

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1877

H. P. 1386

House of Representatives, April 3, 1973

Referred to Committee on Business Legislation. Sent up for concurrence and 1500 ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Dunleavy of Presque Isle.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Create a Maine Consumer Code.

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

Sec. 1. R. S., T. 9, § 229, repealed and replaced. Section 229 of Title 9 of the Revised Statutes, as enacted by chapter 421 of the public laws of 1967, is repealed and the following enacted in place thereof:

§ 229. Maximum rate; prepayment, disclosure; corporations

1. Rate. Except as authorized by other statutes, no person shall, directly or indirectly, contract for, take or receive in money, goods or things in action, or in any other way, any greater sum or any greater value, for the loan or forbearance of money, goods or things in action, than:

A. At the rate of \$12 upon \$100 for one year computed upon the declining principal balance of the loan or forbearance;

B. With respect to loans or forbearances repayable in substantially equal weekly or monthly instalments and the face amounts of which include predetermined interest charges, at the rate of \$6 upon \$100 for one year computed upon that portion of the original principal amount of any such loan or forbearance, not including interest charges, for the time of such loan or forbearance, disregarding part payments and the dates thereof; and

C. With respect to loans or forbearances repayable in instalments other than of the type described in paragraph B, the amount of interest may be predetermined at the rate set forth in paragraph A at the time the loan is made on the basis of the agreed rate of interest and the principal balances agreed to be outstanding and stated in the note or loan contract as an addition to the principal; provided that if any agreed balance of principal or

principal and interest combined or any instalment of principal or principal and interest combined is prepaid in full by cash or renewal the unearned interest shall be refunded as provided in subsection 2, paragraph B. In the computation of interest upon any bond, note, or other instrument or agreement, interest shall not be compounded, nor shall the interest thereon be construed to bear interest, unless an agreement to that effect is clearly expressed in writing, and signed by the party to be charged therewith.

2. Prepayment. Any loan for which the rate of interest charged exceeds \$10 per \$100 for one year computed upon the declining principal balance may be prepaid by the borrower at any time in whole or in part. Upon prepayment of any such loan in full by cash, renewal or refinancing, the borrower shall be entitled to a refund of unearned interest charged which shall be determined as follows:

A. On any such loan which is repayable in substantially equal, successive instalments at approximately equal intervals of time and the face amount of which includes predetermined interest charges, the amount of such refund shall be as great a proportion of the total interest charged as the sum of the balances scheduled to be outstanding during the full instalment periods commencing with the instalment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all instalment periods of the loan;

B. On any other such loan, the amount of such refund shall not be less than the difference between the interest charged and interest, at the rate contracted for, computed upon the unpaid principal balances of the loan from time to time outstanding prior to prepayment in full.

3. Provision. A contract to make loans or an evidence of indebtedness may provide for a rate of interest or penalty payable upon the principal amount of an extension of a loan or forbearance or upon any amount in default under a loan or forbearance which shall not exceed the rate allowed in subsection 1, paragraph A.

4. Statement. Any person making a loan for which interest is agreed to be paid at a rate exceeding the rate of \$10 upon \$100 for one year computed upon the declining principal of the loan shall, at or prior to making such loan, deliver to the borrower a statement, which may be incorporated in a copy of the evidence of indebtedness, setting forth all of the terms of the transaction in clear and distinct language, including:

A. The rate of interest agreed upon in terms either of simple interest computed on the declining principal balance or of the actual interest cost in money; and

B. A statement that the loan may be prepaid in full or in part and that, if the loan is prepaid in full, the borrower may receive a refund of interest charged.

5. Application. This section shall not apply to loans to corporations.

6. —further. This section does not apply to transactions governed by Title 9, chapter 372.

Sec. 2. R. S., T. 9, § 3086, repealed. Section 3086 of Title 9 of the Revised Statutes, as amended, is repealed.

Sec. 3. R. S., T. 9, §§ 3901 to 3927, repealed. Sections 3901 to 3925, as enacted by section 35 of chapter 423 of the public laws of 1969 and sections 3926 and 3927, as enacted by section 2 of chapter 63 of the public laws of 1971, of Title 9 of the Revised Statutes, are repealed.

Sec. 4. R. S., T. 9, Part 13, additional. Title 9 of the Revised Statutes is amended by adding a new Part 13 to read as follows:

PART 13

PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

CHAPTER 374

MAINE CONSUMER ACT

SUBCHAPTER 1

GENERAL PROVISIONS AND DEFINITIONS

§ 3931. Short title

Chapter 374 shall be known and may be cited as the **Maine Consumer Act**.

§ 3932. Purposes; rules of construction

1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this Act are:

A. To simplify, clarify and modernize the law governing consumer transactions;

B. To protect customers against unfair, deceptive, false, misleading and unconscionable practices by merchants;

C. To permit and encourage the development of fair and economically sound consumer practices in consumer transactions; and

D. To coordinate the regulation of consumer credit transactions with the policies of the Federal Consumer Credit Protection Act.

3. A reference to a provision of this Act includes reference to a related rule or order of the administrator adopted pursuant to this Act.

§ 3933. Applicable law

1. Unless superseded by the particular provisions of this Act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement this Act.

2. Unless terms used in this Act are defined by particular provisions of this Act, they shall have the meaning given them in Title 11 if they are therein defined.

3. Unless superseded by the particular provisions of this Act parties to a consumer transaction have all of the obligations, duties, rights and remedies provided in Title 11 which apply to the transaction.

4. This Act shall not preempt the administration or enforcement of other statutes pertaining to the same subject where not conflicting. Conduct prescribed under sections 4071, 5098, 5099 or 5100 may also constitute violations of Title 19, section 1153 and Title 17, section 1620.

§ 3934. Construction against implied repeal; severability

This Act being a general Act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§ 3935. Settlement of claims; agreement to forego rights; waiver

1. Except as otherwise provided in this Act, a customer may not waive or agree to forego rights or benefits under this Act.

2. A claim by a customer against a merchant for an excess charge, other violation of this Act or civil penalty, or a claim against a customer for default or breach of a duty imposed by this Act, if disputed in good faith, may be settled by agreement.

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

4. A settlement in which the customer waives or agrees to forego rights or benefits under this Act is invalid if the court as a matter of law finds the settlement to be unconscionable at the time it was made. In this regard the court may consider the competence of the customer as measured by his education, ability to speak and read the language of the contract, and his prior consumer experience; any deception or coercion practiced upon him; the nature and extent of the legal advice received by him; and the value of the consideration.

§ 3936. Effect of act on powers of organizations

1. Except as specifically provided, this Act prescribes maximum charges for all consumer credit transactions and displaces existing limitations on the powers of creditors based on maximum charges.

2. Except as specifically provided, with respect to sellers of goods or services, lessors of goods, small loan companies, licensed lenders, consumer and sales finance companies and commercial banks and trust companies, this Act displaces existing limitations on their powers based solely on amount or duration of credit.

3. Except as provided in subsection 1, this Act does not displace limitations on powers of credit unions, savings banks, savings and loan associa-

tions or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

4. Except as provided in subsections 1 and 2, this Act does not displace:

A. Limitations on powers of supervised financial organizations (section 3951, subsection 43) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land or other similar restrictions designed to protect deposits; or

B. Limitations on powers an organization is authorized to exercise under the laws of this State or the United States.

§ 3937. Obligation of good faith

Every agreement or duty within this Act imposes an obligation of good faith in its performance or enforcement. Good faith means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

PART 2

SCOPE AND JURISDICTION

§ 3941. Territorial application

1. Except as otherwise provided in this section, this Act applies to consumer transactions made in this State and to modifications including refinancings, consolidations and deferrals, made in this State, of consumer credit transactions wherever made.

2. For the purposes of this Act, a consumer transaction or modification of a consumer transaction is made in this State, if:

A. A writing signed by the customer and evidencing the obligation or an offer of the customer is received by the merchant in this State; or

B. The merchant induces the customer who is a resident of this State to enter into the transaction by face-to-face solicitation or by mail or telephone solicitation directed to the particular customer in this State.

3. With respect to a transaction pursuant to an open-end credit plan, this Act applies if the customer is a resident of this State and the open-end creditor or a merchant honoring a credit card issued by the open-end creditor, is a resident of this State or furnishes, mails or delivers the goods, services or credit to a resident of this State while the customer is within this State or receives a writing signed by the customer and evidencing the transaction in this State.

4. Subchapter 7 applies to any debt collection activity in this State, including debt collection by means of mail or telephone communications directed to customers in this State.

5. Parts 1 and 2 of subchapter 5, relating to creditors' remedies, apply to actions or other proceedings brought in this State to enforce rights arising

from consumer transactions or extortionate extensions of credit, wherever made.

