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Public Law
123rd Legislature
First Regular Session

Chapter 273
H.P. 1301 - L.D. 1869

An Act To Protect Maine Homeowners from Predatory Lending

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

PART A

Sec. A-1. 9-A MRSA §3-315 is enacted to read:

§ 3-315. Real estate settlement procedures

A creditor and its loan officers 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. A-2. 9-A MRSA §6-105-A is enacted to read:

§ 6-105-A. Uniform multistate automated licensing system

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 thereof, the administrator may undertake the following actions.

1. The administrator may establish new rules, consistent with the principles for operation and implementation established by the system, that are necessary for the State to participate in the system, including rules authorizing the system to collect license fees on behalf of the State and remit those fees to the State, authorizing collection fees by the system to pay for its services, authorizing the system to process and maintain license records and authorizing use of the system's uniform forms, upon the director's finding that each new rule is consistent with the public interest and the purposes of this Act. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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, 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.

Any information provided by or to the administrator pursuant to this section that has been designated as confidential by another state's regulatory agency remains the property of the agency furnishing the information and must be kept confidential by the administrator and the system except as authorized by the agency that furnished the information.

Sec. A-3. 9-A MRSA §8-103, sub-§1, as amended by PL 2003, c. 49, §1, is repealed.

Sec. A-4. 9-A MRSA §8-103, sub-§1-A is enacted to read:

1-A. As used in this Article, unless the context otherwise indicates, the following words have the following meanings.

A. "Accepted credit card" means any credit card that the cardholder has requested and received or has signed or has used or authorized another to use for the purpose of obtaining money, property, labor or services on credit.

B. "Adequate notice" as used in section 8-302 means a printed notice to a cardholder that sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. That notice may be given to a cardholder by printing the notice on any credit card, on each periodic statement of account issued to the cardholder or by any other means reasonably ensuring the receipt by the cardholder.

C. "Affiliate" has the same meaning as set forth in 12 United States Code, Section 1841.

D. "Annual percentage rate" means the annual percentage rate for a loan calculated according to the provisions of 12 Code of Federal Regulations, Part 226.

E. "Bona fide discount points" means an amount knowingly paid by a borrower for the express purpose of reducing, and which 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.

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

G. "Bureau of Consumer Credit Protection" has the same meaning as set out in section 6-103.

H. "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a card to another person.

I. "Card issuer" means any person who issues a credit card or the agent of that person with respect to that card.

J. "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).

K. "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.

L. "Creditor" has the same meaning as "lender" as set forth in 24 Code of Federal Regulations, Section 3500.2 and includes a mortgage broker.

M. "Discount" as used in section 8-303 means a reduction made from the regular price. The term "discount" does not mean a surcharge.

N. "Dwelling" means a residential structure or mobile home that contains one to 4 family housing units, or individual units of condominiums or cooperatives.

O. "Excluded points and fees" means, in connection with a residential mortgage loan, 1% of the total loan amount attributable to 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.

P. "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 of 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.

Q. "High-rate, high-fee mortgage" means a residential mortgage loan in which the terms of the loan meet or exceed one or more of the thresholds defined in paragraph CC.

R. "Material disclosures" means the disclosure, as required by this Article, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments and the due dates or periods of payments scheduled to repay the indebtedness.

S. "Mortgage broker" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2.

T. "Nontraditional mortgage" has the same meaning as those mortgages described in the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued September 29, 2006 and published in 71 Federal Register, 58609 on October 4, 2006 and as updated from time to time.

U. "Points and fees" means:

(1) All items included in the definition of "finance charge" in 12 Code of Federal Regulations, Section 226.4(a) and 226.4(b) except interest or the time price differential;

(2) All items described in 12 Code of Federal Regulations, Section 226.32(b)(1)(iii);

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

(4) The cost of all premiums financed by a creditor directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums, including private mortgage insurance or debt cancellation or suspension fees calculated and paid on a monthly basis or through regularly scheduled periodic payments, may not be considered financed by the creditor;

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

(6) All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor.

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

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

V. "Rate spread home loan" means any loan for which the rate spread must be reported under the Home Mortgage Disclosure Act of 1975, Regulation C, 12 Code of Federal Regulations, Section 203.4(a)(12); and any loan that meets the criteria of a high-rate, high-fee mortgage.

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

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

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

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

(4) The loan is not a construction loan.

X. "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of that dwelling.

Y. "Reverse mortgage transaction" means a nonrecourse transaction in which a mortgage, deed of trust or equivalent consensual security interest is created against the consumer's principal dwelling to secure one or more advances and with respect to which the payment of any principal, interest and shared appreciation or equity is due and payable, other than in the case of default, only after the transfer of the dwelling, after the consumer ceases to occupy the dwelling as a principal dwelling or after the death of the consumer.

