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In Senate, April 4, 2017

An Act To Improve the Foreclosure Process by Regulating Mortgage Loan Servicers

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

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator DOW of Lincoln.
Cosponsored by Representative WALLACE of Dexter and
Representative: PICCHIOTTI of Fairfield.

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

2 **Sec. 1. 9-A MRSA §1-301, sub-§17**, as repealed and replaced by PL 2011, c.
3 427, Pt. A, §4, is amended to read:

4 **17.** "Creditor" means a person who both:

5 A. Regularly extends, whether in connection with loans, sales of property or
6 services, or otherwise, consumer credit that is payable by agreement in more than 4
7 installments or for which the payment of a finance charge is or may be required; and

8 B. Is the person to whom the debt arising from the consumer credit transaction is
9 initially payable on the face of the evidence of indebtedness or, if there is no such
10 evidence of indebtedness, by agreement; except that, in the case of an open-end credit
11 plan involving a credit card, the card issuer and any person who honors the credit
12 card and offers a discount that is a finance charge are creditors.

13 For the purpose of the requirements imposed under Article 8-A for credit billing pursuant
14 to 15 United States Code, Section 1666 et seq. and for open-end consumer credit pursuant
15 to 15 United States Code, Section 1637(a)(5), (a)(6), (a)(7), (b)(1), (b)(2), (b)(3), (b)(8)
16 and (b)(10), "creditor" also includes card issuers whether or not the amount due is
17 payable by agreement in more than 4 installments or the payment of a finance charge is or
18 may be required and the administrator shall by regulation apply these requirements to
19 those card issuers, to the extent appropriate, even though the requirements are by their
20 terms applicable only to creditors offering open-end credit plans.

21 For the purposes of this Title, "creditor" also includes any person who originates 2 or
22 more mortgages referred to as high-cost mortgage loans under Article 8-A, section 8-506
23 in any 12-month period or any person who originates one or more such mortgage loans
24 through a mortgage broker as defined in Article 8-A, section 8-506, subsection 1,
25 paragraph J, or a loan broker as defined in Article 10.

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

28 A person regularly extends consumer credit only if the person extended credit other than
29 credit subject to high-cost mortgage loan requirements more than 25 times or more than 5
30 times for transactions secured by a dwelling in the preceding calendar year. If a person
31 did not meet these numerical standards in the preceding calendar year, the numerical
32 standards must be applied to the current calendar year.

33 "Creditor" includes a mortgage loan servicer.

34 **Sec. 2. 9-A MRSA §1-301, sub-§24-C** is enacted to read:

35 **24-C.** "Mortgage loan servicer" means a person or organization that undertakes
36 direct collection of payments from or enforcement of rights against debtors arising from a
37 supervised loan secured by a dwelling.

38 **Sec. 3. 9-A MRSA §1-301, sub-§38-A, ¶B**, as amended by PL 2001, c. 371, §3,
39 is further amended to read:

1 B. A person, other than an insurance company or other organization primarily
2 engaged in an insurance business, that is subject to the supervision by an official or
3 agency of a state or of the United States and is:

4 (1) Organized, chartered or holding an authorization certificate under the laws of
5 a state or of the United States that authorizes the person both to make or service
6 loans and to receive deposits, including a savings, share, certificate or deposit
7 account; or

8 (2) A nondepository trust company, uninsured bank or merchant bank organized,
9 chartered or holding an authorization certificate under the laws of a state or of the
10 United States that authorizes the limited-purpose financial institution to make or
11 service loans.

12 **Sec. 4. 9-A MRSA §1-301, sub-§39**, as amended by PL 1997, c. 66, §4, is
13 further amended to read:

14 **39.** "Supervised lender" means a person authorized to make or take assignments of or
15 to service supervised loans, either under a license issued by the ~~Administrator (section~~
16 ~~2-301), administrator under section 2-301~~ or as a supervised financial organization
17 ~~(section 1-301, subsection 38-A).~~

18 **Sec. 5. 9-A MRSA §2-301**, as amended by PL 1987, c. 129, §33, is further
19 amended to read:

20 **§2-301. Authority to make or service supervised loans**

21 Unless a person is a supervised financial organization or has first obtained a license
22 pursuant to this Act from the administrator authorizing ~~him~~ the person to make or service
23 supervised loans, ~~he shall~~ the person may not engage in the business of:

24 1. Making supervised loans; ~~or~~

25 2. Taking assignments of and undertaking direct collection of payments from or
26 enforcement of rights from an office in this State against debtors arising from supervised
27 loans; or

28 3. Servicing mortgage loans.

29 **Sec. 6. 9-A MRSA §2-302**, as amended by PL 2013, c. 466, §§1 to 5, is further
30 amended to read:

31 **§2-302. License to make or service supervised loans**

32 1. The administrator shall receive and act on all applications for licenses to make or
33 service supervised loans under this Act. Applications must be filed in the manner
34 prescribed by the administrator and must contain the information required by the
35 administrator to make an evaluation of the financial responsibility, character and fitness
36 of the applicant.

