

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1465

H. P. 964

House of Representatives, March 8, 1967

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Scribner of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Providing for Disclosure of Interest and Finance Charges on Loans.

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

Sec. 1. R. S., T. 9, part 10, additional. Title 9 of the Revised Statutes is amended by adding a new part 10, to read as follows:

PART 10

DISCLOSURE OF INTEREST AND FINANCE CHARGES

CHAPTER 370

DISCLOSURE OF INTEREST AND FINANCE CHARGES

§ 3801. Definitions

In this chapter unless the context or subject matter otherwise requires:

1. Annual finance charge formula. "Annual finance charge formula" means the method for converting a dollar finance charge into a percentage rate. The formula assumes that all scheduled installments of a credit transaction are equal, payable at equal intervals, and fall on due dates which are the same day of each month or other payment period as that on which the agreement is entered into and the debtor makes all payments at the times and in the amounts scheduled. Based upon these assumptions, the annual finance charge formula is:

$$R = \frac{2 PC}{A(N+1)}$$

R equals the percentage rate. P equals the number of payment periods in one year, always 12 if monthly payments, 4 if quarterly payments and 52 if weekly

payments. C equals the finance charge. A equals the principal balance to be paid by the debtor. N equals the number of installments. Except as otherwise provided, a variance tolerance of 1% per year in the percentage rate, if unintentional, is authorized in computations under this formula.

2. Base amount. "Base amount" means the amount in a credit transaction in dollars of which the debtor will have the actual use, or which will be or is paid to the debtor or to another person on behalf of the debtor or from which additional costs, charges and fees are computed.

3. Closed end credit. "Closed end credit" means a credit for a specified amount which amount constitutes a combination of the base amount, permitted charges which are charged to the debtor and the precomputed finance charge and is payable in installments. The term does not include home mortgage or other credits in which the finance charge is not precomputed and stated as a dollar amount but is determined by the periodic application of a rate of finance charge to outstanding balances of the credit.

4. Commissioner. "Commissioner" means the Bank Commissioner.

5. Credit transaction. "Credit transaction" means an extension of credit or a loan evidenced by an agreement, promissory note or other instrument, whether secured or not, under the terms of which a debtor undertakes or agrees to pay the debt at a stated time or over a period of time and for which the debtor pays or agrees to pay a finance, carrying or other charge.

6. Creditor. "Creditor" means the person who extends credit in a credit transaction either as principal or as agent and who requires, as an incident to the extension of credit, the payment of a finance charge.

7. Debtor. "Debtor" means a person to whom or on behalf of whom credit is primarily granted or who is primarily obligated to pay debt.

8. Finance charge. "Finance charge" means a charge made by a creditor, other than permitted charges, paid or payable directly or indirectly by the debtor to or for the account of the creditor and incurred solely because the transaction is a credit transaction and includes:

A. All charges which are not permitted charges and which are designed primarily to increase the gross yield to a creditor in a credit transaction;

B. Charges for investigating the credit or collateral and for commissions or brokerage for obtaining the credit paid or payable by the debtor irrespective of the person to whom they are paid or payable; and

C. Charges for the cost of a credit transaction including interest, discount, add-on or however such charges may be designated.

9. Official fees. "Official fees" means the fees and charges prescribed by law for registering or for filing, recording or otherwise perfecting or releasing or satisfying a security interest in property related to a credit transaction which will actually be paid to public officials.

10. Organization. "Organization" means a corporation, business trust, es-

tate, trust, partnership or association or any other legal entity but not a natural person.

11. Per cent per annum rate disclosure. "Per cent per annum rate disclosure" means the disclosure required or made under section 3805, subsection 1, paragraph G, and under other provisions of this chapter.

12. Permitted charges. "Permitted charges" means charges for services, expenses or the like related to a credit transaction, not in excess of amounts permitted by applicable law, if any, which are requested, agreed to or approved by the debtor for official fees or taxes; for insurance; for delinquency or collection or which otherwise arise by reason of action or default of the debtor; in home mortgage credits, customary brokers' fees and reasonable charges incurred for appraisal of the property, examination of title and the marketability of security, drafting of security instruments or documents and other customary closing costs; or which are of value to the debtor separate and apart from the granting of credit, are reasonable in relation to benefits to the debtor and constitute a type of charge or actual charges which have been filed with the commissioner and as to which the commissioner has failed to notify the creditor in writing of objection within 60 days after the filing. If paid, incurred or financed by the creditor and not otherwise charged to or paid by the debtor, permitted charges may be added to or included in the principal of the debt.

