

# MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION  
(New Title)  
NEW DRAFT OF: 1283, L. D. 1789

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ONE HUNDRED AND SECOND LEGISLATURE

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**Legislative Document**

**No. 1800**

H. P. 1292

House of Representatives, January 26, 1966

Reported by Mrs. Baker from Committee on Legal Affairs and printed under  
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JEROME G. PLANTE, Clerk

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-SIX

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**AN ACT Establishing a Home Repair Financing Act.**

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

**Sec. 1. R. S., T. 9, Part 9, additional.** Title 9 of the Revised Statutes is amended by adding a new Part 9, to read as follows:

**'PART 9**

**HOME REPAIR FINANCING**

**CHAPTER 360**

**THE HOME REPAIR FINANCING ACT**

§ 3721. Short title

Chapter 360 may be cited as "The Home Repair Financing Act".

§ 3722. Definitions

In this chapter, unless the context otherwise indicates:

1. **Cash price.** "Cash price" means the cash sales price for which the home repair contractor would sell the goods and services which are the subject matter of a home repair contract if the sale were a sale for cash rather than an installment sale;

2. **Commissioner.** "Commissioner" means the Bank Commissioner of the State of Maine and includes those members of his department designated by him to administer and enforce this chapter;

3. **Credit service charge.** "Credit service charge" means that amount by which the time sales price exceeds the aggregate of the cash price and the amounts specifically included for official fees and insurance premiums;

4. **Down payment.** "Down payment" means all payments made in cash to the home repair contractor and all allowances given by the home repair contractor to the owner prior to or substantially contemporaneous with the execution of the home repair contract;

5. **Goods.** "Goods" means all chattels personal which are furnished or used in the modernization, rehabilitation, repair, alteration or improvement of real property except those furnished or used for a commercial or business purpose or for resale, and except stoves, freezers, refrigerators, air conditioners other than those connected with a central heating system, hot water heaters and other appliances furnished for use in a home and designated to be removable therefrom without material injury to the structure;

6. **Holder.** "Holder" means any person who is entitled to the rights of a home repair contractor under a home repair contract;

7. **Home repair financing agency.** "Home repair financing agency" means and includes any person, other than a home repair contractor, engaged, directly or indirectly, in the business of purchasing, acquiring, soliciting or arranging for the acquisition of home repair contracts, or any obligation in connection therewith by purchase, discount, pledge or otherwise;

8. **Home repair contract.** "Home repair contract" means an agreement, whether contained in one or more documents, between a home repair contractor and an owner to pay the time sales price of goods and related services in installments over a period of time greater than 3 months;

9. **Home repair contractor.** "Home repair contractor" means any person who is engaged in or who transacts any business of selling goods and related services pursuant to a home repair contract including a salesman who is not an employee of a licensed home repair contractor;

10. **Home repair salesman.** "Home repair salesman" means any person engaged in the business of selling goods and related services pursuant to a home repair contract in an independent or representative capacity, whether or not such person is a resident of this State, excepting a person who is an owner, a partner or an officer of a licensed home repair contractor;

11. **Official fees.** "Official fees" means the fees to be paid to a public officer for obtaining any permit or filing any lien or mortgage taken or reserved as security pursuant to a home repair contract;

12. **Owner.** "Owner" means a person who buys goods or services pursuant to a home repair contract or one who succeeds to the rights or assumes the obligations of such person;

13. **Services.** "Services" means labor, equipment and facilities furnished or used in connection with the installation or application of goods in the modernization, rehabilitation, repair, alteration or improvement of real property;

14. **Time sales price.** "Time sales price" means the total amount to be paid pursuant to the contract excluding default charges authorized under this chapter.

**§ 3723. Contents of contract**

Every home repair contract shall:

1. **In writing.** Be in writing and contain the entire agreement between the owner and the home repair contractor;
2. **Names and description.** State the name and addresses of all parties, the dates when executed by the parties and contain a description of the goods and services;
3. **Completed.** Be completed in full without any blank spaces to be filled in after the contract is signed by the owner, except for serial numbers or identifying marks which are not available for the description of the goods at that time;
4. **Notice.** Contain the following notice in 10-point bold type or larger, directly above the space provided for the signature of the owner:

**“NOTICE TO OWNER**

Do not sign this contract in blank.

You are entitled to a copy of the contract at the time you sign.

Keep it to protect your legal rights.”;

5. **Insurance.** State if workmen’s compensation and public liability insurance are carried by the home repair contractor and applicable to the work to be performed under the contract and if the home repair contractor is qualified by law as a self-insurer.