6. If a consumer transaction, or modification thereof, is made in another state with a customer who is a resident of this State when the transaction or modification is made, the following provisions apply as though the transaction occurred in this State :

A. A creditor, or assignee of his rights, may collect through actions or other proceedings charges only to the extent permitted by subchapter 2 ; and

B. A merchant may not enforce rights against the customer to the extent that the provisions of the agreement violate Part 4 of subchapter 2 or 3.

7. Except as provided in subsections 4 or 5, a consumer transaction or modification thereof, made in another state with a customer who was not a resident of this State when the consumer transaction or modification was made, is valid and enforceable in this State according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

8. For the purposes of this Act, the residence of a customer is the address given by him as his residence in any writing signed by him in connection with a consumer transaction. The given address is presumed to be unchanged until the merchant knows or has reason to know of a new or different address.

9. Notwithstanding other provisions of this section :

A. Except as provided in subsections 4 or 5 this Act does not apply if the customer is not a resident of this State at the time of a consumer transaction and the parties then agree that the law of his residence applies ; and

B. This Act applies if the customer is a resident of this State at the time of a consumer transaction and the parties then agree that the law of this State applies.

10. Except as provided in subsection 9, the following terms of a writing executed by a customer are invalid with respect to consumer transactions, or modifications thereof, to which this Act applies :

A. That the law of another state shall apply ;

B. That the customer consents to the jurisdiction of another state ; and

C. That fixes venue.

§ 3942. Exclusions

This Act does not apply to :

1. Extensions of credit to organizations (section 3951, subsection 28) ;

2. Transactions in which all parties are organizations (section 3951, subsection 28) ;

3. Charges for delayed payment and any discount allowed for early payment in transactions under public utility or common carrier tariffs if a subdivision or agency of this State or of the United States regulates such charges or discounts;

4. The ceilings on rates and charges of a licensed pawnbroker if these ceilings are established by statute or ordinance;

5. The sale of insurance by an insurer, except as otherwise provided in subchapter 4; or

6. Consumer credit transactions in which the amount financed exceeds \$25,000 or other consumer transactions in which the cash price exceeds \$25,000.

PART 3 DEFINITIONS

§ 3951. General definitions

In addition to definitions appearing in subchapters 2 to 7, in this Act:

1. "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between amount financed and 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.

2. "Administrator" means the administrator designated in section 5093.

3. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. Title 11, section 2.202 and any other provisions on parol or extrinsic evidence shall be inoperative to exclude or limit the admissibility of evidence relating to agreements governed by this Act.

4. "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a person, other than an organization, which cultivates, plants, propagates or nurtures those agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

5. "Amount financed" in a consumer credit transaction means the total of the following items from which any prepaid finance charge or required deposit balance has been excluded:

A. In a consumer credit sale, the cash price of the real or personal property or services, less the amount of any downpayment whether made in cash or in property traded in, or in a consumer loan, the amount paid to,

receivable by or paid or payable to the customer or to another person in his behalf;

B. In a consumer credit sale, the amount actually paid or to be paid by the creditor pursuant to an agreement with the customer to discharge a security interest in or a lien on property traded in; and

C. To the extent not included in paragraph A or B:

(1) Any applicable sales, use, excise or documentary stamp taxes;

(2) Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees; and

(3) Additional charges permitted by section 4012.

6. "Business day" means any calendar day except Saturday and Sunday, and except the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving and Christmas.

7. "Cash price" means the price at which property or services are offered, in the ordinary course of business, for sale for cash, and may include:

A. The cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications and improvements; and

B. Taxes, to the extent imposed on the cash sale.

8. "Conspicuous" means that the term or clause is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

9. "Consumer credit sale" means a sale of goods, services or an interest in land to a customer on credit where the debt is payable in instalments or a finance charge is imposed and includes any agreement in the form of a bailment of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods or real property 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 goods or real property upon full compliance with the terms of the agreement.

10. "Consumer credit transaction" means a consumer transaction between a merchant and a customer in which real or personal property, services or money is acquired on credit and the customer's obligation is payable in instalments or for which credit a finance charge is or may be imposed, whether such transaction is pursuant to an open-end credit plan or is a transaction involving other than open-end credit. The term includes consumer credit sales, consumer loans, consumer leases and transactions pursuant to open-end credit plans.

11. "Consumer lease" means a lease of goods which a merchant makes to a customer for a term exceeding 4 months.

12. "Consumer loan" means a loan made by a lender to a customer which is payable in instalments or for which a finance charge is or may be imposed,

and includes transactions pursuant to an open-end credit plan other than a seller credit card.

13. "Consumer transaction" means a transaction in which one or more of the parties is a customer for purposes of that transaction.

14. "Credit" means the right granted by a creditor to a customer to defer payment of debt, to incur debt and defer its payment or to purchase goods, services or interests in land on a time price basis.

15. "Credit card" means any card, plate, merchandise certificate, letter of credit, coupon book or other like credit device existing for the purpose of obtaining money, property, labor or services on credit pursuant to an open-end credit plan.

16. "Creditor" means a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by or procuring consumer credit from third persons.

17. "Customer" means a person other than an organization (subsection 28) who seeks or acquires real or personal property, services, money or credit for personal, family, household or agricultural purposes. A person other than a customer may agree to be governed by this Act with respect to all aspects of a transaction and in such event such person shall be deemed a customer for all purposes of this Act with respect to such transaction.

18. "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program. "Earnings" does not include renewal commissions payable to a licensed insurance agent.

19. "Federal consumer credit protection act" means the Consumer Credit Protection Act (P.L. 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that Act.

20. "Finance charge" means the sum of all charges, payable directly or indirectly by the customer as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the creditor or any other person on behalf of the customer to the creditor or to a third party unless the creditor had no notice or knowledge of the charges paid or payable to the third party, including the following types of charges to the extent they are not permitted additional charges under section 4012 or delinquency charges (section 4013) or deferral charges (section 4014).

- A. Interest, time price differential and any amount payable under a discount or other system of additional charges;
- B. Service, transaction, activity or carrying charge;
- C. Loan fee, points, finder's fee or similar charge;
- D. Fee for an appraisal, investigation or credit report;

E. Any charge imposed by a creditor upon another creditor for purchasing or accepting an obligation of a customer if the customer is required to pay any part of that charge in cash, as an addition to the obligation or as a deduction from the proceeds of the obligation;

F. Premium or other charge for guarantee or insurance protecting the creditor against the customer's default or other credit loss;

G. Charges or premiums for credit life, accident or health insurance, written in connection with any consumer credit transaction to the extent they are not permitted as additional charges under section 4012; and

H. Charges or premiums for insurance, written in connection with any action against loss of or damage to property or against liability arising out of the ownership or use of property to the extent they are not permitted as additional charges under section 4012.

21. "Goods" includes goods (Title 11, section 9.105, subsection 1, paragraph F) not in existence at the time the transaction is entered into and goods which are or are to become fixtures.

22. "Lender" means a merchant regularly engaged in the business of making consumer loans.

23. "Loan" includes:

A. The creation of debt by the lender's payment of or agreement to pay money to the customer or to a third party for the account of the customer;

B. The creation of debt by a credit to an account with the lender upon which the customer is entitled to draw immediately;

C. The creation of debt pursuant to a credit card or similar arrangement other than pursuant to a seller credit card;

D. The forbearance by a lender of debt arising from a loan.

24. "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

25. "Merchant" means a person who regularly advertises, distributes, offers, supplies or deals in real or personal property, services, money or credit in a manner which directly or indirectly results in or is intended or designed to result in, lead to or induce a consumer transaction. The term includes, but is not limited to, a seller, lessor, manufacturer, creditor, arranger of credit and any assignee of or successor to such person. The term also includes a person who by his occupation holds himself out as having knowledge or skill peculiar to such practices or to whom such knowledge or skill may be attributed by his employment as an agent, broker or other intermediary.

26. "Official fees" means:

A. Fees and charges which actually are or actually will be paid for determining the existence of or for perfecting a security interest related to

a consumer credit transaction to the extent that such fees and charges do not exceed those fees and charges prescribed by law for payment to public officials; and

B. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the consumer credit transaction, if the premium does not exceed the amount payable to the insurer and the fees and charges described in paragraph A which would otherwise be payable.

27. "Open-end credit plan" means consumer credit extended on an account pursuant to a plan under which:

A. 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;

B. The customer has the privilege of paying the balance in full or in instalments; and

C. 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 a letter of credit.

28. "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association other than a cooperative organized under Title 13, section 1501 et seq. or Title 13, section 1771 et seq., which has gross annual revenues not exceeding \$5 million.

29. "Other than open-end credit" means consumer credit other than an open-end credit plan itself, or other than consumer credit transactions pursuant to an open-end credit plan, and includes precomputed transactions.

