

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1591

H. P. 1261

House of Representatives, June 11, 1969

Reported by Mr. Scott of Wilton from Committee on Business Legislation.
Printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Establishing a Truth in Lending Law.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the disclosure provisions of the Act of Congress known as the Consumer Credit Protection Act become effective on July 1, 1969; and

Whereas, the disclosure provisions in said Consumer Credit Protection Act differ in many respects from the disclosure provisions of the laws of this State relating to Truth-in-Lending and disclosure of interest and finance charges; and

Whereas, compliance with both the Consumer Credit Protection Act and the laws of this State relating to the same subject matter would cause great confusion and misunderstanding; and

Whereas, the following legislation is vitally necessary in order to prevent undue hardship on the people of the State of Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. R. S., T. 9, § 3402, sub-§ 1, amended. Subsection 1 of section 3402 of Title 9 of the Revised Statutes is amended to read as follows:

1. **Cash price.** "Cash ~~sale~~ price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject

matter of the retail installment contract, if such sale had been a sale for cash instead of a retail installment transaction. The cash ~~sale~~ price may include any taxes ~~registration, license and other fees~~ and charges for accessories and their installation and for delivery, servicing, repairing or improving the motor vehicle.

Sec. 2. R. S., T. 9, § 3402, sub-§ 2, amended. Subsection 2 of section 3402 of Title 9 of the Revised Statutes is amended to read as follows:

2. Documentary fees. “Documentary fees” mean ~~the fees for filing, recording or investigating, perfecting and releasing or satisfying a security interest created by a retail installment contract, and shall not exceed \$10 in the case of consumer goods as defined in Title 11, section 9-100~~ fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

Sec. 3. R. S., T. 9, § 3402, sub-§ 3, amended. Subsection 3 of section 3402 of Title 9 of the Revised Statutes is amended to read as follows:

3. Credit charge. “~~Finance~~ Credit charge” means the amount agreed upon between the buyer and the seller, as limited in chapters 321 to 327, to be added to the ~~principal balance cash sale price, the amount, if any, included for insurance and other benefits, if a separate charge is made therefor, and documentary fees, in determining the time price.~~ principal balance ~~cash sale price, the amount, if any, included for insurance and other benefits, if a separate charge is made therefor, and documentary fees, in determining the time price.~~

Sec. 4. R. S., T. 9, § 3402, sub-§ 6-A, additional. Section 3402 of Title 9 of the Revised Statutes, as amended, is further amended by adding a new subsection, to read as follows:

6-A. Principal balance. “Principal balance” means the cash price less down payment or trade-in plus the amount, if any, included for insurance and documentary fees.

Sec. 5. R. S., T. 9, § 3402, sub-§ 9, amended. Subsection 9 of section 3402 of Title 9 of the Revised Statutes is amended to read as follows:

9. Retail installment transaction. “Retail installment transaction” means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a time price payable in one or more deferred installments for purposes other than resale. ~~The cash sale price of the motor vehicle, the amount included for insurance and other benefits if a separate charge is made therefor, documentary fees and the finance charge, which may include insurance and other benefits, shall together constitute the time price.~~

Sec. 6. R. S., T. 9, § 3402, sub-§ 13, repealed. Subsection 13 of section 3402 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 523 of the public laws of 1967, is repealed.

Sec. 7. R. S., T. 9, § 3481, sub-§ 1, ¶ A, amended. Paragraph A of subsection 1 of section 3481 of Title 9 of the Revised Statutes is amended to read as follows:

A. A retail installment contract shall be in writing and shall be signed by both the buyer and the seller ~~and shall be completed as to all essential pro-~~

~~visions or by memorandum as provided in subsection 6 prior to the signing of the contract by the buyer.~~

Sec. 8. R. S., T. 9, § 3481, sub-§ 1, ¶ B, amended. Paragraph B of subsection 1 of section 3481 of Title 9 of the Revised Statutes is amended to read as follows:

B. The printed portion of the contract shall contain the following language set out in a conspicuous manner: ~~other than instructions for completion, shall be in at least 8 point type. The contract shall contain in a size equal to at least 10 point bold type:~~

- (1) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and
- (2) The following notice: "Notice to the Buyer: 1. Read this contract before signing. 2. You are entitled to an exact copy of the contract you sign."