Z. "Servicer" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2.

AA. "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.

BB. "Subprime mortgage loan" means either a nontraditional mortgage as defined in paragraph S or a rate spread home loan as defined in paragraph U.

CC. "Superintendent of Consumer Credit Protection" has the same meaning as set out in section 6-103.

DD. "Surcharge" means any means of increasing the regular price to a cardholder that is not imposed upon customers paying by cash, check or similar means.

EE. "Tax refund loan," also known as "refund anticipation loan," means a transaction in which a creditor lends an amount less than or equal to a consumer's expected tax refund.

FF. "Threshold" means either:

(1) Rate threshold, which is, for a residential mortgage loan, 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.

GG. "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.

HH. "Unauthorized use," as used in section 8-303, means a use of a credit card by a person other than the cardholder who does not have actual, implied or apparent authority for such use and from which the cardholder receives no benefit.

Sec. A-5. 9-A MRS §8-206, sub-§3, as enacted by PL 1981, c. 243, §25, is amended to read:

3. ~~In the case of a residential mortgage transaction, which is also subject to the Real Estate Settlement Procedures Act of 1974, 12 United States Code, Title 12, Section 2601; et seq., good faith estimates of the disclosures required under subsection 1 shall~~must be made in accordance with ~~regulations~~rules of the administrator under section 8-201, subsection 3; before the credit is extended; or ~~shall~~must be delivered or placed in the mail not later than 3 business days after the creditor receives the consumer's ~~written~~bona fide application, whichever is earlier. If the disclosure statement furnished within 3 days of the ~~written~~bona fide application contains an annual percentage rate ~~which~~that is subsequently rendered inaccurate within the meaning of section 8-106, subsection 3, the creditor shall furnish another statement at the time of settlement or consummation. If the disclosure statement furnished within 3 days of the bona fide application indicates that the consumer will not be assessed a prepayment penalty, and if that statement is subsequently rendered inaccurate, the creditor shall notify the consumer of that change as soon as practicable and shall also furnish a corrected statement prior to the time of settlement or consummation.

Sec. A-6. 9-A MRS §8-206-A, sub-§6, as enacted by PL 1995, c. 326, §5, is repealed.

Sec. A-7. 9-A MRS §8-206-A, sub-§7, as enacted by PL 1995, c. 326, §5, is repealed.

Sec. A-8. 9-A MRS §8-206-A, sub-§8, as amended by PL 2003, c. 49, §2, is repealed.

Sec. A-9. 9-A MRS §8-206-A, sub-§9, as enacted by PL 1995, c. 326, §5, is repealed.

Sec. A-10. 9-A MRS §8-206-A, sub-§11, as enacted by PL 1995, c. 326, §5, is repealed.

Sec. A-11. 9-A MRSA §8-206-A, sub-§12, as enacted by PL 1995, c. 326, §5, is repealed.

Sec. A-12. 9-A MRSA §8-206-A, sub-§12-A, as enacted by PL 2003, c. 49, §4, is repealed.

Sec. A-13. 9-A MRSA §8-206-A, sub-§13, as enacted by PL 1995, c. 326, §5, is repealed.

Sec. A-14. 9-A MRSA §8-206-A, sub-§13-B, as enacted by PL 2003, c. 49, §5, is repealed.

Sec. A-15. 9-A MRSA §8-206-A, sub-§13-C, as enacted by PL 2003, c. 49, §5, is repealed.

Sec. A-16. 9-A MRSA §8-206-A, sub-§16-A, as enacted by PL 2003, c. 49, §6, is repealed.

Sec. A-17. 9-A MRSA §8-206-A, sub-§16-B, as enacted by PL 2003, c. 49, §6, is repealed.

Sec. A-18. 9-A MRSA §8-206-A, sub-§17, as enacted by PL 1995, c. 326, §5, is repealed.

Sec. A-19. 9-A MRSA §8-206-C is enacted to read:

§ 8-206-C. High-rate, high-fee mortgages; additional requirements

1. The making of a high-rate, high-fee mortgage is subject to the following prohibitions, except that, notwithstanding any other provision of law, a residential mortgage loan made by the Maine State Housing Authority pursuant to Title 30-a, chapter 201 is not subject to the following prohibitions.

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

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

C. A high-rate, high-fee mortgage 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.

D. A high-rate, high-fee mortgage may not include payment terms under which the outstanding principal balance or accrued interest will increase at any time over the course of the loan because the regularly scheduled periodic payments do not cover the full amount of interest due.

