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FIRST REGULAR SESSION-2019

Legislative Document

No. 1767

S.P. 599

In Senate, May 23, 2019

An Act To Increase the Efficiency of Certain Consumer Credit Protection Laws

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

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator FOLEY of York.

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

PART A

Sec. A-1. 9-A MRSA §1-201, sub-§1, as amended by PL 2005, c. 604, §1, is further amended to read:

1. Except as otherwise provided in this section, this Act applies to consumer credit transactions and open-end credit plans made or entered into in this State. For purposes of this Act, a consumer credit transaction or open-end credit plan is made or entered into in this State if: the creditor, wherever located, enters into a consumer credit transaction or open-end credit plan with a consumer who is located in this State.

~~A. A signed writing evidencing the obligation or offer of the consumer is received by the creditor in this State;~~

~~B. The creditor, wherever located, induces the consumer who is a resident of this State to enter into the transaction or open-end credit plan by face-to-face, mail, telephone or electronic mail solicitation in this State; or~~

~~C. With respect to a payday loan, the lender, wherever located, enters into a payday loan transaction with a consumer who is located in this State.~~

Sec. A-2. 9-A MRSA §1-301, sub-§17, as amended by PL 2017, c. 106, §1, is further amended to read:

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

1 through a mortgage broker as defined in Article 8-A, section 8-506, subsection 1,
2 paragraph J, or a loan broker as defined in Article 10.

3 For purposes of this Title, "creditor" also includes a private educational lender as that
4 term is defined in 15 United States Code, Section 1650.

5 A Except with respect to credit sales of automobiles, a person regularly extends consumer
6 credit only if the person extended credit other than credit subject to high-cost mortgage
7 loan requirements more than 25 times or more than 5 times for transactions secured by a
8 dwelling in the preceding calendar year. With respect to credit sales of automobiles, a
9 person regularly extends consumer credit if the person extended credit more than 15
10 times in the preceding calendar year. If a person did not meet these numerical standards
11 in the preceding calendar year, the numerical standards must be applied to the current
12 calendar year.

13 "Creditor" includes a mortgage loan servicer.

14 **Sec. A-3. 9-A MRSA §2-301, sub-§2**, as amended by PL 2017, c. 106, §4, is
15 further amended to read:

16 **2.** Taking assignments of and undertaking direct collection of payments from or
17 enforcement of rights ~~from an office in this State~~ against debtors arising from supervised
18 loans; or

19 **Sec. A-4. 9-A MRSA §6-116, sub-§2**, as amended by PL 2009, c. 402, §4, is
20 further amended to read:

21 **2.** Financial information not normally available to the public that is submitted in
22 confidence by an individual or organization to comply with the licensing, registration or
23 other regulatory functions of the administrator, including information derived from a
24 credit or background investigation conducted pursuant to section 6-105-A, subsection 2;

25 **Sec. A-5. 9-A MRSA §6-203, sub-§§3-D and 3-E** are enacted to read:

26 **3-D.** Notwithstanding subsection 3-C, the administrator may by rule adjust the fees
27 paid with respect to creditors that are not supervised financial organizations making
28 residential mortgage loans to support the costs of compliance and staff attorney positions.
29 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
30 chapter 375, subchapter 2-A.

31 **3-E.** The administrator may lower or suspend any fee specified in this section, or
32 established by rulemaking pursuant to this section, by order.

33 **Sec. A-6. 10 MRSA §1273**, as enacted by PL 1993, c. 115, §1 and amended by
34 PL 1995, c. 309, §27, is further amended to read:

35 **§1273. Administrative enforcement**

36 The ~~Director of Consumer Credit Regulation~~ Superintendent of Consumer Credit
37 Protection may take appropriate action to ensure compliance with this chapter, including
38 without limitation: to receive and act on complaints; negotiate an assurance in writing

1 that a violator will not engage in the same or similar conduct in the future; conduct
2 hearings in accordance with the Maine Administrative Procedure Act and issue a cease
3 and desist order for violation of this chapter; and refer cases to the Attorney General, who
4 may bring a civil action against a person for knowingly violating a written assurance of
5 discontinuance. If a court finds a violation of this chapter it may assess a civil forfeiture
6 of not more than \$1,000.

7 **Sec. A-7. 10 MRSA §1495-H, sub-§6**, as enacted by PL 2003, c. 668, §6 and
8 affected by §12, is repealed and the following enacted in its place:

9 **6. Action on license.** After notice and the opportunity for hearing before the
10 administrator, revocation, suspension or nonrenewal of the payroll processor's license.