**§ 3724. Prohibited contract provisions**

No home repair contract shall contain:

1. **Acceleration.** Any acceleration clause under which any part or all of the time balance not yet matured may be declared due and payable because the holder deems himself to be insecure;
2. **Other amounts.** Any agreement to pay any amount other than the time sales price of the goods and services furnished under the contract plus fees and charges authorized by this chapter;
3. **Power of attorney.** Any power of attorney to confess judgment or any other power of attorney;
4. **Liability.** Any provision relieving the home repair contractor from liability upon any claim which the owner may have under the contract;
5. **Right of action.** Any provisions whereby the owner waives any right of action against the home repair contractor or holder or other person acting in his or their behalf for any act committed in the collection of the payments under the contract or in the repossession of the goods, the subject matter of the home repair contract;

6. Assignment. Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned;

7. Signs. Any provision for a payment or credit to any owner for the privilege of placing any sign on the premises where the work is being done or for recommending to the home repair contractor the names of any person or persons, who might be interested in making an installment home repair contract unless such provision has been approved by the commissioner.

§ 3725. Contract copy to owner

Every home repair contractor shall furnish without charge a completely executed copy of the home repair contract to the owner immediately after the owner signs such contract and any acknowledgement of receipt thereof by the owner shall be in 10-point bold type or larger.

§ 3726. Certificate of completion

No home repair contractor shall request or accept a certificate of completion signed by the owner prior to the actual completion of the work to be performed under the home repair contract.

§ 3727. Contract items

Every home repair contract shall state separately:

1. Cash price. The cash price of the goods and services to be furnished;
2. Down payment. The down payment;
3. Unpaid cash balance. The unpaid cash balance which is the difference between subsections 1 and 2;
4. Official fees. The official fees;
5. Insurance premiums. The charge to the owner for insurance, if any, with a specification of the coverage and benefits in simple terms;
6. Principal balance. The principal balance, which is the sum of subsections 3, 4 and 5;
7. Credit service charge. Credit service charge;
8. Time balance. The time balance, which is the sum of subsections 6 and 7, the number of installments required, the amount of each installment and the due dates thereof.

§ 3728. Payment of time balance

Every home repair contract shall provide for the payment of the time balance at substantially equal intervals of time and in substantially equal amounts. When appropriate for the purpose of facilitating payment, the contractor may provide for payments on a schedule which reduces or omits payments over a period or periods not in excess of 93 days in any 12-month period.

**§ 3729. Credit service charges; prohibitions**

1. Credit service charge limitation. A home repair contractor may impose and receive a credit service charge not more than the following: \$8 per \$100 per year computed on the principal balance, or \$25, whichever is greater;

2. Prohibited charges. No home repair contractor or any other person shall charge, collect or receive from any owner, directly or indirectly, any further or other amount for costs, charges, examination, appraisal service, brokerage, commission, interest, discount, expense, fee, fine, penalty or other thing of value in connection with a home repair contract other than the charges permitted by this chapter, except court costs, attorney's fees, the expenses of retaking and storing repossessed goods which are authorized by law, and insurance premiums as authorized by Title 24, Sections 1201 to 1214.

**§ 3730. Delinquency charges and attorney's fees**

1. Delinquency and collection charge. A home repair contract may provide for a delinquency or collection charge for default in the payment of any such contract or any installment thereof, if such default continues for a period of 10 days. Such charge shall not exceed 5% of the amount of the installment in default or \$5 whichever is the lesser and may be collected in cash or charged to the owner's account. The delinquency charge for any one installment shall not be charged or collected more than once. If charged to the owner's account such charge shall be levied within 35 days from the date of such default and written notification that such charge has been made shall be mailed to the owner within 5 days from the date when such charge was made.

2. Attorney's fees. The home repair contract may also provide for the payment of reasonable attorney's fees when a payment in default for a period of 10 days is referred to an attorney, not a salaried employee of the holder of the contract, for collection.

**§ 3731. Receipt for cash payment**

Whenever payment is made in cash on account of any home repair contract, the person receiving such payment shall, at the time of receiving such payment, furnish to the person making such payment a written receipt therefor showing the date, identification of the account and the amount paid.

**§ 3732. Prepayment without penalty**

Any buyer may pay in full at any time before maturity the debt of any home repair contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the credit service charge after first deducting from such finance charge an acquisition cost of \$25, as the sum of the periodical time balances after the date of prepayment, bears to the sum of all the periodical time balances under the schedule of payments in the contract. Where the amount of credit is less than \$1 no refund need be made.

**§ 3733. Extension or deferment**

The holder of a home repair contract, upon agreement in writing with the owner, may extend the scheduled due date or defer the scheduled payment of all

or of any part of any installment or installments payable thereunder. The holder may charge and contract for the payment of an extension or deferral charged by the owner and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.

