12 Code of Federal Regulations, Part ~~243~~ 1013. Rules adopted pursuant to this  
13 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.  
14 In adopting rules pursuant to this subsection, the administrator shall specifically consider  
15 whether there is a substantial impact on consumer protection before adopting rules  
16 affecting the following provisions of section 8-506:

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

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

31           **Sec. 5. 9-A MRSA §8-505, sub-§2**, as enacted by PL 2011, c. 427, Pt. A, §15, is  
32 amended to read:

33           **2. Reimbursement.** The administrator may adopt by rule a reimbursement program  
34 such that creditors subject to an administrative order under section 6-108 may be ordered  
35 to make whatever adjustments are necessary to ensure that any person will not be  
36 required to pay a finance charge in excess of the finance charge actually disclosed or the  
37 dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. In  
38 determining any readjustment, the administrator shall apply, with respect to the annual  
39 percentage rate, a tolerance allowed under the Federal Truth in Lending Act, 15 United  
40 States Code, Section 1607 and its implementing regulation, Regulation Z, 12 Code of  
41 Federal Regulations, Section ~~226.1~~ 1026.1 et seq. and, with respect to the finance charge,  
42 a corresponding numerical tolerance as generated by the tolerance allowed by the Federal

1 Truth in Lending Act and its implementing regulations for the annual percentage rate.  
2 The administrator may order partial adjustment or partial payments over an extended  
3 period if the administrator determines that a partial adjustment or making partial  
4 payments over an extended period is necessary to avoid causing the creditor to become  
5 undercapitalized pursuant to the Federal Deposit Insurance Act.

6 **Sec. 6. 9-A MRSA §8-506, sub-§1, ¶D**, as enacted by PL 2011, c. 427, Pt. A,  
7 §15, is amended to read:

8 D. "Conventional mortgage rate" means the most recently published annual yield on  
9 conventional mortgages published by the Board of Governors of the Federal Reserve  
10 System, as published in statistical release H.15 or any superseding publication, as of  
11 the applicable time set forth in 12 Code of Federal Regulations, Section  
12 ~~226.32(a)(1)(i)~~ 1026.32(a)(1)(i).

13 **Sec. 7. 9-A MRSA §8-506, sub-§1, ¶F**, as enacted by PL 2011, c. 427, Pt. A,  
14 §15, is amended to read:

15 F. "Creditor" has the same meaning as set forth in section 1-301, subsection 17. For  
16 purposes of this section, "creditor" also includes an entity defined as a lender as set  
17 forth in ~~24~~ 12 Code of Federal Regulations, Section ~~3500.2~~ 1024.2, including a  
18 mortgage broker.

19 **Sec. 8. 9-A MRSA §8-506, sub-§1, ¶¶H to M**, as enacted by PL 2011, c. 427,  
20 Pt. A, §15, are amended to read:

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

23 (1) Rate threshold, which, for a residential mortgage loan, is the point at which  
24 the annual percentage rate equals or exceeds the rate set forth in 12 Code of  
25 Federal Regulations, Section ~~226.32(a)(1)(i)~~ 1026.32(a)(1)(i) without regard to  
26 whether the residential mortgage loan may be considered a "residential mortgage  
27 transaction" or an extension of "open-end credit" as those terms are set forth in 12  
28 Code of Federal Regulations, Section ~~226.2~~ 1026.2; ~~or~~ and

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

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

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

38 I. "Higher-priced mortgage loan" has the same meaning as set forth in the Federal  
39 Truth in Lending Act and its implementing regulation, Regulation Z, 12 Code of  
40 Federal Regulations, Section ~~226.35(a)~~ 1026.35(a). "Higher-priced mortgage loan"  
41 also includes a residential mortgage loan that is a nontraditional mortgage as

1 described in the "Interagency Guidance on Nontraditional Mortgage Product Risks"  
2 issued September 29, 2006 and published in 71 Federal Register, 58609 on October  
3 4, 2006 and as updated from time to time, except that "higher-priced mortgage loan"  
4 does not include a mortgage that does not allow a borrower to defer repayment of  
5 principal or interest.