11 A respondent aggrieved by an order of the administrator may obtain judicial review of the
12 order in the Superior Court. The proceeding for review is initiated and conducted in
13 accordance with Title 5, chapter 375, subchapter 7.

14 **Sec. A-8. 32 MRSA §6102, sub-§10**, as enacted by PL 1997, c. 155, Pt. A, §2, is
15 amended to read:

16 **10. Money transmission.** "Money transmission" means the business of selling or
17 issuing payment instruments or the business of receiving money, including digital
18 currencies, for transmission or transmitting money, including digital currencies, within
19 the United States or to locations abroad by any means, including, but not limited to,
20 payment instrument, wire, facsimile or electronic transfer.

21 **Sec. A-9. 32 MRSA §11002, sub-§1-B**, as enacted by PL 2017, c. 216, §2, is
22 repealed.

23 **Sec. A-10. 32 MRSA §11002, sub-§5-A**, as enacted by PL 2017, c. 216, §3, is
24 amended to read:

25 **5-A. Debt buyer.** "Debt buyer" means a person that is regularly engaged in the
26 business of purchasing ~~charged-off delinquent~~ consumer debt for collection purposes,
27 whether the person collects the debt or hires a 3rd party, which may include an attorney-
28 at-law, in order to collect the debt. "Debt buyer" does not include a supervised financial
29 organization as defined in Title 9-A, section 1-301, subsection 38-A or a person that
30 acquires ~~charged-off delinquent~~ consumer debt incidental to the purchase of a portfolio
31 predominantly consisting of consumer debt that ~~has not been charged-off is not~~
32 delinquent. A debt buyer is considered a debt collector for all purposes under this
33 chapter.

34 **Sec. A-11. 32 MRSA §11051**, as amended by PL 2009, c. 243, §7, is further
35 amended to read:

36 **§11051. Investigation, suspension and revocation of licenses**

37 The Bureau of Consumer Credit Protection may examine or investigate the records
38 and practices of any person the ~~superintendent~~ administrator believes has engaged in
39 conduct governed by this chapter in accordance with Title 9-A, section 6-106, may

1 review and approve collection letters proposed for use in this State and may charge for
2 expenses incurred pursuant to Title 9-A, section 6-106, subsection 6. ~~The superintendent~~
3 ~~may file a complaint with the District Court to suspend or revoke a license issued~~
4 ~~pursuant to this chapter, if, after investigation or hearing, or both, the superintendent has~~
5 ~~reason to believe that the licensee has violated any provisions of this chapter or any~~
6 ~~administrative rules issued pursuant to this chapter, or has failed to maintain its financial~~
7 ~~condition sufficient to qualify for a license on an original application.~~

8 After notice and opportunity for hearing, the administrator may suspend or revoke a
9 licensee's license issued pursuant to this chapter if the administrator finds that:

10 **1. Grounds for denial.** A fact or condition exists that, if it had existed at the time
11 when the licensee applied for its license, would have been grounds for denying the
12 application;

13 **2. Violations.** The licensee has knowingly violated any material provision of this
14 chapter or any rule adopted or order validly issued by the administrator under authority of
15 this chapter;

16 **3. Safety and soundness.** The licensee is conducting its business in an unsafe or
17 unsound manner;

18 **4. Insolvency.** The licensee is insolvent;

19 **5. Failure to meet obligations.** The licensee has suspended payment of its
20 obligations, has made an assignment for the benefit of its creditors or has admitted in
21 writing its inability to pay its debts as they become due;

22 **6. Bankruptcy.** The licensee has applied for an adjudication of bankruptcy,
23 reorganization, arrangement or other relief under any bankruptcy;

24 **7. Refusal of examination.** The licensee has refused to permit the administrator to
25 make an examination authorized by this chapter;

26 **8. Failure to respond.** The licensee has failed to promptly and adequately respond
27 to communications from the administrator; or

28 **9. Failure to file report.** The licensee has willfully failed to make a report required
29 by this chapter.

30 **Sec. A-12. 32 MRSA §11051-B** is enacted to read:

31 **§11051-B. Administrative enforcement orders**

32 **1. Cease and desist.** After notice and hearing, the administrator may order any
33 person to cease and desist from engaging in violations of this chapter or any lawful rule
34 adopted or order issued by the administrator and may further order that the person take
35 appropriate corrective action to reimburse consumers in cases in which consumers have
36 been charged amounts in excess of those permitted by this chapter. Notice and hearing

1 need not be provided prior to issuance of an order to cease and desist when, in the opinion
2 of the administrator, immediate action is required to protect the public interest and:

3 A. The debt collector has not complied with section 11031; or

4 B. The debt collector does not maintain a permanent place of business in this State.

5 A respondent aggrieved by an order of the administrator may obtain judicial review of the
6 order in the Superior Court. The proceeding for review is initiated and conducted in
7 accordance with Title 5, chapter 375, subchapter 7.