30. "Payable in instalments" means that payment is required or permitted by agreement to be made in:

A. Two or more instalments, excluding the downpayment in a consumer credit sale, with respect to an obligation arising from a consumer credit transaction for which a finance charge is or may be imposed;

B. More than 4 instalments, excluding the downpayment in a consumer credit sale, in any other consumer credit transaction; or

C. Two or more instalments if any instalment other than the downpayment is more than twice the amount of any other instalment, excluding the downpayment.

31. "Person" includes a natural person, and an organization.

32. "Person related to" with respect to a natural person means:

A. The spouse of the natural person;

B. A brother, brother-in-law, sister, sister-in-law of the natural person;

- C. An ancestor or lineal descendant of the natural person or his spouse; and
- D. Any other relative, by blood or marriage, of the natural person or his spouse who shares the same home with the natural person.
33. "Person related to" with respect to an organization means:
- A. A person directly or indirectly controlling the organization, controlled by the organization or, who together with the organization, is under common control;
- B. An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- C. The spouse of a natural person related to the organization; and
- D. A relative by blood or marriage of a person related to the organization who shares the same home with him.
34. "Personal property" includes, but is not limited to, goods.
35. "Precomputed" with respect to a consumer credit transaction means a consumer credit transaction in which debt is expressed as a single sum comprised of the amount financed and the finance charge computed in advance.
36. "Prepaid finance charge" means any finance charge paid separately, in cash or otherwise, directly or indirectly to the creditor or with the creditor's knowledge to another person or withheld by the creditor from the proceeds of the credit extended.
37. "Presumed" or "presumption" means that the trier of the issue must find the existence of that which is presumed unless and until evidence is introduced which would support a contrary finding.
38. "Required deposit balance" means any deposit balance or any investment which the creditor requires the customer to make, maintain or increase in a specified amount or proportion as a condition to the extension of credit except:
- A. Amounts paid into an escrow account which are permitted additional charges under section 4012;
- B. A deposit balance which will be wholly applied toward satisfaction of the customer's obligation in the transaction;
- C. A deposit balance or investment which was in existence at least 6 months prior to the extension of credit and which is offered by the customer as security for that extension of credit; and
- D. A deposit balance or investment which is acquired or established from the proceeds of an extension of credit made for that purpose, which the creditor does not require as a condition to the extension of credit, and which is acquired or established at the written request of the customer.

39. "Sale of services" means furnishing or agreeing to furnish services and includes arranging to have services furnished by another.

40. "Security interest" means a real property mortgage, deed of trust, seller's interest in real estate under a land contract, any interest in property which secures payment or performance of an obligation under subchapter 9 or any other consensual or confessed lien whether or not recorded.

41. "Seller credit card" means an arrangement pursuant to an open-end credit plan in which a person gives to a customer the privilege of using a credit card or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, a person related to that person or others licensed or franchised to do business under his business or trade name or designation.

42. "Services" includes:

A. Work, labor and other personal services;

B. Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

C. Insurance provided in connection with a consumer credit transaction.

"Services" does not include any services of common carriers if the tariffs, rates, charges, costs or expenses of such common carriers are required by law to be filed with or approved by the federal government or any official, department, division, commission or agency of the United States.

43. "Supervised financial organization" means a person:

A. Organized, chartered or holding an authorization certificate under the laws of this State or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

B. Subject to supervision by an official or agency of this State or of the United States.

44. "Transaction" means an agreement between 2 or more persons, whether or not the agreement is a contract enforceable by action, and includes the making of and the performance pursuant to that agreement.

SUBCHAPTER 2

CONSUMER CREDIT TRANSACTIONS

PART 1

GENERAL PROVISIONS

§ 4001. Short title

This chapter shall be known and may be cited as Maine Consumer Act — Consumer Credit Transactions.

§ 4002. Scope

This subchapter applies to consumer credit transactions.

PART 2

MAXIMUM CHARGES

§ 4011. Finance charge for consumer credit transactions

1. With respect to a consumer credit transaction other than one pursuant to an open-end credit plan, the parties may agree to the payment by the customer of a finance charge not in excess of that permitted by subsections 2 to 4.

2. The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the total of the following:

A. Eighteen per cent on that part of the unpaid balance of the amount financed which is \$500 or less; and

B. Twelve per cent per year on that part of the unpaid balance of the amount financed which is more than \$500.

3. For licensees under Title 9, section 3042 or section 3441, the finance charge, calculated according to those sections, may not exceed the maximums permitted in Title 9, section 3041 or 3082 respectively.

4. For sellers of farm equipment, farm implements and farm tractors, other than licensees under Title 9, section 3441, the finance charge on the sale of equipment may not exceed the Class 2 rate for motor vehicles, as specified in Title 9, section 3482, subsection 1 and calculated in accordance with that section.

5. For the purposes of this section:

A. The finance charge may be calculated on the assumption that all scheduled payments will be made when due;

B. The dollar amount of finance charge shall include the prepaid finance charge excluded from the amount financed; and

C. The effect of prepayment is governed by the provisions on rebate upon prepayment under section 4019.

6. For the purposes of this section, the term of a consumer credit transaction other than one pursuant to an open-end credit plan commences with the date the credit is granted or, if goods are delivered, services performed or proceeds of a loan paid 10 days or more after that date, with the date of commencement of delivery or performance. Differences in lengths of months are disregarded and a day may be counted as 1/30th of a month.

7. Subject to classifications and differentiations the merchant may reasonably establish, he may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsections 2, 3 or 4 as the case may be if:

A. When applied to the median amount within each range, it does not exceed the maximum permitted by subsections 2, 3 or 4 as the case may be; and

B. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph A by more than 8% of the rate calculated according to paragraph A.

8. Notwithstanding subsections 2, 3 or 4, a merchant may contract for and receive a minimum finance charge with respect to a transaction other than one pursuant to an open-end credit plan, of not more than \$5 when the amount financed does not exceed \$75, or \$7.50 when the amount financed exceeds \$75.

9. With respect to consumer credit transactions pursuant to an open-end credit plan the parties may agree to the payment by the customer of a finance charge not in excess of those permitted by subsections 2 or 3, whichever is applicable:

A. A finance charge shall be deemed not to exceed such rates, if it is determined by applying a periodic rate not in excess of those specified in paragraph B or C to:

(1) The average daily balance of the account;

(2) The unpaid balance of the account on the last day of the billing cycle calculated after first deducting all payments, credits and refunds during the billing cycle; or

(3) The median amount within a specified range within which the unpaid balance as calculated according to subparagraph 1 or 2 is included. A charge may be made pursuant to this paragraph only if the creditor, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not exceed the charge resulting from applying that percentage to the lowest amount within the range by more than 8% of the charge on the median amount.

B. If the billing cycle is monthly, the maximum periodic rate is 1.5% of that part of the amount specified in paragraph A, which is \$500 or less, and 1% of that part of such amount which is more than \$500; except that for licensees under Title 9, section 3042 the maximum periodic rate shall not exceed a periodic rate equivalent to the rate permitted under Title 9, section 3041 as determined by the administrator.

C. If the billing cycle is not monthly, the maximum periodic rates are those percentages which bear the same relation to the percentages specified in paragraph B as the number of days in the billing cycle bears to 30.

D. Irrespective of variations from cycle to cycle, a billing cycle is "monthly" for purposes of this section if the average length of 12 successive cycles is not less than 30 or more than 32 days.

10. Anything to the contrary in this chapter notwithstanding, with respect to consumer credit sales and consumer loans secured by real property and insured or guaranteed by the federal government, or any agency or instrumentality thereof, this chapter shall not prohibit or limit any charges which are required by statutes, rules or regulations of such government, agency or instrumentality.

11. A violation of this section is subject to section 5065.

§ 4012. Additional charges

1. In addition to the finance charge permitted by this subchapter, a merchant may bargain for and receive the following additional charges in connection with a consumer credit transaction:

A. Official fees and taxes;

B. Charges or premiums for credit life, accident or health insurance, written in connection with any consumer credit transaction if:

(1) The insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

(2) Any customer desiring such insurance coverage gives specific dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance;

C. 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, if a clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the merchant and stating that the customer may choose the person through which the insurance is to be obtained; and

D. Charges in real property transactions as provided in subsection 2.

2. With respect to a consumer credit transaction which involves the extension of credit secured by an interest in real property, the merchant may bargain for and receive in addition to the finance charge, the following additional charges:

A. If they will be paid to persons not related to the merchant, are reasonable in amount, bona fide and not for the purpose of circumvention or evasion of this subchapter;

B. If the security interest in the real property creates a first lien or equivalent security interest on the property and the credit extended is for the purpose of acquisition or refinancing an obligation secured by an existing first mortgage or equivalent security interest or substantial improvement of the real property by the customer:

(1) Fees or premiums for title examination, title insurance or similar purpose;

(2) Fees for preparation of a deed, settlement statement or other documents to the extent that the charges would customarily be borne by the customer if the transaction were for cash instead of credit;

(3) Fees for notarizing deeds and other documents to the extent that the charges would customarily be borne by the customer if the transaction were for cash instead of credit;

(4) Appraisal fees to the extent that the charges would customarily be borne by the customer if the transaction were for cash instead of credit; and

(5) Survey costs to the extent that the charges would customarily be borne by the customer if the transaction were for cash instead of credit.