Sec. 9. R. S., T. 9, § 3481, sub-§ 1, ¶ C, amended. The 3rd sentence of paragraph C of subsection 1 of section 3481 of Title 9 of the Revised Statutes is amended to read as follows:

Any acknowledgement by the buyer of delivery of a copy of the contract shall be ~~conspicuous in a size equal to at least 10 point bold type~~ and, if contained in the contract, shall appear directly above the buyer's signature.

Sec. 10. R. S., T. 9, § 3481, sub-§ 1, ¶ E, repealed. Paragraph E of subsection 1 of section 3481 of Title 9 of the Revised Statutes, as enacted by section 2 of chapter 523 of the public laws of 1967, is repealed.

Sec. 11. R. S., T. 9, § 3481, sub-§ 2, repealed. Subsection 2 of section 3481 of Title 9 of the Revised Statutes, as amended by section 3 of chapter 523 of the public laws of 1967, is repealed.

Sec. 12. R. S., T. 9, § 3481, sub-§ 6, amended. The first 2 sentences of subsection 6 of section 3481 of Title 9 of the Revised Statutes are amended to read as follows:

No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information, and the due date of the first installment may be inserted in the contract after its execution; and except that said contract may be so signed provided the buyer is given at the time of such execution a bill of sale, invoice or similar memorandum ~~clearly indicating the sales price, down payment, type or types of insurance coverage and the number, period and amount of payments; and provided said contract when completed conforms with said bill of sale, invoice or memorandum, and a copy of said contract is delivered to said buyer setting forth all information required to be set forth by Chapter 2 of Title 1 of the Federal Consumer Credit Protection Act or chapter 372 of~~

this Title whichever may be applicable. ~~The instrument for recording purposes shall be the financing statement, as provided by Title 11, section 9-402.~~

Sec. 13. R. S., T. 9, § 3482, amended. The caption of section 3482 of Title 9 of the Revised Statutes is amended to read as follows:

§ 3482. Credit charge limitations

Sec. 14. R. S., T. 9, § 3482, sub-§ 1, amended. Subsection 1 of section 3482 of Title 9 of the Revised Statutes is amended to read as follows:

1. **Maximum charges.** Notwithstanding any other law, the ~~finance credit~~ charge shall not exceed the following rates:

Group 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, \$7 per \$100 per year;

Group 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 3 years prior to the year in which the sale is made, \$11 per \$100 per year;

Group 3. Any used motor vehicle not in class 2, \$13 per \$100 per year.

Sec. 15. R. S., T. 9, § 3482, sub-§ 2, amended. Subsection 2 of section 3482 of Title 9 of the Revised Statutes is amended to read as follows:

2. **Computation; minimum charge.** Such ~~finance credit~~ charge shall be computed on the principal balance ~~as determined under section 3481, subsection 2~~ on contracts payable in successive monthly payments substantially equal in amount. Such ~~finance credit~~ charge may be computed on the basis of a full month for any fractional month period in excess of 10 days. A minimum ~~finance credit~~ charge of \$25 may be charged on any retail installment transaction.

Sec. 16. R. S., T. 9, § 3482, sub-§ 3, amended. Subsection 3 of section 3482 of Title 9 of the Revised Statutes is amended to read as follows:

3. **Unequal or irregular payments.** When a retail installment contract provides for unequal or irregular installment payments, the ~~finance credit~~ charge may be at the effective rates permitted in subsection 1, having due regard for the schedule of payments.

Sec. 17. R. S., T. 9, § 3483, amended. The 2nd sentence of section 3483 of Title 9 of the Revised Statutes is amended to read as follows:

The amount of such refund shall represent at least as great a proportion of the ~~finance~~ charge after first deducting from such ~~finance credit~~ charge an acquisition cost of \$25, as the sum of the monthly ~~time~~ balances after the month in which prepayment is made, bears to the sum of all the monthly ~~time~~ balances under the schedule of payments in the contract.

Sec. 18. R. S., T. 9, § 3484, amended. Section 3484 of Title 9 of the Revised Statutes is amended to read as follows:

§ 3484. Extension of contract

At the request of the buyer, the holder of a retail installment contract may extend the scheduled due date of all or a part of any installment or installments and in consideration thereof may contract for and receive from the buyer a ~~finance~~ **credit** charge, computed on the sums extended for the period of the extension, at an effective annual rate not in excess of that charged in the original contract, plus documentary fees expended incidental to the extension and the cost of continuing over the period of the extension insurance coverage and other benefits provided in the original contract.