E. A high-rate, high-fee mortgage may not contain a provision that increases the interest rate after default. This paragraph does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, as long as the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

F. A high-rate, high-fee mortgage may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower. If the date of maturity of such a mortgage is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate must be computed by a method that is not less favorable than the actuarial method, as that term is defined in the federal Housing and Community Development Act of 1992, Public Law No. 102-550, Section 933(d) 106 Stat. 3672, 3892 (1992).

G. A creditor may not make a high-rate, high-fee mortgage 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 Bureau of Consumer Credit Protection that the borrower has received counseling on the advisability of the loan transaction.

H. A creditor may not make a payment to a contractor under a home improvement contract from amounts extended as credit under a high-rate, high-fee mortgage except:

(1) In the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(2) At the election of the consumer, by a 3rd-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor and the contractor before the date of payment.

I. All high-rate, high-fee mortgage documents that create a debt or pledge property as collateral must contain the following notice on the first page in a conspicuous manner: "Notice: This is a high-rate, high-fee mortgage subject to special rules under state law. Purchasers or assignees of this high-rate, high-fee mortgage may be liable for all claims and defenses by the borrower with respect to the high-rate, high-fee mortgage."

2. The following provisions apply to a claim made by a borrower against a purchaser or assignee of a high-rate, high-fee mortgage.

A. Any person who purchases or is otherwise assigned a high-rate, high-fee mortgage is subject to all affirmative claims and any defenses with respect to the loan that the borrower could 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 its purchase or acceptance of assignment of any high-rate, high-fee mortgages;

(2) Requires by contract that a seller or assignor of residential mortgage loans to the purchaser or assignee represent and warrant to the purchaser or assignee that either the seller or assignor will not sell or assign any high-rate, high-fee mortgages to the purchaser or assignee or 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-rate, high-fee mortgages. For purposes of this subsection, reasonable due diligence must provide for sampling and may not require loan-by-loan review.

Notwithstanding this paragraph, liability pursuant to this subsection may not accrue to a purchaser or assignee of a high-rate, high-fee mortgage as a result of an alleged violation by a creditor of section 8-206-D, subsection 1, paragraph B.

B. A borrower acting only in an individual capacity may assert claims that the borrower could assert against a creditor of the high-rate, high-fee mortgage against any subsequent holder or assignee of the high-rate, high-fee mortgage as follows:

(1) Within 5 years of the closing of a high-rate, high-fee mortgage, the borrower may assert a violation of this section in connection with the loan as an original action; and

(2) Within 10 years of the closing of a high-rate, high-fee mortgage, after an action to collect on the residential mortgage loan or foreclose on the collateral securing the residential mortgage loan has been initiated or the debt arising from the residential mortgage loan has been accelerated or the residential mortgage loan has become 60 days in default, the borrower may assert any defense, claim or counterclaim or action to enjoin foreclosure or preserve or obtain possession of the property that secures the loan.

A claim asserted by a borrower under this paragraph is limited to amounts required to reduce or extinguish the borrower's liability under the high-rate, high-fee mortgage plus amounts required to recover costs, including reasonable attorney's fees.

3. This section applies notwithstanding any other provision of law, except that nothing in this section may be construed to limit the substantive rights, remedies or procedural rights available to a borrower against any creditor, assignee or holder of a high-rate, high-fee mortgage under any other law. The rights conferred on borrowers in subsection 2, paragraphs A and B are independent of each other and do not limit each other.

Sec. A-20. 9-A MRSA §8-206-D is enacted to read:

§ 8-206-D. Residential mortgage loan requirements

1. The following acts and practices are prohibited in the making of a residential mortgage loan.

A. A creditor may not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a residential mortgage loan that refinances all or any portion of the existing loan or debt.

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

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

D. A residential mortgage loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit the acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

E. A creditor making a residential mortgage loan may not finance directly or indirectly any credit life, credit disability, credit unemployment or credit property insurance or any other life or health insurance or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis or through regularly scheduled periodic payments may not be considered financed by the creditor.

F. A borrower may not be charged a fee in addition to the actual public discharge fee to provide a release upon prepayment. Payoff balances must be provided in accordance with section 9-305-B.

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

(1) The determination of a borrower's reasonable ability to repay a subprime mortgage loan must include, but may not be limited to, consideration of the borrower's income, including statements submitted by or on behalf of the borrower in the loan application, except that a creditor may not disregard facts and circumstances that indicate that the income statements submitted by or on behalf of the borrower are inaccurate or incomplete, credit history, current obligations and employment status; the debt-to-income ratio of the borrower's monthly gross income, including the costs of property taxes and insurance; and other available financial resources other than the borrower's equity in the principal dwelling that secures or would secure the subprime mortgage loan.