13. Principal balance. "Principal balance" means the sum of the base amount and permitted charges, if any, charged to the debtor.

14. Revolving credit. "Revolving credit" means credit granted pursuant to an agreement related to a loan of money in which the debtor incurs from time to time debt which may be payable in installments and in which the debts are debited to a running account.

15. Total loan balance. "Total loan balance" means the sum of the base amount, permitted charges charged to the debtor, if any, and the finance charge.

§ 3802. Applicability

Except as otherwise provided, this chapter applies to any credit transaction in which:

1. Debt from loan of money. The debt incurred or to be incurred arises from a loan of money or the rewriting or refinancing of a loan or loans;

2. Finance charge. A finance charge is or may be payable;

3. Principal balance. The principal balance of the debt at the inception of the transaction is \$25,000 or less;

4. Extending credit. The creditor is in the business or makes a practice of extending credit; and

5. Debtor natural person. The debtor is a natural person and not an organization.

§ 3803. Transactions not included

Notwithstanding section 3802, this chapter shall not apply to credit transac-

tions with respect to which the debt is secured by collateral consisting of accounts receivable, business equipment or inventory and the value of the collateral is equal to a substantial part of the amount of the debt secured.

§ 3804. When information required

Unless the context otherwise requires, information required to be given to the debtor shall be in writing. In a loan transaction in which there is more than one debtor, the obligation of the creditor to furnish information to the debtor shall be satisfied if the information is supplied to only one of the debtors. The creditor may give the debtor the information required by this chapter in a sequence other than that stated. If information to be given under section 3805 is not available to the creditor at the time of the consummation of the transaction, the creditor shall give to the debtor:

1. Prior to consummation. Prior to or as part of the consummation of the transaction, the information that is available and a reasonable estimate of the per cent per annum rate disclosure and either a reasonable estimate of the dollar amount of the finance charge or a simple statement of the method by which the amount of the finance charge will be calculated and a reasonable estimate of the amount of the finance charge produced by that method on typical principal balances; and

2. On or before due date. On or before the due date of the first installment, all of such information.

§ 3805. Information

1. Closed end credit transaction; loan made. In a closed end credit transaction in which a loan is made or is to be made, the creditor shall furnish to the debtor prior to or as a part of the consummation of the transaction, a clear statement in writing setting forth, to the extent applicable and in accordance with such additional rules and regulations as may be prescribed by the commissioner, the following information:

A. The base amount;

B. The aggregate charge to the debtor for insurance with a description of the type or types of coverage in simple terms;

C. The amount of official fees;

D. The amount of other permitted charges, if any, added to or included in the principal of the debt with an itemization of each;

E. The principal balanced owed which is the sum of paragraphs A, B, C and D;

F. The total finance charge;

G. The percentage that the finance charge bears to the principal balance, computed in accordance with the annual finance charge formula or an annual rate formula approved by the commissioner upon application of a creditor;

H. The total loan balance owed by the debtor to the creditor which is the sum of paragraphs E and F, the number and amount of weekly, monthly or

other installment payments and the time of each payment, in which information the amount and times of installment payments need not be separately stated if amounts of and time between payments are substantially equal and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance.

2. Explanation in certain type. The printed material explaining the per cent per annum rate disclosure required to be given to the debtor by subsection 1, paragraph G, shall be printed in 12-point boldface type.

3. Due date. In a closed end credit transaction in which the due date of all or part of one or more installments is deferred or extended or in which the unpaid installments are restated or rescheduled to reduce or rearrange the installment payments, the creditor shall give the debtor the following information at or before the time the extension or deferrment is made:

- A. The amount of the deferment or extension charge, if any;
- B. A description of the additional permitted charges, if any, incident thereto and an itemization of such charges; and
- C. The revised installment payment dates, if any, and the revised amount, if any, of each installment.