1 A. For a lender subject to this subsection whose activities include making or
2 arranging residential mortgage loans, an application for a license to make or service
3 supervised loans must be made electronically, through the nationwide mortgage
4 licensing system and registry. Licenses expire December 31st of each year and must
5 be renewed through the nationwide mortgage licensing system and registry. An
6 application for an initial license must be accompanied by a fee of \$250, and an annual
7 renewal application must be accompanied by a fee of \$100. An application for an
8 initial license or renewal for a place of business other than that of the applicant's first
9 licensed location must be accompanied by a fee of \$100. An applicant must also pay
10 a nationwide mortgage licensing system and registry processing fee in an amount to
11 be determined by the administrators of the nationwide mortgage licensing system and
12 registry. A nonprofit organization exempt from taxation under the United States
13 Internal Revenue Code, Section 501(c)(3) and engaged in the financing of housing
14 for low-income people under a program designed specifically for that purpose must
15 pay an initial licensing fee, and a fee for each branch location, of \$20 and a renewal
16 licensing fee and renewal fee for each branch location of \$10, plus the applicable
17 nationwide mortgage licensing system and registry processing fee.

18 B. For a lender subject to this subsection whose activities do not include making or
19 arranging residential mortgage loans, an initial application for a license must be
20 accompanied by a \$500 fee and a renewal application must include a \$200 fee. A
21 license is granted for a 2-year period and expires on September 30th of the 2nd year.
22 An application for an initial license or renewal for a place of business other than that
23 of the applicant's first licensed location must be accompanied by a fee of \$200.

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

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

1 B. As used in this section, the term "financial responsibility" means that the applicant
2 has available for the operation of the licensed business net assets of at least \$25,000
3 and upon issuance of a license, each licensee shall maintain net assets of at least
4 \$25,000 that are either used or readily available for use in the conduct of the business
5 of each office of the licensee in which supervised loans are made or serviced.

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

11 3. Upon written request, the applicant is entitled to a hearing on the question of the
12 applicant's qualifications for a license or registration if (a) the administrator has notified
13 the applicant in writing that the application has been denied, or (b) the administrator has
14 not issued a license or registration within 60 days after the application for the license or
15 registration was filed. A request for a hearing may not be made more than 15 days after
16 the administrator has mailed a writing to the applicant notifying the applicant that the
17 application has been denied and stating in substance the administrator's findings
18 supporting denial of the application.

19 4. A separate license is required for each place of business. Each branch location
20 license application must be accompanied by a surety bond, in a form acceptable to the
21 administrator, in the amount of \$50,000.

22 5. A licensee may conduct the business of making or servicing supervised loans only
23 at or from any place of business for which ~~he~~ the licensee holds a license and not under
24 any other name than that in the license. For purposes of this subsection, the closing of a
25 supervised loan, secured by an interest in real estate, made by the licensee, at the office of
26 an attorney or land title company, ~~shall~~ may not be considered the making or servicing of
27 a supervised loan at the place of business other than the licensee's licensed location.
28 Loans made pursuant to a lender credit card do not violate this subsection.

29 5-A. A licensee subject to subsection 1, paragraph A may conduct the business of
30 making supervised loans only through a mortgage loan originator who possesses a
31 current, valid license.

32 6. Any supervised loan, otherwise valid under the provisions of this Act, made by
33 any corporation or by any subsidiary or affiliate of any corporation to which a license is
34 granted by the administrator on or before June 30, 1975, and to which said supervised
35 loan is assigned, ~~shall be~~ is deemed to have been made by a duly licensed licensee,
36 provided the administrator finds that said corporation has made a good faith effort to
37 comply with the licensing provisions of this Act.

38 **Sec. 7. 9-A MRSA §2-303, sub-§1**, as amended by PL 2011, c. 427, Pt. B, §7, is
39 further amended to read:

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

1 A. The licensee has violated this Act or any rule or order made pursuant to this Act;
2 or

3 B. Facts or conditions exist that would clearly have justified the administrator in
4 refusing to grant a license had these facts or conditions been known to exist at the
5 time the application for the license was made.

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

8 **Sec. 8. 9-A MRSA §2-303-A**, as amended by PL 2011, c. 427, Pt. B, §8, is further
9 amended to read:

10 **§2-303-A. Temporary suspension of license**

11 Notwithstanding Title 5, sections 10003 and 10004 and Title 10, section 8003, if the
12 public interest or the protection of borrowers so requires, the administrator may, by order,
13 suspend a license to make or service supervised loans or a license as a mortgage loan
14 originator or postpone the effective date of such a license. Upon entry of the order, the
15 administrator shall promptly notify the applicant or licensee that an order has been
16 entered, of the reasons for the order and that, within 15 days after the receipt of a written
17 request by the applicant or licensee, the matter must be scheduled for hearing. Section
18 2-303 applies to all subsequent proceedings.

19 **Sec. 9. 9-A MRSA §2-304, sub-§2**, as amended by PL 2013, c. 466, §6, is further
20 amended to read:

21 2. The administrator may direct each licensee to file composite annual and quarterly
22 reports relating to all supervised loans made ~~or~~ arranged or serviced by that licensee.
23 Information contained in annual and quarterly reports is confidential and may be
24 published only in composite form. The administrator may at any time require additional
25 reports if the administrator determines such action necessary to the proper supervision of
26 licensees.

27 **Sec. 10. 9-A MRSA §2-309**, as enacted by PL 1973, c. 762, §1, is amended to
28 read:

29 **§2-309. No other business for purpose of evasion**

30 A supervised lender may not carry on other business for the purpose of evasion or
31 violation of this Act at a location where ~~he~~ the supervised lender makes or services
32 supervised loans.

33 **SUMMARY**

34 This bill amends the Maine Consumer Credit Code to add mortgage loan servicer to
35 the definition of "creditor," to define "mortgage loan servicer" and to require mortgage
36 loan servicers to be licensed in the same manner as supervised lenders are.