(2) The calculation assumptions used in evaluating the ability to repay for subprime mortgage loans must include:

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

(b) Verification of all sources of income by tax returns, payroll receipts, bank records, reasonable alternative or reasonable 3rd-party verification; and

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

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

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

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

(c) Expanded Guidance for Subprime Lending Programs; and

(d) Interagency Guidance on Subprime Lending.

2. The following provisions apply with respect to a right to cure default of a residential mortgage loan.

A. If all defaults in connection with a residential mortgage loan are cured after the initiation of any action to foreclose, the creditor or the servicer shall take steps as necessary to terminate the foreclosure proceeding or other action. The borrower shall pay any reasonable costs incurred by the creditor or servicer before the cure of default. Cure of default reinstates the borrower to the same position as if the default had not occurred and nullifies, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

B. A borrower has the right to cure a default once in a 12-month period.

3. The administrator, by rule or order, shall prohibit acts or practices in connection with:

A. Residential mortgage loans that the administrator finds unfair, deceptive or designed to evade the provisions of this section; and

B. Refinancing of residential mortgage loans that the administrator finds are associated with abusive lending practices or that are otherwise not in the interest of the borrowing public.

4. The Attorney General of this State has jurisdiction to enforce this section against loan brokers and supervised lenders who 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 section.

5. The rights conferred by this section are independent of and in addition to any other rights under this Title and other state and federal laws.

Sec. A-21. 9-A MRSA §8-206-E is enacted to read:

§ 8-206-E. Violations of residential mortgage loan and high-rate, high-fee mortgage requirements

1. This section applies to any violation of section 8-206-A, 8-206-C or 8-206-D in connection with the origination, brokering or servicing of a residential mortgage loan. This section does not apply to a purchaser or assignee of a residential mortgage loan except as permitted in section 8-206-C, subsection 2.

2. Any person who has been found in violation of section 8-206-A, 8-206-C or 8-206-D by a court may be liable to the borrower for the following:

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

B. Statutory damages as follows:

(1) For violations described in 8-206-C, statutory damages equal to 2 times the finance charge paid under the loan and forfeiture of the remaining interest under the loan; and

(2) For violations described in 8-206-D, statutory damages in the amount of \$5,000 per violation;

C. Punitive damages for violations of section 8-206-C or section 8-206-D, subsection 1, paragraph B when the violation was malicious or reckless; and

D. Costs, including reasonable attorney's fees.

3. A borrower may be granted injunctive, declaratory and other equitable relief the court determines appropriate in an action to enforce compliance with this section and sections 8-206-A, 8-206-C and 8-206-D.

4. 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 section may not be construed to limit recoupment rights available to the borrower under any other law.

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

6. Any person who knowingly violates section 8-206-A or 8-206-C is guilty of a Class E crime.

7. A creditor in a residential mortgage loan who, when acting in good faith, fails to comply with the provisions of section 8-206-A, 8-206-C or 8-206-D is deemed not to have violated those sections if the creditor establishes that either:

A. 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

B. 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.

8. The remedies provided in this section are cumulative.

9. 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.

10. 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.

11. It is a violation of section 8-206-A, 8-206-C or 8-206-D for any person to attempt in bad faith to avoid the application of those sections 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 those sections when the loan would have been a high-rate, high-fee mortgage 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.

Sec. A-22. 9-A MRSA §8-206-F is enacted to read:

§ 8-206-F. Investigative and legal compliance personnel

1. The Superintendent of Consumer Credit Protection shall establish the following positions:

A. A position with the responsibility for promoting compliance with, and investigating alleged violations of, the provisions of this section by entities or individuals subject to the jurisdiction of the Bureau of Consumer Credit Protection; and

B. A staff attorney position with the responsibility for compliance with, and enforcement of the provisions of, this section by entities or individuals subject to the jurisdiction of the Bureau of Consumer Credit Protection.

2. Notwithstanding section 6-203, subsection 3-C, the Superintendent of Consumer Credit Protection may by rule adjust the fees paid with respect to creditors that are not supervised financial organizations making residential mortgage loans to support the costs of the positions established in subsection 1. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-23. 9-A MRSA §8-206-G is enacted to read:

§ 8-206-G. Annual report to Legislature

The Superintendent of Consumer Credit Protection shall report to the Legislature by January 15th of each year regarding the status of mortgage lending in this State and any unfair, deceptive or abusive mortgage lending practices that affect consumers. The report must include, but is not limited to, information on consumer complaints relating to mortgage lending, any enforcement actions, the number of foreclosures in the State, and support for financial literacy and consumer education and counseling. In preparing the report, the superintendent shall consult with the Bureau of Financial Institutions and the Attorney General.