3. For the purposes of this Act, any charge not authorized by this section shall be considered part of the finance charge.

§ 4013. Delinquency charges

1. With respect to a consumer credit transaction other than one pursuant to an open-end credit plan, the parties may agree to a delinquency charge on any instalment not paid in full on or before the 10th day after its scheduled or deferred due date in an amount not to exceed \$3 or 3% of the unpaid amount of the instalment, whichever is less.

2. No delinquency charge may be collected on an instalment which is paid in full on or before the 10th day after its scheduled or deferred due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

3. A delinquency charge under subsection 1 may be collected only once on an instalment however long it remains in default. A delinquency charge may not be collected for a late instalment if, with respect to that instalment, there has been a deferrel.

4.

A. With respect to a consumer credit transaction other than one primarily for an agricultural purpose, interest after the final scheduled maturity date shall not exceed the maximum rate permitted by Title 9, section 229, subsection 1, paragraph A, but if such interest is charged no delinquency charge may be taken on the final scheduled instalment.

B. With respect to a consumer credit transaction primarily for an agricultural purpose, interest after maturity of any scheduled instalment shall not exceed the maximum rate permitted by Title 9, section 229, subsection 1, paragraph A, but if such interest is charged, no delinquency charge may be taken on such instalment.

5. A violation of this section is subject to section 5064.

§ 4014. Deferral charges

1. With respect to a precomputed consumer credit transaction, the parties may at any time agree in writing to a deferral of all or part of one or more unpaid instalments, and the creditor may make and collect a charge but:

A. With respect to a precomputed transaction which is scheduled to be repaid in substantially equal successive instalments at approximately equal intervals, if the deferral is made as of an instalment due date and the payment dates for all wholly unpaid instalments are deferred for one or more full instalment periods and the maturity is extended for a corresponding period, the deferral charge shall not exceed the portion of the precomputed finance charge attributable to the final instalment of the original schedule of payments multiplied by the total number of instalments to be deferred and by the number of full instalment periods in the deferment period; or

B. If the deferral is not made pursuant to paragraph A the deferral charge shall not exceed the rate previously disclosed to the customer pursuant to the provisions on disclosure in Part 3, applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as 1/30th of a month.

2. A deferral charge may be collected at the time it is assessed or at any time thereafter.

3. The deferment period is that period of time in which no payment is required or made by reason of the deferral.

4. Any payment received at the time of the deferment may be applied first to the deferral charge and the remainder, if any, to the unpaid balance of the transaction, but if such payment is sufficient to pay, in addition to the appropriate delinquency charge, any instalment which is in default, it shall be first so applied, and such instalment shall not then be deferred or subject to the deferral charge.

5. No instalment on which a delinquency charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferral unless such delinquency charge or partial payment is refunded to the customer or credited to the deferral charge.

6. In addition to the deferral charge, the merchant may make appropriate additional charges. The amount of such charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral.

7. In addition to any requirements of form established by the administrator, a deferral agreement shall:

A. Be in writing and signed by the customer;

B. Incorporate by reference the transaction to which the deferral applies;

C. State each instalment or part thereof in the amount to be deferred, the date or dates originally payable and either the date or dates agreed to become payable for the payment of the amounts deferred or the periods of deferral; and

D. Clearly set forth the dollar amount of the charge for each instalment to be deferred and the total dollar amount to be paid by the customer for the deferral;

E. This subsection shall not apply to deferral charges made pursuant to subsection 8.

8. The parties may agree in writing at the time of a precomputed consumer transaction, refinancing or consolidation that if an instalment is not paid within 30 days after its due date, the creditor at any time may unilaterally grant a deferral and make charges as provided in this section if a notice is sent to the customer at least 10 days prior to deferral advising him of the total dollar amount of the deferral charge and the periods of deferral, but such deferral shall not be allowed if the customer has a valid claim or defense against the creditor for the payment not made. Only one such unilateral deferral on a consumer credit transaction may be made during any 12-month period.

9. No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the agreement.

10. A violation of this section is subject to section 5064.

§ 4015. Finance charge on refinancing

1. With respect to a consumer credit transaction other than one pursuant to an open-end credit plan, the merchant may by agreement with the customer refinance the unpaid balance and may bargain for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted in section 4011.

2. For the purpose of determining the finance charge permitted in refinancing, the amount financed resulting from the refinancing shall constitute the total of the following:

A. The amount which the customer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment under section 4019 on the date of refinancing, except that for the purpose of computing this amount no minimum finance charge under section 4011, subsection 8, shall be allowed; and

B. Appropriate additional charges under section 4012, included for the period of refinancing.

3. The maximum period for payments resulting from refinancing under this section shall not exceed the periods provided in section 4033 commencing with the date of refinancing, but the outstanding balances for the purposes of that section shall be based on the amount financed resulting from such refinancing.

4. A violation of this section is subject to section 5064.

§ 4016. Finance charge on consolidation

1. If a customer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction or desires to enter into another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments.

2. The unpaid balance with respect to the previous transaction shall be determined under section 4015 and the amount financed resulting therefrom shall be consolidated by adding to it the amount financed with respect to the subsequent transaction. The creditor may contract for and receive a finance charge based on the aggregate amount financed resulting from consolidation at a rate not exceeding that permitted by section 4011.

3. The maximum period for payments resulting from consolidation under this section shall not exceed the periods provided for in section 4033 commencing with the date of consolidation but the outstanding balances for the purposes of that section shall be based on the amount of the consolidated outstanding balance.

4. A violation of this section is subject to section 5064.

§ 4017. Advances to perform agreements of customer

1. With respect to a consumer credit transaction the parties may, to the extent not prohibited by this Act, agree that the customer will perform certain duties with respect to preserving or insuring collateral if such duties are reasonable in relation to the risk of loss of or damage to the collateral. In the event of the customer's failure to so perform the creditor may, if authorized by the agreement, pay for the performance of such duties on behalf of the customer. The amount paid may be added to the unpaid balance of the customer's obligation, if the merchant has given the customer written notice of his nonperformance, reasonable opportunity after such notice to so perform, and, in the absence of performance, has made all expenditures on behalf of the customer in good faith and in a commercially reasonable manner.

2. Within a reasonable time after advancing any sums pursuant to subsection 1, the merchant shall state to the customer in writing the amount of the sums advanced, any charges with respect to this amount and any revised payment schedule and, if the duties of the customer performed by the merchant pertain to insurance, a brief description of the insurance paid for including the type and amount of coverages.

3. A finance charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate stated to the customer pursuant to the provisions on disclosure in Part 3, except that with respect to an open-end credit plan the amount of the advance may be added to the unpaid balance of the account and the merchant may make a finance charge not exceeding that permitted by section 4011.

4. A violation of this section is subject to section 5064.

§ 4018. Right to prepay

Subject to section 4019, the customer may prepay in full or in any part, at any time without penalty, the unpaid balance of any consumer credit transaction other than a transaction secured by a first lien mortgage or equivalent security interest on real estate with an original term of 10 years or more and on which the annual percentage rate disclosed pursuant to Part 3 is 10% or less.

§ 4019. Rebate on prepayment

1. Upon prepayment in full of the unpaid balance of a precomputed consumer credit transaction, refinancing or consolidation, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the customer. If the total of all rebates, refunds and credits to be paid to the customer under this Act is less than \$1, no rebate need be made.

2. The unearned portion of the precomputed finance charge on consumer credit transactions repayable in substantially equal successive instalments at approximately equal intervals shall be equal to at least that portion of the finance charge which the the sums of the instalment balances of the obligation scheduled to be outstanding after the instalment date nearest the date of prepayment bears to the sum of all instalment balances originally scheduled to be outstanding under the obligation. For the purpose of determining the instalment date nearest the date of prepayment when payments are monthly, any prepayment made on or before the 15th day following an instalment due date shall be deemed to have been made as of the instalment due date, and if prepayment occurs on or after the 16th day it shall be deemed to have been made on the succeeding instalment due date. This method of calculating rebates may be referred to as the "rule of 78" or "sum of the digits" method.

3. With respect to other precomputed consumer credit transactions, the administrator may prescribe by rule the refund formula consistent with subsection 2, taking into account the irregularity of instalment amounts and due dates.