8 **2. Objection not urged; remand.** An objection not urged at the hearing under
9 subsection 1 may not be considered by the court unless the failure to urge the objection is
10 excused for good cause shown. A party may move the court to remand the case to the
11 administrator in the interest of justice for the purpose of adducing additional specified
12 and material evidence and seeking findings thereon upon good cause shown for the
13 failure to adduce this evidence before the administrator.

14 **3. Testimony available to parties.** The administrator's copy of the testimony at the
15 hearing under subsection 1 must be available at reasonable times to all parties for
16 examination without cost.

17 **4. Obtain decree.** If no proceeding is initiated under subsection 1, the administrator,
18 through the Attorney General, may obtain a decree of the Superior Court for enforcement
19 of its order upon showing that the order was issued in compliance with this section, that
20 no proceeding for review was timely initiated and that the respondent is subject to the
21 jurisdiction of the court. The decree of the Superior Court may also provide any relief
22 available in an action brought under Title 9-A, section 6-110.

23 **5. Unconscionable agreements; fraudulent, unconscionable conduct.** With
24 respect to unconscionable agreements or fraudulent or unconscionable conduct by the
25 respondent, the administrator may not issue an order pursuant to this section, but, through
26 the Attorney General, may bring a civil action for an injunction.

27 **Sec. A-13. 32 MRSA §11051-C** is enacted to read:

28 **§11051-C. Assurance of discontinuance**

29 If it is claimed that a person has engaged in conduct that could be subject to an order
30 by the administrator or by a court, the administrator may accept an assurance in writing
31 that the person will not engage in the same or in similar conduct in the future. Such an
32 assurance may include any, or any combination, of the following: stipulations for the
33 voluntary payment by the debt collector of the costs of investigation or of an amount to
34 be held in escrow as restitution to debtors aggrieved by past or future conduct of the debt
35 collector or to cover costs of future investigation, or admissions of past specific acts by
36 the debt collector or that such acts violated this chapter or other statutes. A violation of
37 an assurance of discontinuance is a violation of this chapter.

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PART B

Sec. B-1. 9-A MRSA §8-504, sub-§2, as amended by PL 2013, c. 464, §4, is further amended to read:

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 1026 and 12 Code of Federal Regulations, Part 1013. 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; and~~

~~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.

Sec. B-2. 9-A MRSA §8-505, sub-§§5 to 7, as enacted by PL 2011, c. 427, Pt. A, §15, are amended to read:

5. Civil liability. ~~Except as otherwise provided for transactions subject to section 8-506, subsection 6, any~~ 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~~ 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~~ 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.

Sec. B-3. 9-A MRSA §8-506, as amended by PL 2013, c. 464, §§6 to 9, is repealed.

Sec. B-4. 9-A MRSA §8-508, sub-§1, as enacted by PL 2011, c. 427, Pt. A, §15, is amended to read:

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 law; and

PART C

Sec. C-1. 9-A MRSA §6-105-A, as amended by PL 2011, c. 427, Pt. B, §§10 and 11, is further amended 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 mortgage loan originators thereof, or entities in other license categories processed by the system that are licensed or registered by the administrator, the administrator may undertake the following actions.

1. The administrator may establish new rules and procedures, 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 and procedures 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~~ administrator's finding that each new rule or procedure 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 mortgage loan originator thereof, or entity in another license category processed by the system that is licensed or registered by the administrator, 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.

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

6 **Sec. C-2. 9-A MRSA §6-202, sub-§1**, as amended by PL 2009, c. 228, §1, is
7 further amended to read:

8 **1.** Persons subject to this Part shall file notification with the administrator before
9 commencing business in this State; and, annually thereafter, on or before January 31st ~~of~~
10 ~~each year or on an alternate date established by the administrator.~~ The notification filings
11 must be made to the administrator and must be in a form and contain information that the
12 administrator considers appropriate for the proper supervision and regulation of such
13 persons.

14 **PART D**

15 **Sec. D-1. 9-A MRSA §12-107, sub-§4**, as enacted by PL 2007, c. 394, §1 and
16 affected by §3, is repealed.