Sec. A-24. 9-A MRSA §9-101, as enacted by PL 1987, c. 396, §12, is amended to read:

§ 9-101. Scope

This article applies to all consumer credit transactions made by creditors that are not supervised financial organizations, that are made to finance or refinance the acquisition of real estate or the initial construction of a dwelling or that are secured by a first-lien mortgage on real estate.

Sec. A-25. 9-A MRSA §9-311 is enacted to read:

§ 9-311. Real estate settlement procedures

A creditor and its loan officers 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 and Regulation X, 24 Code of Federal Regulations, Section 3500 et seq.

Sec. A-26. 9-A MRSA §9-312 is enacted to read:

§ 9-312. False information on application for credit

A supervised lender, or any loan officer 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 of a supervised lender knowingly falsify such information on a consumer's application.

Sec. A-27. 9-A MRSA §9-313 is enacted to read:

§ 9-313. Rate locks

If a supervised lender charges a consumer a fee to lock in a certain interest rate for a certain length of time, that supervised lender shall:

1. Take steps that are necessary to actually secure or guarantee the specified rate for the appropriate length of time;
2. Select a time period within which the loan can reasonably be expected to close; and

3. Use good faith efforts to close the loan within the rate lock period.

Sec. A-28. 9-A MRSA §9-314 is enacted to read:

§ 9-314. Prepayment penalty riders

A supervised lender may not impose a prepayment penalty provision through use of a rider or amendment to the loan contract if the terms of the loan contract state that no such prepayment penalty may be imposed or that such a penalty is not specifically authorized under state law.

Sec. A-29. 9-A MRSA §10-302, sub-§2, as amended by PL 2005, c. 274, §9, is further amended to read:

2. The terms and conditions of payment, including the total of all payments to be made by the consumer for the service or by any other person or entity, whether to the loan broker or to some other person; and

Sec. A-30. 9-A MRSA §10-303-A is enacted to read:

§ 10-303-A. Good faith and fair dealing

1. A loan broker shall, in addition to duties imposed by other statutes or at common law:

A. Act in good faith and with fair dealing in any transaction, practice or course of business in connection with the brokering or making of any mortgage loan;

B. Safeguard and account for any money handled for the borrower;

C. Follow reasonable and lawful instructions from the borrower;

D. Use reasonable skill, care and diligence;

E. Timely and clearly disclose to the borrower material information that might reasonably affect the borrower's rights, interests or ability to receive the borrower's intended benefit from the residential mortgage loan, including the total compensation the broker would receive from any of the loan options the broker presents to the borrower; and

F. Make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges and repayment terms of the loan.

2. The duties and standards of care created in this section may not be waived or modified.

Sec. A-31. 9-A MRSA §10-307 is enacted to read:

§ 10-307. Real estate settlement procedures

A loan broker and its loan officers 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 and Regulation X, 24 Code of Federal Regulations, Section 3500 et seq.

Sec. A-32. 9-A MRSA §10-308 is enacted to read:

§ 10-308. False information on application for credit

A loan broker or any loan officer 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 of a loan broker knowingly falsify such information on a consumer's application.

Sec. A-33. 9-A MRSA §10-309 is enacted to read:

§ 10-309. Rate locks

If a loan broker collects a fee from a consumer to lock in a certain interest rate for a certain length of time, that loan broker shall:

1. Take steps that are necessary to actually secure or guarantee the specified rate for the appropriate length of time;
2. Select a time period within which the loan can reasonably be expected to close; and
3. Use good faith efforts to close the loan within the rate lock period.

Sec. A-34. 10 MRSA §1330 is enacted to read:

§ 1330. Solicitation using prescreened trigger lead information from consumer report

1. **Use of prescreened trigger lead information.** When using prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a loan with another lender or loan broker, a lender or loan broker may not use unfair or deceptive practices described in subsection 2.

2. **Unfair or deceptive practices.** Without limitation, it is an unfair or deceptive practice to:

- A. Fail to state in the initial phase of the solicitation from a lender or loan broker that the solicitor is not affiliated with the lender or loan broker with which the consumer initially applied;
- B. Fail in the initial solicitation to conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer;
- C. Knowingly or negligently use information regarding consumers who have opted out of prescreened offers of credit or who have placed their contact information on the federal do-not-call registry; or
- D. Solicit a consumer with offers of certain rates, terms and costs with intent to subsequently raise the rates or change the terms to the consumer's detriment.