4. In the event of deferral, the unearned portion of the finance charge and deferral charge shall be computed as follows:

A. If deferred pursuant to section 4014, subsection 1, paragraph A the unearned portion of the finance charge and deferral charge shall be computed according to the rule of 78 calculated with regard to the extended maturity date. For the purposes of such calculation, the instalments deferred shall fall due in the same order as provided for in the original schedule of payments and the balances attributable to the deferred instalment periods shall be the same as were attributable to the instalment periods originally. When the rebate is so computed, a separate rebate of the deferral charge is not required; or

B. If otherwise deferred pursuant to section 4014, the unearned portion of the finance charge shall be computed without regard to the deferral as provided in subsection 2 according to the original schedule, and the unearned portion of the deferral shall be computed separately and if the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the finance charge, or if any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the finance charge.

5. This section does not preclude the collection or retention by the creditor of delinquency charges under section 4013 for delinquencies or payments due prior to prepayment.

6. If the maturity of the obligation is accelerated for any reason and judgment is obtained, the customer is entitled to the same rebate as if payment in full had been made on the date judgment is entered against the customer.

7. A violation of this section is subject to section 5064.

PART 3

DISCLOSURE AND FORM OF WRITINGS

§ 4021. Requirements of Federal Act

In addition to the disclosures required by the Federal Consumer Credit Protection Act, the creditor shall disclose to the customer to whom credit is extended the information required by this Part. With respect to every consumer credit sale payable in instalments (section 3921, subsection 30) upon which no separate finance charge is stated or imposed (section 3921, subsection 20) the creditor shall make disclosures in accordance with the Federal Consumer Credit Protection Act, to the extent applicable, whether or not such Act requires such disclosures to be made.

§ 4022. General requirements and provisions

1. The information required by this Part to be disclosed by the creditor to the customer to whom credit is extended:

A. Shall be made clearly and conspicuously;

B. Shall be in writing;

C. Except as provided in section 4023 and in rules adopted by the administrator, need not be contained in a single writing or made in the order set forth in this Act;

D. May be supplemented by additional information or explanations supplied by the creditor, but none shall be stated, utilized or placed so as to mislead or confuse the customer or contradict, obscure or detract attention from the information required by this Part to be disclosed; and so long as the additional information or explanations do not have the effect of circumventing, evading or unduly complicating the information required to be disclosed by this Part; and

E. Need be made only to the extent applicable and only as to those items for which the creditor makes a separate charge to the customer.

2. The creditor shall disclose all information required by this Part before the transaction is consummated; such disclosures may be made on the face of the writing evidencing the transaction.

3. Before any payment is due, the creditor shall furnish the customer with an exact copy of each instrument, document, agreement and contract which is signed by the customer and which evidences the customer's obligation.

4. Anything to the contrary in this act notwithstanding, the sale of insurance pursuant to subchapter 4 shall not be considered a sale requiring separate disclosure other than as provided in section 4012.

§ 4023. Form requirements other than open-end

1. In a consumer credit sale other than one pursuant to an open-end credit plan, the customer's obligation to pay the total of payments shall be evidenced by a single instrument, which shall include, in addition to the other disclosures required by this Part, the signature of the seller, the signature of the customer, the date on which it was signed and a description of any property the customer transfers to the seller as a trade-in.

2. The terms of such instrument evidencing a consumer credit sale shall be set forth in not less than 8-point standard type, or such similar type as is prescribed in rules adopted by the administrator, to the extent that larger type is not specifically required by this Act.

3. Except as provided in subsection 4, every writing evidencing the customer's obligation to pay under a consumer credit transaction other than one pursuant to an open-end credit plan, shall contain immediately above or adjacent to the place for the signature of the customer, a clear, conspicuous, printed or typewritten notice in substantially the following language:

NOTICE TO CUSTOMER

A. DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

B. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

C. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

D. YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

4. The notice described in subsection 3, paragraph A is not required when no terms appear on the reverse side of the writing. The notice described in subsection 3, paragraph D is not required with respect to a consumer credit transaction secured by a first lien mortgage or equivalent security interest on real property, the original term of which is 10 years or more.

5. The creditor shall retain a copy of such writing evidencing a consumer credit transaction, other than one pursuant to an open-end credit plan, and of any proposal for a consumer credit transaction which the merchant has required or requested the customer to sign and which the customer has signed during contract negotiations, for a period of one year after the last payment scheduled under the transaction, or one year after the transaction has been repaid in full, whichever is sooner. The creditor shall supply the customer with copies of such documents upon any demand of the customer made within such period; one copy shall be furnished at no charge; and subsequent copies shall be furnished on the condition that the customer pay the creditor's reasonable costs of preparing and forwarding the copy.

6. A violation of this section is subject to section 5064.

§ 4024. Prohibition of blank writings

1. Every writing evidencing a consumer credit transaction shall be completed as to all essential provisions prior to the signing thereof by the parties, and no creditor shall induce, encourage or otherwise permit the customer to sign a writing containing blank spaces which are to be filled in after it is signed except for a space provided for the identifying numbers of goods if not available at the time of the transaction. Blanks relating to price, charges or terms of payment which are inapplicable to a transaction must be filled in a manner which reveals their inapplicability unless their inapplicability is clearly and conspicuously indicated.

2. A violation of this section is subject to section 5064.

§ 4025. Notice to cosigners

1. No natural person, other than the customer and his spouse, shall be obligated as a surety, cosigner, comaker, indorser, guarantor or similar party to assume personal liability for payment of a consumer credit transaction unless such person, in addition to signing the writing evidencing the consumer credit transaction, or a separate guaranty or similar instrument, also signs a separate instrument in substantially the following language:

EXPLANATION OF COSIGNER OBLIGATION

A. The undersigned as a cosigner or guarantor has agreed to pay the total of payments under a consumer credit transaction between _____ (name of customer) and _____ (name of merchant) made on _____ (date of transaction) for _____ (description of purpose of credit, i.e. sale or loan) in the amount of \$_____.

B. As a cosigner the undersigned will be liable and fully responsible for payment of the above amount even though he is not entitled to any of the goods, services or loan furnished thereunder.

C. The undersigned may be sued in court for the payment of the amount due under this consumer credit transaction even though the customer named above may be working or have funds to pay the amount due.

D. This explanation is not the agreement under which you are obligated, and the guaranty or agreement you have executed must be consulted for the exact terms of your obligations.

(Signature of cosigner)

2. The instrument must be printed, typed or otherwise reproduced in a size and style equal to at least 10-point boldface type or such similar type as prescribed by the administrator, and shall contain no other matter than above set forth and shall bear the signature of the cosigner and no other person.

3. The merchant shall furnish to the cosigner a copy of the instrument evidencing the consumer credit transaction and a copy of the cosigner statement. The copy of the cosigner's statement shall be furnished at the time of the signing of such statement.

4. Such explanation shall not be required to be given to a merchant who endorses or is otherwise liable for payment to an assignee or holder of the customer's obligation.

5. Taking or arranging for a customer to sign an instrument in violation of this section is a violation subject to section 5064.

§ 4026. Receipts; accounting; evidence of payment

1. The creditor shall furnish the customer, without request, a written receipt for each payment made in cash, or any other time the method of payment does not itself provide evidence of payment.

2. At any time after consummation of a consumer credit transaction other than one pursuant to an open-end credit plan, the creditor, upon written request by the customer, shall furnish to the customer a written statement of the amounts and specifying the dates of payments received and charges imposed together with the unpaid balance at the time of the statement. With respect to transactions secured by a first lien mortgage, or equivalent security interest, on real property such statement need specify only the dates and amounts of payments received and charges imposed during the previous 12 months, and the unpaid balance remaining at the time of the statement. The customer shall be entitled to one such statement free of charge once every 12 months. Additional statements shall be furnished if the customer pays the creditor's reasonable costs of preparing and furnishing the statement.

3. With respect to an open-end credit plan, the creditor shall at any time upon written request by the customer, furnish to the customer a written statement, which may consist of copies of the periodic statements furnished to the customer under the plan, specifying the dates and amounts of purchases or loan credit extended and payments received during the previous 12 months, and the unpaid balance remaining at the time of the statement. The customer shall be entitled to one such statement at a charge not in excess of \$1 once every 12 months. Additional statements shall be furnished

if the customer pays the creditor's reasonable costs of preparing and furnishing the statement.

4. Within 45 days after payment by the customer of all sums for which he is obligated under a consumer credit transaction other than one pursuant to an open-end credit plan, the creditor shall give or forward to the customer instruments which acknowledge payment in full, and release of any security interest when there is no outstanding secured obligation, and furnish to the customer or his designee evidence of the release or assignment to such designee of any recorded lien on real estate and termination of any filed financing statement which perfected such security interest.