If the extension is made by agreement to refinance the unpaid balance of the original contract and provide a new schedule of payments, the holder may contract for and receive from the buyer in consideration thereof a ~~finance~~ **credit** charge, at an annual effective rate not in excess of that charged in the original contract, computed on the sum of the unpaid ~~time~~ balance of the original contract, plus delinquency and collection charges accrued, documentary fees expended incidental to the extension and the cost of continuing over the period of the extension insurance coverage and other benefits provided in the original contract; but after deduction of a refund credit on the original contract of not less than that to which the buyer would be entitled under section 3483 had he prepaid in full, except that the holder shall not be allowed the acquisition cost of \$25. The buyer shall be furnished a copy of such an agreement, signed by the parties thereto ~~containing the description and amount of each item above used in the computation of the new time balance, the new time balance and the new schedule of payments.~~

Sec. 19. R. S., T. 9, § 3522-A, additional. Title 9 of the Revised Statutes is amended by adding a new section 3522-A, to read as follows:

§ 3522-A. Disclosure records

Every retail seller, sales finance company and holder of a retail installment contract shall maintain a place of business in this State and keep at its place or places of business such books, accounts and records, including records relating to disclosure required by state or federal laws 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.

Sec. 20. R. S., T. 9, § 3722, sub-§ 1, amended. Subsection 1 of section 3722 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

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;

Sec. 21. R. S., T. 9, § 3722, sub-§ 3, amended. Subsection 3 of section 3722 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

3. Credit 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;

Sec. 22. R. S., T. 9, § 3722, sub-§§ 13, 14 and 15, repealed and replaced. Subsections 13 and 14 of section 3722 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, and subsection 15, as enacted by section 4 of chapter 523 of the public laws of 1967, are repealed and the following enacted in place thereof:

13. Principal balance. "Principal balance" means the cash price less down payment plus the amount included, if any, for official fees and insurance premiums;

14. 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;

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

Sec. 23. R. S., T. 9, § 3723, sub-§ 3, amended. Subsection 3 of section 3723 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

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;~~

Sec. 24. R. S., T. 9, § 3723, sub-§ 4, amended. Subsection 4 of section 3723 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

4. Notice. Contain the following notice in ~~10 point bold type or larger, directly above the space provided for the signature of the owner~~ a conspicuous manner:

"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.";

Sec. 25. R. S., T. 9, § 3725, amended. Section 3725 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

§ 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~~ **conspicuous**.

Sec. 26. R. S., T. 9, § 3727, repealed. Section 3727 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965 and as amended by sections 5 and 6 of chapter 523 of the public laws of 1967, is repealed.

Sec. 27. R. S., T. 9, § 3729, amended. The caption of section 3729 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows :

§ 3729. Credit charges ; prohibition

Sec. 28. R. S., T. 9, § 3729, sub-§ 1, amended. Subsection 1 of section 3729 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows :

1. **Credit 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 ;

Sec. 29. R. S., T. 9, § 3732, amended. The 2nd sentence of section 3732 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows :

The amount of such refund shall represent at least as great a proportion of the credit ~~service~~ charge after first deducting from such ~~finance credit~~ 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.

Sec. 30. R. S., T. 9, § 3734, amended. The 2nd sentence of section 3734 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows :

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 and reasonable attorney's 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 obligation under the contract, computed without allowance for any acquisition cost.

Sec. 31. R. S., T. 9, § 3734, amended. The 3rd sentence of section 3734 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows :

Such refinance charge shall not exceed the rate of credit ~~service~~ charge provided under this chapter.

Sec. 32. R. S., T. 9, § 3748, amended. The first sentence of section 3748 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

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, including records relating to disclosure required by state or federal law relating to all transactions under this chapter as will enable the commissioner to enforce full compliance with the provisions thereof.

Sec. 33. R. S., T. 9, c. 370, repealed. Chapter 370 of Title 9 of the Revised Statutes, as enacted by chapter 472 of the public laws of 1967 and as amended, is repealed.

Sec. 34. R. S., T. 9, c. 371, repealed. Chapter 371 of Title 9 of the Revised Statutes, as enacted by chapter 471 of the public laws of 1967 and as amended, is repealed.