Sec. A-35. Authority to submit legislation. The Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation may submit legislation to the Second Regular Session of the 123rd Legislature to amend definitions in the Maine Revised Statutes, Title 9-A to conform with the uniform forms used by the system described in this Act and to modify the license renewal dates set forth in Title 9-A, section 2-302, subsection 1 and section 10-201.

Sec. A-36. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 9-A, Article 9, in the Article headnote, the words "consumer credit transactions secured by first-lien mortgages" are amended to read "consumer credit transactions made to acquire real estate or secured by first-lien mortgages," and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. A-37. Application. That section of this Part that amends the Maine Revised Statutes, Title 9-A, section 8-206-A and those sections of this Part that enact Title 9-A, section 8-103, subsection 1-A and Title 9-A, sections 8-206-C, 8-206-D and 8-206-E apply to all residential mortgage loans and high-rate, high-fee mortgages originated or entered into on or after the effective date of this Part.

Sec. A-38. Revisor's review; cross-references. The Revisor of Statutes shall review the Maine Revised Statutes and include in the errors and inconsistencies bill submitted to the Second Regular Session of the 123rd Legislature pursuant to Title 1, section 94 any sections necessary to correct and update any cross-references in the statutes to provisions of law repealed in this Part.

Sec. A-39. Legislative findings and purposes.

1. Legislative findings. The Legislature finds that the proliferation of predatory home lending in this State threatens our economy and the viability of many communities, causes decreases in home ownership, makes many homeowners victims of unprincipled creditors and places responsible Maine lending institutions at a disadvantage.

The Legislature further finds that, because competition and self-regulation have not eliminated the predatory terms for home-secured loans, the consumer protection provisions of this Part are necessary to protect Maine consumers, ensure fairness for responsible lenders and ensure responsible lending practices.

2. Purposes. The purposes of this Part are to protect home ownership and individual home equity and prohibit predatory lending practices in this State by addressing fraudulent or abusive lending practices in the mortgage market. Predatory lending practices restricted by this Act include:

- A. Lending practices that do not consider a borrower's genuine ability to repay, thereby increasing the probability of foreclosure;
- B. Loan flipping, which is repeatedly refinancing loans for the purpose of charging high fees to the consumer;
- C. Engaging in fraud or deception to conceal the true nature of the loan obligation, or ancillary products, from an unsuspecting or unsophisticated borrower;
- D. Adding excessive fees and "packing," which is the practice of adding fees far exceeding those justified on economic grounds, including without limitation financing of excessive points and fees, adding excessive prepayment penalties and financing of unnecessary products.

Sec. A-40. Rulemaking. The Superintendent of Consumer Credit Protection and the Superintendent of Financial Institutions shall adopt rules as authorized by the Maine Revised Statutes, Title 9-A, section 8-206-D, subsection 1, paragraph B before January 1, 2008.

Sec. A-41. Effective date. That section of this Part that enacts the Maine Revised Statutes, Title 9-A, section 8-206-F takes effect 90 days after adjournment of the 123rd Legislature. The remainder of this Part takes effect January 1, 2008.

PART B

Sec. B-1. 2 MRSA §6, sub-§2, as repealed and replaced by PL 2005, c. 683, Pt. A, §1, is amended to read:

2. Range 90. The salaries of the following state officials and employees are within salary range 90:

Superintendent of Financial Institutions;

Superintendent of Consumer Credit Protection;

State Tax Assessor;

Superintendent of Insurance;

Executive Director of the Maine Consumer Choice Health Plan;

Deputy Commissioner, Department of Administrative and Financial Services;

Associate Commissioner for Adult Services, Department of Corrections;

Associate Commissioner for Juvenile Services, Department of Corrections;

Public Advocate;

Deputy Commissioner of Integrated Services, Department of Health and Human Services;

Deputy Commissioner of Health, Integrated Access and Strategy, Department of Health and Human Services;

Chief Information Officer;

Associate Commissioner for Legislative and Program Services, Department of Corrections; and

Chief of the State Police.

Sec. B-2. 2 MRSA §6, sub-§4, as amended by PL 2005, c. 405, Pt. D, §3, is further amended to read:

4. Range 88. The salaries of the following state officials and employees are within salary range 88:

Director, Bureau of Employee Relations;

Director, Bureau of Air Quality;

Director, Bureau of Land and Water Quality;

Director, Bureau of Remediation and Waste Management;

Deputy Commissioner, Environmental Protection;

~~Director, Office of Consumer Credit Regulation;~~

Director, Office of Licensing and Registration;

Administrator, Office of Securities; and

Deputy Chief of the State Police.