#### § 3734. Refinancing

The holder of a home repair contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinance charge by the owner and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of official fees incident to such refinancing and the cost of continuing insurance coverage provided in the original contract after the deduction of a refund credit on the credit service charge and any insurance premium in an amount equal to that to which the owner would have been entitled under section 3732 if he had prepaid in full his obligations under the contract, computed without allowance for any acquisition cost. Such refinance charge shall not exceed the rate of credit service charge provided under this chapter. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, any additional official fees, the cost of continuing insurance coverage provided in the original contract, the amount of the refinance charge under the refinancing agreement, the new unpaid time balance and the new schedule of installment payments.

#### § 3735. Statement of account

Upon written request from the owner, the holder of the home repair contract shall deliver to the owner within 10 days from receipt of the written request a statement of the owner's account showing the date and amount of all payments made or credited to the account and the total amount, if any, unpaid under the contract. Not more than 2 such statements shall be required in any 12-month period.

#### § 3736. Payment of contract in full

With respect to contracts pursuant to which there is a lien, mortgage or encumbrance upon the goods or real property, upon payment in full by the owner of the time sales price and other amounts lawfully due under a home repair contract, the holder shall:

1. Original instruments. Return to the owner the original instruments evidencing indebtedness under a home repair contract which were signed by the

owner or his sureties or guarantors in connection with such contract, excepting such instruments as are filed with a public official and retained in the files of such official;

2. Security interest. Release all security interest in the goods and real property affected by the home repair contract; and

3. Delivery. Deliver to the owner such good and sufficient assignments, releases of liens and mortgages on personal and real property and such other instruments of title as may be necessary to vest the owner with complete evidence of title.

With respect to all other contracts, the holder, upon payment in full by the retail buyer of the time sales price and other amounts lawfully due under a home repair contract, shall furnish the owner with such instruments as the commissioner may by regulation provide.

#### § 3737. Unauthorized charges

All costs and charges in connection with such contract which are not authorized by this chapter shall be unenforceable. Any payment of such costs or charges shall be applied to the next maturing installment or, if the contract has been fully paid, remitted to the owner and the owner shall be entitled to recover all such costs or charges.

#### § 3738. Licensees

No person shall engage in or transact any business of a home repair financing agency, a home repair contractor or home repair salesman in this State without first obtaining a license from the commissioner as provided for in this chapter. No financial institution as defined in section 222, credit union, national bank or federal savings and loan association authorized to do business in this State shall be required to obtain a license or pay a license fee hereunder; however, nothing contained in this chapter shall be deemed to have any effect whatever upon any existing law regulating the power of or the conditions and limitations under which such institutions may engage the business of a home repair financing agency. No license issued under this chapter shall be transferable or assignable.

#### § 3739. Application for license

Application for a license under this chapter shall be in writing, under oath, and shall be in the form prescribed by the commissioner.

The application shall state the name and residence and business addresses of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof. It shall state the address where the business is to be conducted, demonstrate the financial responsibility of the applicant and set forth any other information the commissioner may require.

#### § 3740. Approval or rejection of license application

Within 60 days after the filing of the application and the payment of the fees herein set forth the commissioner shall:



1. Issue license. Issue and deliver to the applicant a license to engage in the business of a home repair financing agency, a home repair contractor or home repair salesman in accordance with this chapter.

2. Refuse to issue license. Refuse to issue the license for any reason for which he may suspend, revoke or refuse to renew any license under this chapter.

§ 3741. Refusal of license; hearing

If the commissioner refuses to issue a license he shall:

1. Notification. Notify the applicant of the denial and of his right to request a hearing within 10 days;

2. License fee. If the applicant does not request a hearing, return the sum paid as a license fee;

3. Hearing. If the applicant requests such a hearing; give notice of the grounds for refusal and hold a hearing thereon, and within 30 days after such hearing the commissioner shall file a written decision containing his findings and conclusions and serve a copy thereof upon the applicant.

§ 3742. Licensee's name and location; changes

No licensee shall transact any business subject to this chapter under any other name or maintain an office at any other location than that designated in the license. In case such location be changed, the commissioner shall endorse the change of location on the license without charge.

§ 3743. License fees, renewals

Every home repair financing agency shall pay to the commissioner at the time of making the application and annually thereafter upon renewal a license fee of \$100. Each home repair contractor shall pay to the commissioner at the time of making the application and thereafter annually upon renewal a license fee of \$100, and for each home repair salesman in excess of 5 in his employ \$10. Each home repair salesman, not in the employ of a home repair contractor, \$10.