Sec. 35. R. S., T. 9, c. 372, additional. Title 9 of the Revised Statutes is amended by adding a new chapter 372, to read as follows:

PART 12

CONSUMER CREDIT COST DISCLOSURE

CHAPTER 372

CONSUMER CREDIT COST DISCLOSURE

§ 3901. Short title

This chapter may be cited as the Truth-in-Lending Act.

§ 3902. Findings and declaration of purpose

The Legislature finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this chapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.

§ 3903. Definitions and rules of construction

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

A. Commissioner. The term "commissioner" refers to the Bank Commissioner of the State of Maine.

B. Consumer. The adjective “consumer” used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, household or agricultural purposes.

C. Credit. The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

D. Credit sale. The term “credit sale” refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

E. Creditor. The term “creditor” refers only to creditors who regularly extend, or arrange for the extension of, credit for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this chapter apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

F. Open end credit plan. The term “open end credit plan” refers to a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

G. Organization. The term “organization” means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

H. Person. The term “person” means a natural person or an organization.

2. **Rules of construction.** The following rules of construction set forth in this section are applicable for the purpose of this chapter:

A. Any reference to any requirement imposed under this chapter or any provision thereof includes reference to the regulations of the commissioner under this chapter or the provision thereof in question.

B. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this chapter does not in itself constitute a violation of this chapter.

§ 3904. Exemption transactions

This chapter does not apply to the following:

1. Credit transactions involving extensions of credit for business or commercial purposes, or to governments or governmental agencies or instrumentalities, or to organizations;

2. Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission;
3. Credit transactions, other than real property transactions, in which the total amount to be financed exceeds \$25,000;
4. Transactions under public utility tariffs, if the commissioner determines that a state regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

§ 3905. Regulations

The commissioner shall prescribe regulations to carry out the purposes of this chapter. These regulations may contain such classifications, differentiations or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the commissioner are necessary or proper to effectuate the purposes of this chapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Any regulations prescribed under authority of this chapter shall not be subject to the procedures provided by section 6, subsection 4, and shall become effective on the date designated by the regulation.

§ 3906. Determination of finance charge

1. Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

- A. Interest, time price differential, and any amount payable under a point, discount or other system of additional charges;
- B. Service or carrying charge;
- C. Loan fees, finder's fee or similar charge;
- D. Fee for an investigation or credit report;
- E. Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

2. Charges or premiums for credit life, accident or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless:

- A. The coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and
- B. In order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific

affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

3. Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

4. If any of the following items is itemized and disclosed in accordance with the regulations of the commissioner in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

A. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction;

B. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph A which would otherwise be payable;

C. Taxes;

D. Any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the commissioner by regulation.

5. The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

A. Fees or premiums for title examination, title insurance or similar purposes;

B. Fees for preparation of a deed, settlement statement or other documents;

C. Escrows for future payments of taxes and insurance;

D. Fees for notarizing deeds and other documents;

E. Appraisal fees;

F. Credit reports.

§ 3907. Determination of annual percentage rate

1. The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the commissioner:

A. In the case of any extension of credit other than under an open end credit plan, as;

(1) That nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(2) The rate determined by any method prescribed by the commissioner as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (1).

B. In the case of any extension of credit under an open end credit plan, as the quotient, expressed as a percentage, of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

2. Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the commissioner determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the commissioner may by regulation require.

3. The annual percentage rate may be rounded to the nearest quarter of 1% for credit transactions payable in substantially equal installments when a creditor determines the total finance charge on the basis of a single add-on, discount, periodic or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the commissioner.

4. The commissioner may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection 1, paragraph A, subparagraph (1) by not more than such tolerances as the commissioner may allow. The commissioner may not allow a tolerance greater than 8% of that rate except to simplify compliance where irregular payments are involved.

5. In the case of creditors determining the annual percentage rate in a manner other than as described in subsection 3 or 4, the commissioner may authorize other reasonable tolerances.

§ 3908. Administrative enforcement

1. Compliance with the requirements imposed under this chapter shall be enforced by the Bank Commissioner.

2. The commissioner, or his duly authorized representatives shall have power to make such investigations as he shall deem necessary, and may ex-

amine the books, accounts, records and files of any creditor, or any subsequent assignee of the original creditor. The commissioner shall have power to administer oaths and affirmations to any person whose testimony is required.

3. The commissioner, or his duly authorized representative may make application to the Federal Reserve Board for a determination that under the laws of this State any class of credit transaction within this State is subject to requirements substantially similar to federal requirements and that there is adequate provisions for enforcement.

