

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

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Legislative Document

No. 728

H. P. 552

House of Representatives, February 10, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. O'Brien of Portland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

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AN ACT Revising the Laws Relating to Licensed Small Loan Agencies.

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

**Sec. 1. R. S., T. 9, § 3081, amended.** The last sentence of the first paragraph of section 3081 of Title 9 of the Revised Statutes, as repealed and replaced by section 5 of chapter 474 of the public laws of 1967, is amended to read as follows:

No contract of loan made under chapters 281 to 289 shall provide for a greater rate than 8% per year simple interest on the principal balance remaining unpaid at the expiration of 36 months ~~on the original loan, including any additional amounts borrowed, any renewal, refinancing or extension of the contract made within such period;~~ and thereafter, such unpaid principal balance shall not be directly or indirectly renewed or refinanced by the lender who made such loan, nor shall such lender grant any additional loan to any such borrower until such unpaid balance has been paid in full from the date of making any loan contract.

**Sec. 2. R. S., T. 9, § 3085, repealed and replaced.** Section 3085 of Title 9 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 3085. Limitations on agreements and practices

1. Balloon payments prohibited. No licensee shall schedule loans to be payable in other than equal periodic intervals and no scheduled payment shall be more than twice as large as the average of earlier scheduled payments, except to the extent that the amount or schedule of payments are adjusted to the seasonal or irregular income of the borrower.

2. Chattel mortgages on household goods and other personal property exempt from levy, prohibited. No licensee shall take any security instrument covering, or pledge of, any personal property exempt under Title 14, section 4401, nor any waiver of such right of exemption, provided that the exemption under said section 4401 shall, for the purposes of this section, cover household furniture not exceeding \$1,000 in value. Any security agreement covering, or pledge of, such exempt property is void.

3. Body executions prohibited. No licensee shall by legal process permit an execution to run against the body of any borrower to seek the imprisonment of such borrower.

4. Evasion of maturity limitation prohibited. No licensee under chapters 281 to 289 shall make any loan contract or series of loan contracts to the same borrower or borrowers, the original unpaid principal balances of which do not exceed the unpaid balance of a prior loan and the amount of any charges collected when the loan is made, that provide for a greater rate than 8% simple interest following 36 months from the date of making the original loan contract, to evade the effect of the limitation on the period of repayment of individual loan contracts in section 3081.

5. Wage assignments prohibited. No licensee shall take any assignment of any salary or wages, earned or to be earned.

6. Waiver of homestead exemption prohibited. No licensee shall take from a borrower any waiver of a homestead exemption.

7. Possession of security restricted. No licensee shall before judgment take possession of any security without first providing the borrower with 10 days written notice. The required notice may be sent to the borrower's last known residence. No notice is required if there is an imminent likelihood that the security will be substantially damaged or concealed.

8. Payments for referrals prohibited. No licensee shall endeavor to obtain loan recommendations by offering to pay, or by paying, with money or other articles of value, or by advertising allowances to any merchant, business organization or other person.

9. Excessive garnishment prohibited. Notwithstanding any other provision of law, no licensee shall be entitled to any wages in any amount that exceeds the lesser of:

A. Twenty-five percent of the disposable wages for any workweek, or

B. The amount by which disposable wages for any workweek exceed 40 times the federal minimum hourly wage prescribed by section 6 (a) (1) of the Fair Labor Standards Act of 1938, U.S.C. Title 29, § 206 (a) (1), in effect at the time the wages are payable.

"Disposable wages" mean that part of the wages remaining after the deduction from those wages of any amounts required by law to be withheld.

10. Unreasonable venue prohibited. No licensee shall commence any action against a borrower except in the county in which the borrower resides

at the commencement of the action or, if the borrower cannot be located with reasonable effort, in the county in which the borrower was last known to reside.

11. Waiver of rights prohibited and unconscionable settlements void.

A. Except as otherwise provided, a borrower may not waive or agree to forego rights or benefits under chapters 281 to 289.

B. A claim by a borrower against a licensee for an excess charge, other violation of chapters 281 to 289, or civil penalty, or a claim against a borrower for default, if disputed in good faith, may be settled by agreement.

C. A claim, whether or not disputed, against a borrower may be settled for less value than the amount claimed.

D. A settlement is invalid if the court as a matter of law finds it to have been unconscionable at the time it was made. The competence of the borrower, any deception, economic duress or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

12. Unconscionability.

A. With respect to a loan made under chapters 281 to 289, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

B. If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose and effect to aid the court in making the determination.

### STATEMENT OF FACT

The purpose of this bill is to repeal the 36-month restriction and to provide additional consumer protection by small loan agencies.