§ 4027. Estimates or approximations

If at the time disclosures must be made, an amount or other item of information required to be disclosed or needed to determine a required disclosure is unknown or not available to the creditor, and a reasonable effort has been made to ascertain it, the creditor may use an estimated amount or approximation of the information, if:

1. The estimate or approximation is clearly identified as such, is reasonable and is based on the best information available to the creditor; and

2. The estimate or approximation is not used for the purpose of circumventing or evading the disclosure requirements of this subchapter.

PART 4

LIMITATIONS ON AGREEMENTS AND PRACTICES

§ 4031. Scope

This Part applies to consumer credit transactions.

§ 4032. Balloon payments prohibited

1. With respect to a consumer credit transaction other than a transaction which is either pursuant to an open-end credit plan, not precomputed and on which the annual percentage rate disclosed pursuant to Part 3 is less than 12% or a transaction primarily for an agricultural purpose, no merchant shall enter into an agreement which requires a schedule of payments under which any one payment is not equal or substantially equal to all other payments, or under which the intervals between any consecutive payments differ substantially except as permitted in subsection 2 or 3.

2. The parties may agree to payments that are not substantially equal to other payments or are paid at unequal intervals if:

A. The customer's livelihood is dependent upon income that is seasonal or otherwise not regular, such payments are in accordance with the needs of the customer and a notice in substantially the following language is set forth immediately below the customer's signature in 12-point boldface type, or its equivalent as prescribed by the administrator:

WARNING

The amounts of payments or the dates on which they are payable under this agreement are not equal. Do not sign this paper unless you are certain that this payment schedule meets your needs.

B. The unequal or irregular payment is part of an agreed downpayment received by the creditor contemporaneously with or prior to the consummation of the transaction;

C. The unequal or irregular payment is part of an agreed downpayment that does not exceed 20% of the cash price, has a due date not later than the due date of the second instalment of the transaction and is excluded from the amount financed upon which the finance charge is computed, and if it is the mutual understanding of the customer and the creditor that such a partial payment will be separately financed the customer has the right to rescind the transaction without penalty if he cannot obtain such separate financing; or

D. The unequal or irregular payment is the final scheduled payment and is less than, or not more than 10% greater than, the average amount of the other scheduled payments, if such other payments are substantially equal.

3. In the event that subsection 2, paragraph A applies, the customer shall have the right at any time to refinance the unequal or irregular instalment pursuant to section 4015 for refinancing, except that the rate shall not exceed the rate disclosed in the original transaction pursuant to Part 3 of subchapter 3.

4. Taking or arranging for the customer to sign an instrument in violation of this section shall be subject to section 5064.

§ 4033. Maximum periods of repayment

1. With respect to a consumer credit transaction other than one pursuant to an open-end credit plan no merchant shall initially schedule payments to be paid in full:

A. Over a period of more than 25 months if the total of payments is \$700 or less;

B. Over a period of more than 37 months if the total of payments is more than \$700, but does not exceed \$1,400; or

C. Over a period of more than 49 months if the total of payments is more than \$1,400, but does not exceed \$2,000, unless the transaction is for the acquisition of or substantial improvement to real property in which case such period shall not exceed 61 months.

2. The period specified in subsection 1 shall commence with the date of first payment or when the finance charge begins to accrue, whichever is earlier.

3. Taking or arranging for the customer to sign an instrument in violation of this section is subject to section 5064.

§ 4034. Assignment of earnings prohibited

1. No merchant shall take or arrange for an assignment of earnings of the customer for payment or as security for payment of an obligation arising out of a consumer transaction unless such assignment is revocable at will by the customer.

2. A violation of this section is subject to section 5064.

§ 4035. Authorization to confess judgment prohibited

1. No merchant shall take or accept from the customer a warrant or power of attorney or other authorization for the creditor, or other person acting on his behalf, to confess judgment.

2. A violation of this section is subject to section 5065.

§ 4036. Negotiable instruments

1. In a consumer credit sale or lease transaction, no seller or lessor shall take a negotiable instrument (Title 11, section 3.104), other than a check, as evidence of the obligation of the customer.

2. In a consumer loan transaction which constitutes an interlocking loan (section 4038), no creditor shall take a negotiable instrument (Title 11, section 3.104), other than a check, as evidence of the obligation of the customer.

3. The holder to whom an instrument issued in violation of this section is negotiated, notwithstanding that he may otherwise be a holder in due course of such instrument, is subject to all claims and defenses of the customer against the payee subject to the extent provided in subsection 4.

4. Such holder's liability under this section is limited to:

A. The amount owing to the holder on such instrument at the time the holder receives notice of a claim or defense of the customer against such payee; plus

B. If the customer has obtained a judgment against such payee and execution with bond is issued within one year after judgment and is returned unsatisfied, the amount paid by the customer to the holder before the holder received notice of the claim or defense of the customer, if such claim is made against the holder within 2 years after such judgment is returned unsatisfied. Any judgment against the payee, other than a default judgment, shall be binding on the holder.

5. Taking or arranging for the customer to sign an instrument in violation of this section is subject to section 5064.

§ 4037. Defenses assertable against an assignee

1. With respect to a consumer credit transaction other than a consumer loan which is not an interlocking consumer loan (section 4038), an assignee of the rights of a creditor is subject to all claims and defenses of the customer against the assignor arising out of the transaction notwithstanding an agreement to the contrary, subject to subsection 2.

2. An agreement by the customer not to assert against an assignee a claim or defense arising from a consumer credit transaction is enforceable only by an assignee not related to the assignor who acquires the customer's contract in good faith and for value, who gives the customer notice of the assignment as provided in section 4039 and who, within 12 months after the mailing of the notice of assignment, has not received notice of the customer's claim or defense. In the event that such assignee further assigns the customer's obligation to another party not related to the original assignor, such party may enforce an agreement by the customer not to assert claims or defenses, only to the extent that the original assignee could do so under this section, and any notice by the customer to the original assignee is effective as to such party. Such good faith assignee's liability under this section is limited to:

A. The amount owing to the assignee with respect to the consumer credit transaction at the time the assignee received notice of a claim or defense of the customer against the assignor; plus

B. If the customer has obtained a judgment against the assignor and execution with bond is issued within one year after judgment and is returned unsatisfied, the amount paid by the customer to the assignee before the assignee received notice of the claim or defense of the customer, if such claim is made against the assignee within 2 years after execution is returned unsatisfied. Any judgment against the assignor, other than a default judgment, shall be binding on the assignee.

3. Any assignee does not acquire a customer's contract in good faith within the meaning of subsection 2 if the assignee has knowledge, including knowledge from his course of dealing with other customers of the assignor or from the assignor or the assignee's records, or written notice of violations of the Act, of conduct of the kind described in section 5098, or of substantial complaints by such other customers that such assignor fails or refuses to perform his contracts with such customers and fails to remedy such complaints.

4. No term of an agreement may confer upon an assignee greater immunity from claims and defenses of the customer against the assignor than is permitted in this section. No term of an agreement purporting to waive defenses against an assignee is enforceable unless the agreement makes conspicuous reference to this section and to the customer's right to assert such claim or defense against an assignee within 12 months after being furnished a notice of assignment.

5. Except where execution with bond is returned unsatisfied under subsection 2, paragraph B or where the assignor is in bankruptcy, receivership or other insolvency proceedings or cannot be found within the state, any claims or defenses of the customer under this section can only be asserted as a matter of counterclaim, defense to or set off against a claim by the assignee.

6. Taking or arranging for the customer to sign an instrument in violation of this section is subject to section 5064.

§ 4038. Interlocking loans

1. The lender in an interlocking consumer loan is subject to the claims and defenses the consumer may have against the seller or lessor in the consumer transaction for which the proceeds of the loan are used, subject to subsection 3.

2. For purposes of this section, a consumer transaction pursuant to a seller credit card shall be deemed to be a consumer loan transaction if the transaction is other than a purchase or lease of goods or services from the issuer of the seller credit card, from a person related to such issuer or from others licensed or franchised to do business solely under the business or trade name or designation of such issuer.

3. For purposes of this section, a consumer loan transaction is an "interlocking consumer loan" if the creditor knows or has reason to know that all or a meaningful part of the proceeds of the loan are used to pay all or part of the customer's obligations to the seller or lessor under a consumer sale or lease, and if:

A. The lender is a person related to the seller or lessor;

B. The lender supplies to the seller or lessor, or the seller or lessor prepares, documents used to evidence the loan, other than sales slips or drafts used to evidence purchases pursuant to an open-end credit plan;

C. The lender directly or indirectly pays to the seller or lessor any commission, finder's fee or other similar consideration based upon or measured by the consumer loan;

D. The lender has recourse to the seller or lessor for nonpayment of the consumer loan transaction through a guaranty, maintenance of a reserve account or otherwise, but this paragraph shall not apply to transactions pursuant to a credit card issued by a lender not related to the seller or lessor;

E. The lender has knowledge, including knowledge from his course of dealing with other customers of the seller or lessor or from the lender's records, or written notice of substantial complaints by such other customers, that such seller or lessor fails or refuses to perform his contracts with them and that such merchant fails to remedy such complaints within a reasonable time; or

F. The loan exceeds \$100, is disbursed directly to the seller or lessor and is made pursuant to a credit card to finance a purchase from a seller's or lessor's place of business in this state, if the seller or lessor has a direct or indirect contractual relationship with the issuer permitting him to honor the credit card.