§ 3909. Views of other agencies

To keep the commissioner's regulations in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System and with the regulations of administrators in other jurisdictions, the commissioner, so far as is consistent with the purposes, policies and provisions of this chapter, shall :

1. Before adopting, amending and repealing regulations, advise and consult with administrators in other jurisdictions which enact truth-in-lending laws; and

2. In adopting, amending and repealing regulations, take into consideration :

A. The regulations so prescribed by the Board of Governors of the Federal Reserve System; and

B. The regulations of administrators in other jurisdictions which enact truth-in-lending laws.

§ 3910. Effect on other laws

1. This chapter does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of this State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this chapter extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.

2. In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this chapter in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

3. Except as specified in sections 3917 and 3922, this chapter and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under state or federal law.

§ 3911. Criminal liability for willful and knowing violation

Whoever willfully and knowingly :

1. Gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this chapter or any regulation issued thereunder;

2. Uses any chart or table authorized by the commissioner under section 3907 in such a manner as to consistently understate the annual percentage rate determined under section 3907 subsection 1, paragraph A, subparagraph (1); or

3. Otherwise fails to comply with any requirement imposed under this chapter, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or by both.

§ 3912. Penalties inapplicable to governmental agencies

No civil or criminal penalty provided under this chapter for any violation thereof may be imposed upon the United States or any agency thereof, or upon any state or political subdivision thereof, or any agency of any state or political subdivision.

§ 3913. Reports by commissioner

The commissioner shall include in the report required in section 4 information concerning the administration of his functions under this chapter including such recommendations as he deems necessary or appropriate including his assessment of the extent to which compliance with the requirements imposed under this chapter is being achieved.

§ 3914. General requirement of disclosure

1. Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the commissioner, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this chapter.

2. If there is more than one obligor, a creditor need not furnish a statement of information required under this chapter to more than one of them.

§ 3915. Form of disclosure; additional information

1. Regulations of the commissioner need not require that disclosures pursuant to this chapter be made in the order set forth in this chapter, and may permit the use of terminology different from that employed in this chapter if it conveys substantially the same meaning.

2. Any creditor may supply additional information or explanations with any disclosures required under this chapter.

§ 3916. Effect of subsequent occurrence

If information disclosed in accordance with this chapter is subsequently rendered inaccurate as the result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter.

§ 3917. Right of rescission as to certain transactions

1. Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with regulations of the commissioner, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the commissioner, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the commissioner, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

2. When an obligor exercises his right to rescind under subsection 1, he is not liable for any finance or other charge, and any security interest given by the obligor becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 10 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

3. Notwithstanding any rule of evidence, written acknowledgement of receipt of any disclosures required under this chapter by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

4. The commissioner may, if he finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

5. This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

§ 3918. Content of periodic statements

If a creditor transmits periodic statements in connection with any extension of consumer credit other than under an open end consumer credit plan, then each of those statements shall set forth each of the following items:

1. The annual percentage rate of the total finance charge.
2. The date by which, or the period, if any, within which payment must be made in order to avoid additional finance charges or other charges.
3. Such of the items set forth in section 3919, subsection 2, as the commissioner may by regulation require as appropriate to the terms and conditions under which the extension of credit in question is made.

§ 3919. Open end consumer credit plans

1. Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

- A. The conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finance charge;
- B. The method of determining the balance upon which a finance charge will be imposed;
- C. The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge;
- D. Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;
- E. If the creditor so elects,

(1) The average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or

(2) Whenever circumstances are such that the computation of a rate under subparagraph (1) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan;

The commissioner shall prescribe regulations, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph;

F. The conditions under which any other charges may be imposed and the method by which they will be determined;

G. The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.

2. The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

- A. The outstanding balance in the account at the beginning of the statement period;
- B. The amount and date of each extension of credit during the period, and, if a purchaser was involved, a brief identification, unless previously furnished, of the goods or services purchased;
- C. The total amount credited to the account during the period;
- D. The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge;
- E. Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate determined under section 3907, subsection 1, paragraph B, is required to be disclosed pursuant to paragraph F, the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;
- F. Where the total finance charge exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate determined under section 3907, subsection 1, paragraph B, except that if the finance charge is the sum of 2 or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable;
- G. At the election of the creditor, the average effective annual percentage rate of return, or the projected rate, under the plan as prescribed in subsection 1, paragraph E;
- H. The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed;
- I. The outstanding balance in the account at the end of the period;
- J. The date by which, or the period, if any, within which, payment must be made to avoid additional finance charges.