17 **Sec. D-2. 14 MRSA §6111, sub-§3-B**, as enacted by PL 2009, c. 402, §13, is
18 repealed.

19 **Sec. D-3. 14 MRSA §6112, sub-§4**, as enacted by PL 2009, c. 402, §15, is
20 amended to read:

21 **4. Funding.** The Department of Professional and Financial Regulation, Bureau of
22 Consumer Credit Protection shall ~~establish a nonlapsing, dedicated account for the~~
23 ~~deposit of all~~ revenues transferred from the Department of Administrative and Financial
24 Services, Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and
25 ~~for any funds received from any public or private source into its operating account.~~ The
26 Bureau of Consumer Credit Protection shall use the ~~account~~ funds to cover the costs of
27 carrying out the duties in this section and section 6111, subsections 3-A, ~~3-B~~ and 4-A;
28 ~~and the funds in the account may not be used for any other purpose.~~

29 **Sec. D-4. 14 MRSA §6112, sub-§5**, as enacted by PL 2009, c. 402, §15, is
30 repealed.

31 **SUMMARY**

32 Part A of this bill does the following.

33 **1.** It clarifies the jurisdiction of the Department of Professional and Financial
34 Regulation, Bureau of Consumer Credit Protection to regulate transactions entered into
35 by mail, telephone or electronic mail or using a creditor's website when the consumer is
36 located in Maine.

1 2. It establishes that an automobile seller is regularly engaged in credit sales if the
2 seller sells more than 15 cars per year on credit. Currently, a dealer can sell up to 25 cars
3 a year on credit without complying with any disclosure, rate cap or repossession
4 standards.

5 3. It defines a supervised lender to include a company that purchases and collects on
6 supervised loans, regardless of whether the company maintains an office in this State.
7 Current law already holds in-state companies to this standard.

8 4. It clarifies confidentiality provisions by referencing an exception currently found
9 in another section of the Maine Consumer Credit Code.

10 5. It authorizes the Superintendent of Consumer Credit Protection to adjust fees to
11 support the costs of compliance and staff attorney positions with revenues derived from
12 nonbank mortgage companies. It also allows the superintendent to reduce fees by order.

13 6. It corrects a reference to the Superintendent of Consumer Credit Protection.

14 7. It specifically provides that the Superintendent of Consumer Credit Protection or
15 the Superintendent of Financial Institutions has the authority, after notice to the licensee
16 and opportunity to be heard, to suspend, revoke or deny renewal of a payroll processor's
17 license.

18 8. It confirms the ability of the Bureau of Consumer Credit Protection to regulate
19 transmission of digital currencies, such as Bitcoin.

20 9. It clarifies the definition of "debt buyer" as a regular purchaser of delinquent debt,
21 regardless of whether the delinquent debt has been charged off and removed as an
22 account from the books of the creditor as an asset and treated as a loss or expense.

23 10. It establishes the Superintendent of Consumer Credit Protection's authority over
24 debt collectors consistent with authority granted the administrator with respect to other
25 license types.

26 11. It adds to the laws governing debt collectors routine enforcement authority
27 consistent with authority currently applied with respect to consumer lenders and creditors.

28 12. It adds to the laws governing debt collectors an assurance of discontinuance as an
29 enforcement option consistent with current law applicable to consumer lenders and
30 creditors.

31 Part B repeals mortgage lending restrictions applicable to nonbank mortgage lenders
32 that have been made unnecessary due to subsequent enhancements to federal mortgage
33 lending laws.

34 Part C does the following.

35 1. It permits the use of a nationwide multistate licensing system to process licenses
36 and registrations with respect to general creditors, debt collectors, money transmitters and
37 other entities regulated by the Bureau of Consumer Credit Protection. It also authorizes

1 the use of that system by large, national companies that already use the system for their
2 licenses in other states.

3 2. It amends a notification date provision in the law to permit the Bureau of
4 Consumer Credit Protection to use the nationwide mortgage licensing system for different
5 business types.

6 Part D does the following.

7 1. It repeals language that requires annual reports to the joint standing committee of
8 the Legislature having jurisdiction over insurance and financial services matters.

9 2. It repeals language that requires a report to the Legislature every 90 days on the
10 activities of the Bureau of Consumer Credit Protection's foreclosure intake, counseling
11 and referral program.

12 3. It consolidates accounts within the Bureau of Consumer Credit Protection.

13 4. It repeals language that requires the Bureau of Consumer Credit Protection to
14 report to the Legislature every 6 months on the budgetary aspects of the bureau's
15 foreclosure intake, counseling and referral program.