4. To the extent that a lender under an interlocking consumer loan is subject to claims or defenses of the customer against a merchant under this section, the lender's liability is limited to claims or defenses arising from the consumer transaction financed by the proceeds of the loan, and may not ex-

ceed that portion of the unpaid balance of the loan at the time the lender has notice of the claim or defense, which the proceeds used to pay all or part of the customer's obligation on which the claim is based bears to the entire amount financed of the loan, unless the customer has obtained a judgment against the merchant and execution thereon has been returned unsatisfied, in which event the lender shall in addition be liable in a similar manner for the proportionate amount paid by the customer to the lender with respect to the interlocking consumer loan before the lender received notice of the claim or defense of the customer.

5. With respect to a loan which constitutes an interlocking consumer loan solely by reason of subsection 3, paragraph F, the lender shall be liable as provided in subsection 4 only if he receives notice of the customer's claim or defense within 12 months after the transaction is charged against the customer's account, and the unpaid balance of such a loan for purposes of subsection 4 shall be determined pursuant to the method set forth in section 4048.

6. This section shall not apply to consumer loans extended for the purpose of acquiring residential real property which are secured by a first lien mortgage or equivalent security interest on such property and on which the annual percentage rate disclosed pursuant to Part 3 is less than 12%.

§ 4039. Notice of assignment

1. The customer is authorized to pay the assignor until the customer receives notification of assignment of the rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the customer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the customer may pay the original creditor.

2. The notification of assignment shall be in writing and addressed to the customer at his address as stated in the contract, shall be accompanied by a copy of the contract or shall identify the contract, describe the goods or services, state the names of the assignor and the customer, the name and address of the assignee, the number, amount and due dates or periods of payments scheduled to repay the indebtedness and, except in the case of a transaction secured by a first lien mortgage or equivalent security interest for the purpose of the acquisition of a dwelling, the total of payments. A provision in the assigned contract that the customer waives or will not assert claims or defenses against the assignee pursuant to section 4037, subsection 2 shall not be effective unless the notification of assignment also contains a clear and conspicuous statement that the customer has 12 months within which to notify the assignee in writing of any complaints, claims or defenses he may have against the assignor and that if the customer does not give such notice, the assignee will have the right to enforce the contract free of such claims or defenses subject to the Maine Consumer Act.

§ 4040. Statements of compliance or performance

Statements in the form of acknowledgments, certificates of performance or otherwise, signed by the customer, to the effect that there has been com-

pliance with any of the requirements of this Act or performance by the other party or parties to the transaction shall create no presumption that the facts recited in such statements are true.

§ 4041. Attorney's fees

1. Except as provided in subsection 2 with respect to a consumer credit transaction no term of a writing may provide for the payment by the customer of attorney's fees.

2. With respect to a consumer transaction in which credit is extended for the purpose of acquiring residential real property, which is secured by a first lien mortgage or equivalent security interest on such property, and on which the annual percentage rate disclosed pursuant to Part 3 is 12% or less, the creditor may contract for the customer's payment of reasonable attorney's fees actually incurred by the creditor, but the customer shall be liable for such fees only to the extent:

A. Such fees are payable to a licensed attorney who is not an employee of the creditor; and

B. Such fees do not exceed 5% of the amount of the judgment entered against the customer, or \$100 in the event no judgment is so entered and the dispute is settled prior to judgment.

3. Taking or arranging for the customer to sign an instrument in violation of this section is subject to section 5064.

§ 4042. Restriction on liability in consumer lease

In a consumer lease other than one for an agricultural purpose, the obligation of a customer upon expiration of the lease may not exceed the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property occasioned by other than normal use or for other default.

§ 4043. Limitation on default charges

1. Except for reasonable expenses incurred in disposition of collateral, no term of a writing evidencing a consumer credit transaction may provide for any charges as a result of default by the buyer other than those authorized by this Act.

2. A violation of this section is subject to section 5064.

§ 4044. Use of multiple agreements

1. No creditor shall divide or otherwise encourage the customer or customers to become obligated at the same time on more than one consumer loan, more than one consumer credit sale, or one or more interlocking consumer loans (section 4038) and consumer credit sale for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted under this Act.

2. Multiple agreements which arise out of substantially the same transaction shall be presumed to be in violation of this section.

3. A violation of this section is subject to section 5065.

§ 4045. Changes in open-end credit terms

1. Except as provided in subsection 2, no creditor shall make any changes in the terms of open-end credit plans which are adverse to the interests of the customer with respect to any outstanding balances. For the purposes of this section, a change shall be presumed to be adverse if the result thereof is to increase the rate of the finance charge or the amount of the periodic payment due. Outstanding balances shall be determined on the assumption that all payments shall be credited first to any finance charges that may be due and then to the payment of debts in the order in which the entries to the account showing the debts were made.

2. A change adverse to the interests of the customer may be made with respect to outstanding balances if:

A. The change is required by legislation, regulations or administrative rules becoming effective after the date of the agreement with the customer and the creditor has mailed or delivered to the customer written notice disclosing such proposed change not less than 3 months prior to the effective date of such change or such lesser period of time as may be available before such change is required to be made;

B. The change is made within 3 months of the effective date of this section or within 3 months after the repeal or expiration of any federal legislation, administrative order, rule, guideline or regulation, the purpose of which was to limit or freeze finance charges or other charges, in effect on the effective date of this section, whichever is later;

C. The creditor mails or otherwise delivers to the customer a written disclosure of the proposed change not less than one year prior to the effective date of such change; or

D. The customer agrees in writing to such change.

3. No term of a writing executed by the customer shall constitute authorization for a creditor to unilaterally make changes in the terms of the credit plan, which are otherwise prohibited by this section.

4. A violation of this section is subject to section 5064.

§ 4046. Referral transactions prohibited

1. With respect to a consumer transaction no merchant shall give or offer to give a rebate or discount or otherwise pay or offer to pay value to the customer as an inducement for a consumer transaction in consideration of his giving to the creditor the names of prospective customers, or otherwise aiding the creditor in entering into a transaction with another customer or, without being limited by any of the foregoing, performing any other act or the occurrence of any other event, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the customer enters into the agreement.

2. A violation of this section is subject to section 5065.

§ 4047. Restrictions on security interests

1. With respect to a consumer credit sale a seller may take a security interest only in:

A. The property sold;

B. Goods upon which the property sold is installed or to which it is annexed, or goods upon which the services sold are performed, if the obligation secured is \$500 or more;

C. Real property to which the property sold is affixed, or which is maintained, repaired or improved as a result of the sale of the property or services, if the obligation secured is \$1,000 or more;

D. Goods of the consumer which were the subject of a prior transaction with the seller which is consolidated (section 4016) with the consumer credit sale, or if the consumer credit sale is made pursuant to an open-end credit plan, goods previously purchased by the consumer pursuant to the plan, subject however to section 4048; and

E. Agricultural products or agricultural equipment then owned by the customer or acquired or to be acquired in the future.

2. With respect to a consumer lease, a lessor may not take a security interest in any property of the customer other than the leased goods to secure his obligations under the lease.

3. With respect to a consumer loan, a lender may not take a security interest, other than a purchase money security interest, in:

A. Clothing of the customer and his dependents and the following: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware; or

B. Real property if the obligation secured is less than \$1,000.

4. A violation of this section is subject to section 5064.

§ 4048. Security interests: consolidations; open-end credit plans

1. The parties may agree in a consolidation agreement under section 4015 that the creditor may secure the consolidated obligation by a security interest in property in which the creditor has an existing security interest as a result of the prior transaction which is one of those agreed to become consolidated.

2. For the purpose of determining the extent to which a consolidated obligation is secured after a consolidation of consumer sales other than sales primarily for an agricultural purpose, and after a consolidation of consumer loans in which one or more of the loans consolidated is secured by a purchase money security interest in property of the type described in section 4047, payments received by the creditor after a consolidation agreement are deemed to have been first applied to the payment of obligations arising from

the transactions first made. To the extent that obligations are paid pursuant to this section, security interests in items of property terminate as the obligation originally incurred with respect to each item is paid.

3. Payments received by the creditor upon an open-end credit plan are deemed, for the purpose of determining the amount of the unpaid balance secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account, and then to the payment of the respective amounts financed in the order in which the entries to the account were made.