§ 3806. Revolving credit transaction

1. Loan made or to be made. In any revolving credit transaction in which a loan is made or is to be made, if during a billing cycle debt is incurred, payment is made by the debtor or liability to pay a finance or other charge is incurred, the creditor shall furnish to the debtor within a reasonable time after the end of the billing cycle and in accordance with such additional rules and regulations as may be prescribed by the commissioner, the following information:

- A. The outstanding balance at the beginning of the billing cycle;
- B. Entries during the billing cycle, exclusive of finance charge or other charges;
- C. A brief description of the transactions giving rise to accounting entries in a statement or in accompanying sales slips, cancelled checks or the like;
- D. The amount of finance charge and other charges debited during the billing cycle;
- E. The outstanding balance at the end of the billing cycle; and
- F. The amount which must currently be paid by the debtor and when the amount must be paid in order to avoid delinquency.

2. Revolving credit transaction. In a revolving credit transaction involving a loan of money under this chapter, there shall appear in 12-point boldface type on the agreement and every statement of account a recitation of the simple interest per annum rate that approximates most closely any finance charge rate or rates imposed. Such percentage rate shall be computed either by multiplying

the periodic rate of charge by the number of payment periods in a year or by an annual rate formula approved by the commissioner upon application by a creditor. In the case of any agreement in existence on the effective date of this Act the per cent per annum rate disclosure required as to agreements by this subsection may be made in a separate notice mailed or delivered to the debtor.

§ 3807. Other transactions

If a credit transaction subject to this chapter is neither a closed end nor a revolving credit transaction, the creditor shall furnish to the debtor prior to or as a part of the consummation of the transaction a statement of disclosure of the finance charge rate in terms of a simple annual interest rate in 12-point bold-face type. If the creditor states or calculates the finance charge by a method other than a simple annual interest rate, the simple annual interest rate shall be computed either in accordance with the annual finance charge formula, or by multiplying the periodic rate of charge by the number of payment periods in a year, or by an annual rate formula approved by the commissioner upon application by a creditor.

§ 3808. Advertising

No creditor shall in any advertisement, publication, display, broadcast, solicitation or representation make any false, misleading or deceptive statement concerning any finance, delinquency or extension charge, or rate, or the security interest, collateral, terms or conditions upon which it will make any credit agreement or finance the same. Any advertisement, publication, display, solicitation or representation containing a statement of a rate or rates of a finance charge or a table showing amount of loan and number and amount of payments with respect to transactions subject to section 3807 as well as closed end and revolving credits, shall be expressed in terms of a simple annual interest rate. The simple annual interest rate shall be computed in the case of a closed end credit, in accordance with the annual finance charge formula; in the case of a revolving credit, by multiplying the periodic rate of charge by the number of payment periods in a year; or in either case, by an annual rate formula approved by the commissioner upon application by a creditor.

§ 3809. Rules and regulations

The commissioner may prescribe from time to time such rules and regulations as may be necessary or proper in carrying out this chapter, and may provide that any violations thereof shall be punished by such fines, not to exceed \$500, as he may determine. In prescribing rules and regulations with respect to any particular type of credit transaction, the commissioner shall consider whether in such transactions compliance with the disclosure requirements of this chapter is being achieved under any other law.

§ 3810. Provisions for noncompliance

The failure of any creditor to disclose the information required by this chapter shall bar his recovery of any finance, delinquency, collection or refinancing charge, but shall not bar his right to recover from the debtor an amount equal to the unpaid principal balance or to realize upon the security and recover from

the debtor an amount equal to the unpaid principal balance less the net proceeds of any disposition of such security.

This section shall not apply to any violation which any creditor shall establish by a preponderance of the evidence to be the result of accident or bona fide error in any mathematical computation, the layout or format, size of type or order of clause contained in any credit agreement or the failure to furnish to the debtor any statement required by this chapter.

§ 3811. Penalties

Whoever violates any provision of this chapter shall be punished by a fine of not more than \$500.

Sec. 2. Effective date. This Act shall take effect on January 1, 1968.