6 J. "Mortgage broker" has the same meaning as set forth in 24 12 Code of Federal  
7 Regulations, Section ~~3500.2~~ 1024.2, except as otherwise provided in this Article.

8 K. "Points and fees" has the same meaning as set forth in 12 Code of Federal  
9 Regulations, Section ~~226.32(b)(1)~~ 1026.32(b)(1). In addition, "points and fees"  
10 includes:

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

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

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

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

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

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

29 (2) The loan is considered a federally related mortgage loan as set forth in 24 12  
30 Code of Federal Regulations, Section ~~3500.2~~ 1024.2;

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

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

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

35 M. "Servicing" has the same meaning as set forth in 24 12 Code of Federal  
36 Regulations, Section ~~3500.2~~ 1024.2 and includes any other activities or  
37 responsibilities undertaken in connection with a residential mortgage loan by a person  
38 who acts as a servicer with respect to that residential mortgage loan, including  
39 collection and default management functions.

40 **Sec. 9. 9-A MRSA §8-506, sub-§2**, as enacted by PL 2011, c. 427, Pt. A, §15, is  
41 amended to read:

1           **2. High-cost mortgage loans; restrictions.** A high-cost mortgage loan is subject to  
2 the provisions applying to certain closed-end home mortgages covered by Regulation Z,  
3 12 Code of Federal Regulations, Section ~~226.32~~ 1026.32 and the following restrictions.

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

6           B. In addition to the limitation on balloon payments found in Regulation Z, 12 Code  
7 of Federal Regulations, Section ~~226.32~~ 1026.32, a high-cost mortgage loan may not  
8 contain a scheduled payment that is more than twice as large as the average of earlier  
9 scheduled payments. This paragraph does not apply when the payment schedule is  
10 adjusted to the seasonal or irregular income of the borrower.

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

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

19           **Sec. 10. 9-A MRSA §8-507**, as enacted by PL 2011, c. 427, Pt. A, §15, is  
20 amended to read:

21           **§8-507. Exemption from the Federal Truth in Lending Act**

22           **1. Preservation of federal exemption.** As required by the Federal Truth in Lending  
23 Act, 15 United States Code, Section 1633 and its implementing regulation, Regulation Z,  
24 12 Code of Federal Regulations, Section ~~226.29~~ 1026.29, the administrator may take any  
25 action necessary to apply for or to preserve a determination by the ~~Federal Reserve Board~~  
26 federal Consumer Financial Protection Bureau or its successor agency that under the laws  
27 of this State any class of credit transactions within this State is subject to requirements  
28 substantially similar to federal requirements and that there are adequate provisions for  
29 enforcement of such requirements.

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

35           **Sec. 11. 9-A MRSA §9-311-A**, as amended by PL 2011, c. 427, Pt. B, §12, is  
36 further amended to read:

37           **§9-311-A. Real estate settlement procedures**

38           A creditor and its mortgage loan originators shall comply with the provisions of the  
39 federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section

1 2601 et seq. and its implementing regulation, Regulation X, ~~24~~ 12 Code of Federal  
2 Regulations, Section ~~3500~~ 1024.1 et seq.

3 **Sec. 12. 9-A MRSA §10-307**, as amended by PL 2011, c. 427, Pt. B, §16, is  
4 further amended to read:

5 **§10-307. Real estate settlement procedures**

6 A loan broker and its mortgage loan originators shall comply with the provisions of  
7 12 United States Code, Section 2601 et seq., the federal Real Estate Settlement  
8 Procedures Act of 1974 and its implementing regulation, Regulation X, ~~24~~ 12 Code of  
9 Federal Regulations, Section ~~3500~~ 1024.1 et seq.

10 **SUMMARY**

11 This bill updates the Maine Consumer Credit Code so that existing references to  
12 federal regulations are up to date. The bill also amends the Maine Revised Statutes, Title  
13 9-A, section 3-310 by consolidating references to the implementing regulations of the  
14 Federal Truth in Lending Act.