Legislative Document **No. 1691**

H.P. 1214 House of Representatives, December 30, 2013

An Act To Stop Unlicensed Loan Transactions

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Presented by Representative POWERS of Naples.
Cosponsored by Senator GRATWICK of Penobscot and
Representatives: FREY of Bangor, GILBERT of Jay, KORNFIELD of Bangor, KUSIAK of Fairfield, MASTRACCIO of Sanford, NADEAU of Winslow, PLANTE of Berwick, SHORT of Pittsfield.

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

2   **Sec. 1. 9-A MRSA §5-118** is enacted to read:

3   **§5-118. Unlicensed loan transactions**

4   **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5   following terms have the following meanings.

6   A. "Financial account" means a checking, savings, share, stored value, prepaid,
7   payroll card or other depository account.

8   B. "Lender" means a person engaged in the business of making loans of money,
9   credit, goods or things in action and charging, contracting for or receiving on any
10   such loan interest, a finance charge, a discount or consideration. For purposes of this
11   section, "lender" does not include a supervised financial organization.

12   C. "Process" or "processing" includes printing a check, draft or other form of
13   negotiable instrument drawn on or debited against a consumer's financial account,
14   formatting or transferring data for use in connection with the debiting of a consumer's
15   financial account by means of such an instrument or an electronic funds transfer or
16   arranging for such services to be provided to a lender.

17   D. "Processor" means a person who engages in processing.

18   **2.   Certain loans prohibited.** It is an unfair or deceptive act or practice in
19   commerce, a violation of the Maine Unfair Trade Practices Act and a violation of this
20   Title for a lender directly or through an agent to solicit or make a loan to a consumer by
21   any means unless the lender is in compliance with Article 2, Part 3 or is otherwise exempt
22   from the requirements of Article 2, Part 3.

23   **3.   Certain processing prohibited.** It is an unfair or deceptive act or practice in
24   commerce, a violation of the Maine Unfair Trade Practices Act and a violation of this
25   Title for a processor, other than a federally insured depository institution, to process a
26   check, draft, other form of negotiable instrument or an electronic funds transfer from a
27   consumer's financial account in connection with a loan solicited from or made by any
28   means to a consumer unless the lender is in compliance with Article 2, Part 3 or is
29   otherwise exempt from the requirements of Article 2, Part 3.

30   **4.   Certain assistance to lenders or processors prohibited.** It is an unfair or
31   deceptive act or practice in commerce, a violation of the Maine Unfair Trade Practices
32   Act and a violation of this Title for a person or lender to provide assistance to a lender or
33   processor when the person or lender or the person's or lender's authorized agent receives
34   notice from a regulatory, law enforcement or similar governmental authority, knows from
35   its normal monitoring and compliance systems or consciously avoids knowing that the
36   lender or processor is in violation of subsection 2 or 3 or is engaging in an unfair or
37   deceptive act or practice in commerce. This subsection does not apply to a supervised
38   financial organization.

1   **SUMMARY**

2   This bill makes an unlicensed loan transaction, including an unlicensed loan
3   transaction by a payday lender, or assisting in such a transaction, an unfair or deceptive
4   act or practice in commerce, a violation of the Maine Unfair Trade Practices Act and a
5   violation of the Maine Consumer Credit Code. This bill does not affect supervised
6   financial organizations.