Sec. B-3. 9-A MRSA §6-103, as amended by PL 1995, c. 502, Pt. H, §2, is repealed and the following enacted in its place:

§ 6-103. Administration

There is created and established the Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation. The Superintendent of Consumer Credit Protection is the head of the Bureau of Consumer Credit Protection. As used in this Act, and except as provided in section 1-301, subsection 2, "administrator" means the Superintendent of Consumer Credit Protection. The administrator is appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and to confirmation by the Legislature. The administrator is appointed for a 5-year term, or until a successor is appointed and qualified. Any vacancy occurring must be filled by appointment for the unexpired portion of the term. The administrator may be removed from office for cause by the Governor and Title 5, section 931, subsection 2 does not apply.

Sec. B-4. Transition provisions. The following provisions govern the transition of the Office of Consumer Credit Regulation to the Bureau of Consumer Credit Protection.

1. The Bureau of Consumer Credit Protection is the successor in every way to the powers, duties and functions of the former Office of Consumer Credit Regulation.

2. The current Director of the Office of Consumer Credit Regulation becomes the acting Superintendent of Consumer Credit Protection and shall serve in that capacity until a successor is appointed and qualified in accordance with the Maine Revised Statutes, Title 9-A, section 6-103.

3. All existing rules, regulations and procedures in effect, in operation or adopted in or by the Office of Consumer Credit Regulation or any of its administrative units or officers are hereby declared in effect and continue in effect until rescinded, revised or amended by the proper authority.

4. All existing contracts, agreements and compacts currently in effect in the Office of Consumer Credit Regulation continue in effect.

5. Any positions authorized and allocated subject to the personnel laws to the former Office of Consumer Credit Regulation are transferred to the Bureau of Consumer Credit Protection and may continue to be authorized.

6. All records, property and equipment previously belonging to or allocated for the use of the former Office of Consumer Credit Regulation become, on the effective date of this Part, part of the property of the Bureau of Consumer Credit Protection.

7. All existing forms, licenses, letterheads and similar items bearing the name of or referring to the Office of Consumer Credit Regulation may be used by the Bureau of Consumer Credit Protection.

Sec. B-5. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Office of Consumer Credit Regulation" appear or reference is made to that entity or those words, those words are amended to read or mean, as appropriate, "Bureau of Consumer Credit Protection" or "bureau," and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. B-6. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Director of the Office of Consumer Credit Regulation" appear or reference is made to that entity or those words, those words are amended to read or mean, as appropriate, "Superintendent of Consumer Credit Protection" or "superintendent," and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. B-7. Effective date. This Part takes effect when approved.

PART C

Sec. C-1. 9-A MRSA §1-202, sub-§8, ¶A, as amended by PL 1997, c. 64, §1, is further amended to read:

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

- (1) Pursuant to the terms of a construction financing agreement;
- (2) To protect the security or to perform the covenants of the consumer;
- (3) As negative amortization of principal under the terms of the financing agreement;
- (4) From funds withheld at consummation pending the resolution of matters that otherwise would tend to delay or prevent closing, including, without limitation, remedy of title defects or repairs to meet appraisal standards; or
- (5) Pursuant to the terms of a reverse mortgage transaction, as defined in section 8-103, subsection ~~11-A~~, paragraph ~~H-1X~~, 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. C-2. 9-A MRSA §2-509, as amended by PL 2007, c. 99, §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 mortgage, as defined in section 8-103, subsection ~~11-A~~, paragraph ~~F-1P~~, 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. C-3. 9-A MRSA §8-104, sub-§4, as enacted by PL 1997, c. 155, Pt. C, §2, is amended to read:

4. The administrator may exempt, by rule, from all or part of this Title any class of transactions, other than transactions involving a mortgage described in section 8-103, subsection ~~11-A~~, paragraph ~~F-1P~~, for which, in the determination of the administrator, coverage under all or part of this Title does not

provide a meaningful benefit to consumers in the form of useful information or protection. In determining which classes of transactions to exempt in whole or in part under this subsection, the administrator shall consider the following factors:

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

Sec. C-4. 9-A MRSA §8-105, sub-§6, ¶B, as enacted by PL 1995, c. 614, Pt. B, §3 and affected by §4, is amended to read:

- B. For purposes of section 8-204:
 - (i) If, except as provided in subparagraph (ii), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 1/2 of 1% of the total amount of credit extended; or
 - (ii) In the case of a transaction, other than a high-rate, high-fee mortgage as defined in section 8-103, subsection ~~1-A~~, paragraph ~~F-P~~, that:
 - (a) Is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction, as defined in section 8-103, subsection ~~1-A~~, paragraph ~~HW~~, or is any subsequent refinancing of such a transaction; and
 - (b) Does not provide any new consolidation or new advance, if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 1% of the total amount of credit extended.

