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COMMITTEE AMENDMENT " ." TO LD 522, An Act To Cap Interest Rates for Consumer Debt

Amend the bill by striking out the title and inserting in its place the following:

An Act to Protect Consumers Against Predatory Lending Practices

Amend the bill by striking out everything after the enacting and before the summary and inserting in its place the following:

Sec. 1. **9-A MRSA Article 2, Part 7** is enacted to read:

Part 7: Fraudulent Practices

§2-701. Engaging in any pretense to evade requirements of this Article prohibited

Any entity covered by this Article may not engage in any device, subterfuge, or pretense to evade the requirements of this Article including, but not limited to, making loans disguised as a personal property sale and leaseback transaction, disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services, or making, offering, assisting, or arranging a debtor to obtain a loan with a greater rate or interest, consideration, or charge than is permitted by this Article through any method. Any loan made in violation of this Part is void and uncollectible as to any principal, fee, interest, or charge.

§2-702. Purporting to act as an agent or service provider for another entity exempt from this Article

A person is a lender subject to the requirements of this Article notwithstanding the fact that the person purports to act as an agent, service provider, or in another capacity for another entity that is exempt from this Article, if, among other things:

- A. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan;
- B. The person markets, brokers, arranges, or facilitates the loan and holds the right, requirement, or first right of refusal to purchase loans, receivables, or interests in the loans; or
- C. The totality of the circumstances indicate that the person is the lender and the transaction is structured to evade the requirements of this Article. Circumstances that weigh in favor of a person being a lender include, without limitation, when the person:

- (i) Indemnifies, insures, or protects an exempt entity for any costs or risks related to the loan;
- (ii) Predominantly designs, controls, or operates the loan program; or
- (iii) Purports to act as an agent, service provider, or in another capacity for an exempt entity while acting directly as a lender in other states.

Sec. 2. 9-A MRS §5-201, sub-§ 2 is amended to read:

2. If a creditor has violated the provisions of this Act applying to authority to make supervised loans, section 2-301, the debtor is not obligated to pay ~~any application fee, prepaid finance charge or closing cost, nor the loan finance charge owed for the first 12 months of the loan.~~ If the debtor has paid any part of ~~the application fee, prepaid finance charge, closing cost or loan finance charge owed for the first 12 months of the loan,~~ the debtor has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than 2 years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

Sec. 3. 9-A MRS §5-201, sub-§2-A is enacted to read:

2-A. If a lender has violated the provisions of this Act applying to authority to make supervised loans as set forth in section 2-301, the lender:

- A. May not furnish information concerning the debt to a consumer reporting agency, as defined in Title 10 section 1308, subsection 3; and
- B. May not refer the debt to a debt collector, as defined in Title 32, section 11002, subsection 6.

Sec. 4. Short-term, small dollar loan study. The Bureau of Consumer Credit Protection shall study the use by Maine residents of short-term, small dollar loans in accordance with this section. In conducting the study, the bureau shall seek input from consumer advocates, regulators in other states, federal regulatory agencies, members of the lending industry and other interested parties.

- 1. At a minimum, the study shall include the following:
 - a. A survey of the laws of other New England states related to maximum interest rates, permitted fees and finance charges and other provisions regulating consumer debt;
 - b. A survey of other policies that help consumers avoid the debt trap, including prohibitions on post-dated checks or loan limits accompanied by cooling-off periods;
 - c. A review of complaints from Maine consumers and a survey of credit counselors and nonprofit organizations that provide legal or other assistance to Maine consumers to provide insight into the types of debt that are causing the most difficulty to Maine consumers; and
 - d. An analysis of the extent to which lenders and other entities use the provisions of Title 9-A, section 2-201, subsection 6 to receive a minimum charge on short-term, small dollar loans and the impact of those minimum charges on overall interest rates

charged to Maine consumers.

2. The Bureau shall submit the report, including any suggested legislation, to the Joint Standing Committee on Health Coverage, Insurance and Financial Services no later than December 1, 2021. The Joint Standing Committee on Health Coverage, Insurance and Financial Services may submit a bill to the Second Regular Session of the 130th Legislature in response to the report.

SUMMARY

This amendment replaces the bill and changes the title. The amendment prohibits certain actions in the making of consumer loans to protect consumers from fraudulent practices and other violations of the Maine Consumer Credit Code. The amendment provides that the debtor is not obligated to pay a loan if the creditor has violated any provision and further prohibits a creditor from furnishing any information concerning the debt to a consumer reporting agency or referring the debt to a debt collector.

The amendment also requires the Bureau of Consumer Credit Protection to conduct a study the use by Maine residents of short-term, small dollar loans and submit the report to the Legislature by December 1, 2021.