



**LEGAL SERVICES  
FOR MAINE ELDERS**

LD 314 -- An Act to Establish Consumer Protections Regarding Small Dollar Loans

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders  
Joint Standing Committee on Health Coverage, Insurance, and Financial Services

February 12, 2025

Senator Bailey, Representative Mathieson, and members of the Joint Standing Committee on Health Coverage, Insurance, and Financial Services:

My name is John Brautigam. I am here today on behalf of Legal Services for Maine Elders. LSE provides free legal help for Mainers aged 60 and older when their basic human needs are at stake.

I have been practicing law for 34 years. I also served as Assistant Attorney General in the Consumer Protection Division, and as a litigating attorney in the United States Securities and Exchange Commission. I had the privilege of serving on your predecessor committee for two legislative sessions, including one session as House Chair.

**Maine's True Lender Law**

For decades Maine and nearly every other state has limited the interest rate charged for a personal loan. This cap is a statement of public policy. It says that although access to credit can help people overcome financial difficulty, at a certain point a very high interest rate does more harm than good. Loans at exorbitant rates cross the line from assisting a borrower to exploiting them. This is a cornerstone consumer protection in Maine law.

But we are in a federal system. Maine cannot dictate what interest rate is charged by banks in other states. This is true even when those banks lend to Maine borrowers.

Most credible banks chartered in other states steer clear of egregious predatory lending. Instead, their business model rests on long-term stability, regulatory compliance, and their reputation. They don't make loans with an APR of 100 percent.

Eventually, however, some out-of-state interests thought up a way to lend in Maine without having to get a charter in another state. These entities are not banks, but they partner with other banks in a way that would exempt them from Maine law. Under this arrangement, these out-of-state businesses continued to perform all the key roles of a lender such as creating the loan program, managing the loans, and assuming the financial risk of the loans. But they did all this

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under the umbrella of another financial institution which shielded them from having to comply with Maine law. They typically paid a fee to the intermediary, so this came to be known as the “rent-a-bank” arrangement – a gaping loophole in public policy regarding interest rate limits.

Maine and many other states soon responded by closing the loophole. Maine enacted a law saying that the company that is operating this arrangement cannot hide behind an intermediary.<sup>1</sup> The legislature decided that it was necessary to stop companies from engaging in “subterfuge” or “pretense” to circumvent the law.

Specifically, our law now says that when one company is the source of the capital for the loan, manages the loan, and bears the financial risk, it is considered the “true lender” regardless of the technical role of any intermediary. This is called the “totality of the circumstances” test for identifying who is the real lender. You could also say that it’s the “If it walks like a duck and talks like a duck . . .” test. This common sense rule now determines which company must comply with Maine laws. It says that a company can’t evade responsibility on the basis of a technicality.

The “true lender” law was approved by your predecessor committee with a unanimous vote and sailed through the House and Senate. It was signed into law in June 2021. The loophole was closed. Maine’s interest rate caps and other consumer protections now apply with full force to entities even if they try to use other financial institutions to shield them. This law is working as intended—it gives Maine a more uniform policy and prevents out-of-state companies from trapping borrowers in a cycle of debt with sky-high interest rates.

The most important provision of Maine’s “true lender” law is 9-A M.R.S. § 2-702. This is where you will find the “totality of the circumstances” test. This entire section would be repealed by LD 314. See page 1, line 12.

### **Does LD 314 Include an Interest Rate Cap?**

The bill does not come close to adequately replacing the true lender law. It exempts supervised lenders from the consumer protection provisions of the Maine Consumer Credit Code including interest rate limits. Advocates of LD 314 may say that it has a new cap that will work just as well. We disagree. Instead of an explicit interest rate percentage cap, the bill would focus on the dollar amount of the monthly repayment. Under the bill a lender could not require a monthly payment of more than 12% of the borrower’s monthly income. Since this approach does not link the repayment cap to the size or duration of the loan, exorbitant interest rates are entirely possible.

An example will illustrate how LD 314 would work. Consider a borrower who has a monthly income of \$3,000. The bill allows for a maximum monthly payment of \$360, equal to twelve percent of income. This monthly payment maximum is the same regardless of whether the loan is for \$250 or \$2500, or whether the loan is repaid in four months or twelve months. If this borrower takes out a \$2,500 loan to be repaid over 12 months, the maximum APR would be

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<sup>1</sup> 2021 Public Laws, chapter 297.

115.37 percent.<sup>2</sup> But it gets worse. Remember, the lender could charge up to \$360 per month on any loan, even one much smaller than \$2,500. If you do the math, a smaller loan amount means an APR even higher than 115 percent, assuming the same monthly repayment.

### **This is no Time to Roll Back Consumer Protections.**

Those who benefit from unlimited interest rates argue that repealing Maine's true lender law would expand access to credit, but that is deceptive. The loans they offer are not designed to help people build wealth or financial stability. Instead, they are structured to extract as much money as possible from those who can least afford it. These lenders thrive when borrowers are caught up in a long-term cycle of debt. The bill says a borrower cannot have more than one loan, but it does not prohibit a never-ending chain of loans trapping the consumer in exorbitant repayment requirements. Companies with a genuine interest in financial inclusion, economic opportunity, or responsible lending would not do this. We make this statement based on decades of experience working to help Mainers struggling to achieve financial security and independence.

Meaningful state law consumer protections are more important than ever. The federal agency charged with protecting bank account holders is no longer operating and may be abolished. See attachment.<sup>3</sup> Regardless of whether one agrees with abolishing the CFPB, even those who are critical of the CFPB say that state-based regulation is crucial because state authorities are closer to the situation and have the most relevant expertise and experience.<sup>4</sup> This is no time to weaken proven state protections.

### **Conclusion**

I urge you to reject any attempt to repeal the true lender law. It is not an obstacle to economic prosperity – it is an important safeguard. LD 314 would benefit those who profit from hardship while harming families, small businesses, and our communities.

Thank you.

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<sup>2</sup> Assuming this is a standard fully amortizing loan with fixed equal monthly payments.  $R = P/L \div (1 - (1+r)^{-n})$  where P = Maximum allowable monthly payment (12% of monthly income); L = Loan amount (\$2,500); r = Monthly interest rate (APR/12, expressed as a decimal); n = Loan term in months (12 or 24 months).

<sup>3</sup> Since 2010, the CFPB has returned over \$17 billion to consumers harmed by illegal practices in banking, credit cards, mortgages, and other financial products. The website with the cite for this and other information was taken off-line on February 7, 2025.

<sup>4</sup> [https://www.supremecourt.gov/DocketPDF/22/22-448/271782/20230710212140388\\_CFPB%20Motion%20to%20Participate.pdf](https://www.supremecourt.gov/DocketPDF/22/22-448/271782/20230710212140388_CFPB%20Motion%20to%20Participate.pdf)

# Attachment