3. In the case of any open end consumer credit plan in existence on the effective date of this Act, the items described in subsection 1, to the extent applicable, shall be disclosed in a notice mailed or delivered to the obligor not later than 30 days after that date.

§ 3920. Sales not under open end credit plans

1. In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:

- A. The cash price of the property or service purchased ;
- B. The sum of any amounts credited as downpayment, including any trade-in ;
- C. The difference between the amount referred to in paragraph A and the amount referred to in paragraph B ;
- D. All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge ;
- E. The total amount to be financed, the sum of the amount described in paragraph C plus the amount described in paragraph D ;
- F. Except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable ;
- G. The finance charge expressed as an annual percentage rate except in the case of a finance charge :

(1) Which does not exceed \$5 and is applicable to an amount financed not exceeding \$75 ; or

(2) Which does not exceed \$7.50 and is applicable to an amount financed exceeding \$75 ;

A creditor may not divide a consumer credit sale into 2 or more sales to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

H. The number, amount, and due dates or periods of payments scheduled to repay the indebtedness ;

I. The default, delinquency or similar charges payable in the event of late payments ;

J. A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

2. Except as otherwise provided in this chapter, the disclosures required under subsection 1 shall be made before the credit is extended, and may be made by disclosing the information in the contract or other evidence of indebtedness to be signed by the purchaser.

3. If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the deferred payment price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosure required under subsection 1 may be made at any time not later than the date the first payment is due.

4. If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the

deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection 1 for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

§ 3921. Consumer loans not under open end credit plans

1. Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

A. The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf;

B. All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge;

C. The total amount to be financed, the sum of the amounts referred to in paragraph A plus the amounts referred to in paragraph B;

D. Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge;

E. The finance charge expressed as an annual percentage rate except in the case of a finance charge;

(1) Which does not exceed \$5 and is applicable to an extension of consumer credit not exceeding \$75; or

(2) Which does not exceed \$7.50 and is applicable to an extension of consumer credit exceeding \$75;

A creditor may not divide an extension of credit into 2 or more transactions to avoid the disclosure of an annual percentage rate pursuant to this paragraph;

F. The number, amount and the due dates or periods of payments scheduled to repay the indebtedness;

G. The default, delinquency or similar charges payable in the event of late payments;

H. A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a

clear identification of the property to which the security interest relates.

2. Except as otherwise provided in this chapter, the disclosure required by subsection 1 shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor.

3. If a creditor receives a request for an extension of credit by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection 1 may be made at any time not later than the date the first payment is due.

§ 3922. Civil liability

1. Except as otherwise provided in this section, any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this chapter to be disclosed to that person is liable to that person in an amount equal to the sum of:

A. Twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than \$100 nor greater than \$1,000; and

B. In the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

2. A creditor has no liability under this section if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

3. A creditor may not be held liable in any action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

4. Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in real property may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this chapter, and that it maintained procedures reasonably adapted to apprise it of the existence of any such violations.

5. Any action under this section may be brought in any district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

§ 3923. Written acknowledgement as proof of receipt

Except as provided in section 3917, subsection 3, and except in the case of actions brought under section 3922, subsection 4, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this chapter shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this chapter. This section does not affect the rights of the obligor in any action against the original creditor.

§ 3924. Conformity with federal law

It is declared to be the legislative intent that the state law shall require disclosure of items of information substantially similar to the requirements of any applicable federal law. To effectuate this intent the commissioner is specifically authorized, empowered and directed to adopt such interim regulations governing the information to be disclosed and the manner of disclosure so as to assure that the requirements of state law meet the requirements of such applicable federal law. Such regulations shall remain in full force and effect until 90 days after the close of the next regular session of the Legislature. Section 6, subsection 4, shall not apply to regulations issued under this chapter.

§ 3925. Exemption from Federal Truth-in-Lending Act

This chapter shall not apply to any class of credit transactions within this State which are subject to the requirements of Chapter 2 of Title 1 of The Consumer Credit Protection Act enacted by Congress unless any such class of transactions shall have first been exempted from the requirements of said Chapter 2 by a regulation of the Board of Governors of the Federal Reserve Board and such exemption remains in effect.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1, 1969.