Sec. C-5. 9-A MRSA §8-106-A, as enacted by PL 1995, c. 326, §4, is amended to read:

§ 8-106-A. Number of percentage points

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

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

B. Warranted by the need for credit.

2. An increase or decrease under subsection 1 may not result in the number of percentage points referred to in subsection 1 being less than 8 percentage points or greater than 12 percentage points.

3. In determining whether to increase or decrease the number of percentage points referred to in subsection 1, the administrator shall consult with representatives of consumers, including low-income consumers, and lenders.

The dollar amount specified in section 8-103, subsection ~~1-A~~, paragraph ~~F-1~~, subparagraph ~~(2)P~~ must be adjusted annually on January 1st by the annual percentage change in the Consumer Price Index, as reported on June 1st of the year preceding the adjustment.

This section may not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for an extension of credit.

Sec. C-6. 9-A MRSA §8-204, sub-§5, ¶A, as enacted by PL 1981, c. 243, §25, is amended to read:

A. A residential mortgage transaction as defined in section 8-103, subsection ~~1-A~~, paragraph ~~HW~~;

Sec. C-7. 9-A MRSA §8-206-A, sub-§15, as enacted by PL 1995, c. 326, §5, is amended to read:

15. The administrator may, by rule or order, exempt specific mortgage products or categories of mortgages from any of the prohibitions specified in subsections ~~6 to 13~~10 and ~~11-A~~ if the administrator finds that the exemption:

A. Is in the interest of the borrowing public; and

B. Applies only to products that maintain and strengthen home ownership and equity protection.

Sec. C-8. 9-A MRSA §8-209, sub-§4, ¶A, as enacted by PL 1995, c. 614, Pt. A, §14, is amended to read:

A. Any person who purchases or is otherwise assigned a high-rate, high-fee mortgage, as defined in section 8-103, subsection ~~1-A~~, paragraph ~~F-1~~P, is subject to all claims and defenses with respect to that mortgage that the consumer may assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising

ordinary due diligence could not determine, based on the documentation required by this Title, the itemization of the amount financed and other disclosure of disbursements, that the mortgage was a high-rate, high-fee mortgage. This paragraph does not affect rights of a consumer under subsection 1, 2 or 3 or any other provision of this Title.

Sec. C-9. 9-A MRSA §8-209, sub-§4, ¶D, as enacted by PL 1995, c. 614, Pt. A, §14, is amended to read:

D. Any person who sells or otherwise assigns a high-rate, high-fee mortgage, as defined in section 8-103, subsection ~~1-A~~, paragraph ~~F-1P~~, shall include a prominent notice of the potential liability under this subsection as determined by the administrator.

Sec. C-10. 10 MRSA §1141, sub-§2, as enacted by PL 1991, c. 261, is 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 ~~DH~~.

Sec. C-11. Appropriations and allocations. The following appropriations and allocations are made.

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Office of Consumer Credit Regulation 0091

Initiative: Allocates funds for a Chief Field Investigator position with responsibility for investigating complex allegations of mortgage-related violations, including directing and overseeing the office's fact-gathering process, and for supervising the investigative activities of existing compliance examination staff and allocates for a Staff Attorney position with responsibility for compliance and enforcement as provided under the Maine Revised Statutes, Title 9-A, section 8-206-F.

OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
POSITIONS - LEGISLATIVE COUNT	2.000	2.000
Personal Services	\$111,196	\$156,841
All Other	\$22,514	\$20,144
	<hr/>	<hr/>
OTHER SPECIAL REVENUE FUNDS TOTAL	\$133,710	\$176,985

Office of Consumer Credit Regulation 0091

Initiative: Allocates funds for the reclassification of the Director of the Office of Consumer Credit Regulation position to Superintendent of Consumer Credit Protection.

OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
Personal Services	\$8,061	\$15,785
	<hr/>	<hr/>
OTHER SPECIAL REVENUE FUNDS TOTAL	\$8,061	\$15,785

**PROFESSIONAL AND FINANCIAL REGULATION,
DEPARTMENT OF
DEPARTMENT TOTALS**

	2007-08	2008-09
OTHER SPECIAL REVENUE FUNDS	\$141,771	\$192,770
DEPARTMENT TOTAL - ALL FUNDS	\$141,771	\$192,770

See title page for effective date, unless otherwise indicated.