

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 52

H. P. 45

Office of the Clerk of the House

Filed December 12, 1972 under Joint Rule 6 by Mr. Dunleavy of Presque Isle. To be printed and delivered to the House of Representatives of the 106th Legislature.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Dunleavy of Presque Isle.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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AN ACT to Regulate Revolving Credit Accounts.

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

R. S., T. 9, c. 374, additional. Title 9 of the Revised Statutes is amended by adding a new chapter 374 to read as follows:

CHAPTER 374

REVOLVING CREDIT ACCOUNTS

§ 3981. Definitions

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

1. "Commissioner" refers to the Bank Commissioner of the State of Maine.
2. "Creditor" means a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit.
3. "Customer" means a natural person to whom consumer credit is offered or to whom it is or will be extended, and includes a comaker, endorser, guarantor or surety for such natural person who is or may be obligated to repay the extension of consumer credit.
4. "Holder" means any person who is entitled to the rights of a creditor under a revolving credit account.
5. "Organization" means a corporation, trust, estate, partnership, cooperative, association, government or governmental subdivision, agency or instrumentality.

6. "Person" means a natural person or an organization.

7. "Revolving credit account" means consumer credit extended on an account pursuant to a plan under which the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; the customer has the privilege of paying the balance in full or in instalments and a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. The term does not include negotiated advances under an open end real estate mortgage or letter of credit.

8. "Truth-in-Lending Act" means Title 1 of the Federal Consumer Credit Protection Act or chapter 373 of this Title, whichever may be applicable.

#### § 3982. Establishment of revolving credit account authorized

A revolving credit account may be established by a creditor only in response to a written request or application therefor from a customer. Nothing contained in this chapter shall be deemed to have any effect whatever upon any existing law regulating the power of or the conditions under which any person or organization may engage in business.

#### § 3983. Disclosures

The creditor shall make all disclosures and deliver all statements required by the Truth-in-Lending Act.

#### § 3984. Finance charges

1. Rate. A creditor or holder under a revolving credit account may assess a finance charge upon the customer which shall not exceed 1% per month computed upon the outstanding unpaid balance thereunder, from month to month, which need not be calendar month, or other regular period. The outstanding unpaid balance shall be determined consistent with subsection 3. If the amount of any finance charge is less than 50¢ for any month, 50¢ may be assessed, provided that no finance charge is assessed for a zero balance.

2. Ranges of balances. Finance charges may be computed under revolving credit accounts within a range of not in excess of \$10 on the basis of the median amount within the selected range, provided that such finance charge is applied to all unpaid balances within such range.

3. Computation. In the event that a finance charge is imposed, except where the creditor or holder imposes the average daily balance method, it shall be computed upon the previous balance after all payments on account, returns and other credits made or given during the first 25 days of the cycle shall have been first deducted; provided, however, that returns and other credits may be deducted only to the extent that the purchase to which the credit or return relates has been reflected in the previous balance.

#### § 3985. Timely mailing of billing statement required; loss of finance charge

The creditor or holder shall mail or deliver to the customer a statement for each billing cycle, at least 9 days before the end of the next succeeding billing

cycle. If the creditor or holder fails to mail or deliver such statement within the specified period, he shall not be entitled to any finance charge with respect to the next succeeding billing cycle based upon the previous balance of such next succeeding billing cycle. If any such finance charge is assessed or collected, the customer shall receive a credit or refund for any such finance charge assessed or collected other than in accordance with the provisions of this section within the 2 billing cycles following such assessment or collection. The failure to provide such credit or refund within the period specified shall subject the creditor or holder to the penalties provided in section 3989.

§ 3986. Charges included in revolving credit account finance charge; additional charges prohibited

The finance charge shall include all charges incident to investigating and making the revolving credit account. No fee, expense, delinquency, collection or other charge whatsoever shall be taken, received, reserved or contracted by the creditor or holder of a revolving credit account except as provided in this section. Charges may be made for insurance premiums and shall be made in accordance with the requirements of the Truth-in-Lending Act and applicable insurance laws. A creditor may, however, in an agreement which is signed by the customer and of which a copy is given or furnished to the customer provide for the payment of attorney's fees and costs in conformity with section 3988.

§ 3987. Notes cutting off customer's right of action or defense against creditor prohibited

No revolving credit account shall require or entail the execution of any note or series of notes by the customer which when separately negotiated will cut off as to 3rd parties any right of action or defense which the buyer may have against the creditor.

§ 3988. Award of reasonable attorney's fees and court costs to prevailing party

A revolving credit account may provide for the payment of reasonable attorney's fees and actual court costs if it is referred to an attorney for collection. Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on an account subject to this chapter regardless of whether such action is instituted by the creditor, holder or customer. Where the defendant alleges in his answer that he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this section.

§ 3989. Violation as misdemeanor

Any person who shall willfully violate any provision of this chapter 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.

**§ 3990. Knowledge by assignee of noncompliance with chapter as barring recovery of charges; recovery by customer of charges paid**

In case of failure by any person to comply with this chapter, such person or any person who acquires a revolving credit account with knowledge of such noncompliance is barred from recovery of any finance charge imposed in connection with such account and the customer shall have the right to recover from such person an amount equal to any of such charges paid by the customer.

**§ 3991. Correction of failure of compliance**

Notwithstanding section 3990, any failure to comply with any provision of this chapter may be corrected within 10 days after the holder notifies such failure or is notified thereof in writing by the customer and, if so corrected, neither the creditor nor the holder shall be subject to any penalty under this chapter.

**§ 3992. Payment to last known holder as discharge of customer in absence of notice of assignment**

Unless the customer has notice of actual or intended assignment of a revolving credit account, payment thereunder made by the customer to the last known holder of such account, shall to the extent of the payment, discharge the customer's obligation.

**§ 3993. Administrative enforcement**

Compliance with the requirements imposed under this chapter shall be enforced by the commissioner.

The commissioner, or his duly authorized representatives, shall have power to make such investigations as he shall deem necessary and may examine the books, accounts, records and files of any creditor or holder.

The commissioner shall have power to administer oaths and affirmations to any person whose testimony is required.

## STATEMENT OF FACT

It is the intent of this legislation to limit finance charges on revolving accounts to 1% per month.