§ 3744. License duration; abatement

No abatement in the amount of the said license fee shall be made if the license is issued for less than one year, nor if the license is surrendered, canceled or revoked prior to the expiration of the period for which such license was issued. Every license shall expire on December 31st of each year.

§ 3745. Revocation or suspension of license

The commissioner may suspend, revoke or refuse to renew any license issued hereunder, upon 10 days' notice in writing, forwarded by registered or certified mail to the principal place of business or residence of such licensee, stating the contemplated action and in general the grounds therefor, after reasonable opportunity to be heard, if he shall find that the licensee or any owner, director, officer, member, partner, employee or agent of such licensee has:

1. Misstatements. Made any material misstatement in the application;

2. Violation of law. Knowingly or without the exercise of due care failed to comply with or violated any provisions of this chapter;
3. Fraud. Defrauded any retail buyer or willfully failed to perform any written agreement with any owner;
4. Misrepresentation. Willfully misrepresented or failed to disclose any of the material particulars or the nature thereof required to be stated or furnished to the owner under this chapter;
5. Contracts signed in blank. Knowingly taken any instrument evidencing a home repair contract or note which was signed in blank;
6. Bad faith. Otherwise demonstrated lack of financial responsibility, unworthiness, bad faith or dishonesty.

§ 3746. Investigation of licensees

The commissioner shall have power to make such investigations as he shall deem necessary, and may examine the books, accounts, records, and files of any person who is a party to or holder of a home repair contract. The commissioner shall have power to administer oaths and affirmations to any person whose testimony is required.

§ 3747. Commissioner's power of subpoena; contempt

The commissioner shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter pertaining to this chapter.

In case of a failure of any person to comply with any subpoena issued by the commissioner or to testify to any matter concerning which he may be lawfully interrogated, the Superior Court, on application of the commissioner, may issue an order requiring the attendance of such person and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished as for contempt.

§ 3748. Records of transactions

Every home repair contractor, home repair financing agency and holder of a home repair contract shall maintain a place of business in this State and keep at its place or places of business such books, accounts and records relating to all transactions under this chapter as will enable the commissioner to enforce full compliance with the provisions thereof. All such books, accounts and records shall be preserved and kept available for such period of time as the commissioner may by regulation require. The commissioner may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the commissioner to determine compliance with this chapter.

§ 3749. Assignments

No holder shall sell, transfer or assign any obligation in connection with a home repair contract or any evidence of indebtedness thereunder to any person

who is not authorized as a home repair financing agency, except that such obligation or evidence of indebtedness may be sold, transferred or assigned to a state or national bank outside of this State, if the contract is retained by the holder and collection of payments thereon is made to the holder.

§ 3750. Cash loans

No cash loan or debt consolidation loan shall directly or indirectly be included in or combined or consolidated with any home repair contract or with any extension, deferment or refinancing agreement pertaining thereto.

§ 3751. Rules and regulations

The commissioner is authorized and empowered to make such general rules and regulations, and such specific rulings, demands and findings as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this chapter, in addition hereto and not inconsistent herewith.

§ 3752. Advisory board

There is established a Home Repair Advisory Board in the Department of Banks and Banking. The board shall consist of the commissioner, who shall be chairman of the board, and 4 other members appointed by the commissioner. Of the 4 appointed members, 2 shall each have had practical experience as home repair contractors. Each appointed member shall serve for a term of 4 years and until his successor is appointed and qualified.

The members of the board shall serve without compensation but shall be reimbursed for their actual and necessary expenses in attending meetings of the board.

The board shall:

1. Advise and consult with the commissioner concerning practices in the home repair industry, the administration of this chapter, and the rules and regulations adopted to implement this chapter;
2. Advise and inform the public concerning any practices in connection with home improvements which the board may consider contrary to the public interest.

§ 3753. Violations

Any home repair contractor, home repair financing agency, home repair salesman or holder of a home repair contract and any officer, partner, member, employee, agent or representative of either who shall knowingly violate this chapter or shall directly or indirectly counsel, aid or abet such violation shall be liable to a fine of not more than \$2,500 for each offense, or by imprisonment for not more than 90 days, or by both.

Any person who violates section 3738 shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$500 for each offense.'

**Sec. 2. Appropriation.** There is appropriated from the General Fund to the Department of Banks and Banking the sum of \$10,700 to carry out the purposes of this Act. The breakdown of expenditures shall be as follows:

**BANKS AND BANKING, DEPARTMENT OF**

Personal Services  
All Other

**1966-67**  
(2) \$ 8,700  
2,000  

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\$10,700