

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

3. A civil action, by the administrator through the Attorney General, after which a court, ~~upon a finding of repeated or willful violations or of violation of an assurance of discontinuance,~~ may assess a civil penalty of not more than \$5,000; ~~and~~

4. A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the credit services organization in an amount determined by the court ~~to be not less than \$250, nor more than \$1,000,~~ plus costs of the action together with reasonable attorney's fees; ~~and~~

5. Revocation, suspension or nonrenewal of its registration pursuant to section 2-303.

See title page for effective date.

CHAPTER 496

S.P. 589 - L.D. 1649

An Act to Promote Equitable Penalties for Unlicensed Consumer Lending

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

Sec. 1. 9-A MRSA §5-201, sub-§2, as amended by PL 1985, c. 763, Pt. A, §46, is further 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 ~~he~~ 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, ~~he~~ 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. 2. 9-A MRSA §5-201, sub-§8, as enacted by PL 1973, c. 762, §1, is amended to read:

8. If the creditor establishes by a preponderance of evidence that a violation is unintentional ~~or~~ and the

result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections 1, ~~2~~ and 3, the validity of the transaction is not affected, and no liability is imposed under subsection 4, except for refusal to make a refund.

Sec. 3. 9-A MRSA §6-108, sub-§7, as enacted by PL 1985, c. 763, Pt. A, §50, is amended to read:

7. No order may be issued under this section if the creditor establishes by a preponderance of evidence that a violation was unintentional ~~or~~ and the result of a bona fide error; notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error except that this subsection ~~shall~~ does not apply ~~where~~ if the violation had previously been brought to the attention of the creditor by way of examination, investigation or formal complaint through the administrator, or ~~where~~ if the violation involves the obligation to refund excess charges, as specified in section 5-201, subsections 2 and 3 or section 9-405, subsections 2 and 4.

Sec. 4. 9-A MRSA §9-405, sub-§§4 and 7, as enacted by PL 1987, c. 396, §12, are amended to read:

4. If a creditor has violated the provisions of this article applying to authority to make supervised loans, section 9-201, 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 ~~he~~ 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, ~~he~~ the debtor has a right to recover the payment from the person violating this article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. 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.

7. If the creditor establishes by a preponderance of evidence that a violation is unintentional ~~or~~ and the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections 1; and 2 ~~and 4~~, the validity of the transaction is not affected, and no liability is imposed under subsection 3, except for refusal to make a refund.

See title page for effective date.