4. If obligations consolidated or financed pursuant to an open-end credit plan arise from 2 or more transactions made on the same day, payments received by the creditor are deemed, for the purpose of determining the amount of the obligation secured by the various security interests, to have been applied first to the payment of the smallest obligation.

5. A violation of this section is subject to section 5064.

§ 4049. Waivers prohibited

1. No contract evidencing a consumer credit transaction may contain any provision by which:

A. The merchant or other person acting on his behalf is given authority to enter the customer's dwelling or to commit any breach of the peace in the course of taking possession of collateral securing the transaction;

B. The customer waives any right of action against the merchant, or other person acting on his behalf, for any breach of the peace or other illegal act committed in the course of taking possession of such collateral; or

C. The customer executes a power of attorney or similar instrument appointing the merchant, or other person acting on his behalf, as the customer's agent in the taking of possession of such collateral.

2. A violation of this section is subject to section 5064.

SUBCHAPTER 423

CONSUMER APPROVAL TRANSACTIONS

AND ADVERTISING

PART 1

GENERAL PROVISIONS

§ 4051. Short title

This subchapter shall be known and may be cited as **Maine Consumer Act — Consumer Approval Transactions and Advertising.**

§ 4052. Scope

This chapter applies to consumer transactions.

PART 2

RIGHT TO RESCIND

§ 4061. Definition

“Consumer approval transaction” means a consumer transaction other than a sale or lease or listing for sale of real property, a sale of goods at auction, the sale or lease of goods for an agricultural purpose or a loan made to finance the sale of goods at auction for an agricultural purpose which is initiated by face-to-face solicitation away from a regular place of business of the merchant or by mail or telephone solicitation directed to the particular customer and which is consummated or in which the customer’s offer to contract or other writing evidencing the transaction is received by the merchant away from a regular place of business of the merchant and involves the extension of credit or is a cash transaction in which the amount the customer pays exceeds \$25. “Consumer approval transaction” shall in no event include a catalog sale which is not accompanied by any other solicitation.

§ 4062. Right to cancel: manner of cancellation

1. Except as provided in subsection 4, in addition to any right otherwise to revoke an offer, to rescind the transaction or to exercise any remedy for the merchant’s breach, a customer has the right to cancel consumer approval transaction until midnight of the third business day after the merchant has given the notice to the customer in accordance with section 4063.

2. Notice of cancellation shall be by mail addressed to the merchant and shall be considered given at the time mailed.

3. Notice of cancellation by the customer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the customer not to be bound by the consumer approval transaction.

4. The customer may not cancel a consumer approval transaction if:

A. The customer has determined that a delay of 3 business days in performance of the merchant’s obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger property which the customer owns or for which he is responsible;

B. The customer furnishes the merchant with a separate dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving his right of rescission. The use of printed forms for this purpose is prohibited;

C. The merchant in good faith makes a substantial beginning of performance of the contract before the customer gives notice of cancellation; and

D. In the case of goods, the goods cannot be returned to the merchant in substantially as good condition as when received by the customer.

§ 4063. Notice to customer

1. Whenever a customer has the right to cancel a consumer approval transaction, the merchant shall give 2 copies of a separate typed or printed notice of that fact to the customer. The notice must:

A. Be printed in capital and lowercase letters of not less than 12-point boldface type;

B. Appear under the conspicuous caption: "CUSTOMER'S RIGHT TO CANCEL";

C. Read as follows: You may cancel this agreement or purchase by either mailing a written notice to the seller postmarked not later than the third business day after the date you signed this agreement or purchased the goods or services, or by delivering such written notice to the seller, by 5 p.m. of the third business day after you signed this agreement or purchased the goods or services. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address. A duplicate of this page is provided by the seller for your records. The notice must be mailed or delivered to: (insert name and mailing address of seller).

2. A merchant who in the ordinary course of business regularly uses a language other than English in any advertising or other solicitation of customers or in any printed forms for use by customers or in any face-to-face negotiations with his customers shall give the notice described in this section to a customer whose principal language is such other language both in English and in the other language.

3. The notice required under this section must be delivered either after all the credit cost disclosures have been made to the customer as required by the federal consumer credit protection act and the customer has signed the writing evidencing the transaction, or contemporaneously therewith, but not before.

4. A violation of this section is subject to section 5064.

§ 4064. Restoration of downpayment; security interest void;
return of property

1. Within 10 days after a consumer approval transaction has been canceled, the merchant shall cause any money paid by the customer, including a downpayment, to be returned to the customer and shall take any appropriate action to reflect the termination of the transaction including any security interest created as a result.

2. Upon cancellation, as allowed by this section, the customer is not liable for any finance or other charge and the transaction, including any security interest, is void.

3. If the merchant has received any property from the customer, he shall return such property in substantially as good condition as it was when it was given within 20 days after the cancellation of the transaction. If such property is not returned within such time, the customer shall have the right to recover the property or the greater of its agreed or fair market value at retail.

§ 4065. Duty of customer

1. The customer has the duty to take reasonable care of the goods in his possession before cancellation and for a reasonable time after tender, not to exceed 20 days.

2. Upon the performance of the merchant's obligations under section 4064, the customer shall tender the property to the merchant, except that if the return of the property to the merchant is inequitable the customer shall tender its reasonable value.

3. Tender shall be made at the location of the property or at the residence of the customer at the option of the customer.

4. If the merchant does not take possession of the property within 20 days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

5. If the merchant has performed any services pursuant to a consumer approval transaction prior to its cancellation, the merchant is entitled to no compensation.

PART 3

ADVERTISING

§ 4071. False, misleading or deceptive advertising

No merchant shall advertise, print, display, publish, distribute or broadcast or cause to be advertised, printed, displayed, published, distributed or broadcast, in any manner any statement or representation with regard to the extension of consumer credit including the rates, terms or conditions for the extension of such credit, which is false, misleading, or deceptive, or which omits to state material information with respect to the extension of credit that is necessary to make the statements therein not false, misleading or deceptive. With respect to matters specifically governed by the Federal Consumer Credit Protection Act, compliance with such act satisfies the requirements of this section.

§ 4072. Remedies and penalty

In addition to any other remedy provided by law, a customer who has been induced to consummate a consumer credit transaction as a result of advertising in violation of section 4071 shall be entitled to a recovery from the merchant in accordance with section 5065.

SUBCHAPTER 4

INSURANCE

PART 1

GENERAL PROVISIONS

§ 4081. Short title

This chapter shall be known and may be cited as **Maine Consumer Act — Insurance.**

§ 4082. Scope

1. Except as provided in subsection 2, this chapter applies to insurance provided or to be provided in relation to consumer credit transactions.
2. The provision on cancellation by a creditor section 5003 applies to loans the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed.

PART 2

CONSUMER CREDIT INSURANCE

§ 4091. Definition "consumer credit insurance"

"Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

- A. Insurance provided in relation to a consumer credit transaction in which a payment is scheduled more than 10 years after the extension of credit;
- B. Insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring customers of the creditor; or
- C. Insurance indemnifying the creditor against loss due to the customer's default.

§ 4092. Charge for insurance

1. Except as otherwise provided in this chapter and subject to the provisions on additional charges section 4012, and maximum charges section 4011 a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him.
2. This subchapter does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

§ 4093. Conditions applying to insurance to be provided by creditor

1. When the parties agree that consumer credit insurance shall be provided, at the time the indebtedness is incurred there shall be delivered to the customer the individual policy, a group certificate of insurance, a copy of the application for such insurance or a notice of proposed insurance.
2. The evidence of insurance provided pursuant to subsection 1 shall set forth the name and home office address of the insurer, the name or names of the customers, the premium or amount of payment by the customer, if any, separately for credit life insurance and credit accident and health insurance, the amount, term and a brief description of the coverage provided, including all exclusions and exceptions.

3. Within 30 days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the customer if it is not delivered at the time the indebtedness is incurred.

4. Within 10 days from the date the indebtedness is incurred, the customer shall be permitted to return the policy, certificate of insurance or the notice of proposed insurance and receive a refund of any premium paid for the insurance if he is not satisfied with the insurance for any reason. Such insurance shall then be void and the parties will be in the same position as if no certificate, policy or notice of proposed insurance had been issued.

5. A violation of this section is subject to section 5063.

§ 4094. Maximum charge by creditor for insurance

1. Except as provided in subsection 2, if a creditor contracts for or receives a charge for insurance, the amount charged for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the customer is determined, conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

2. A creditor who provides consumer credit insurance in relation to an open-end credit plan may calculate the charge to the customer in each billing cycle by applying the current premium rate to either:

A. The average daily unpaid balance of the obligation in the cycle;

B. The unpaid balance of the obligation or a median amount within a specified range of unpaid balances of the obligation on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the finance charge section 2011, but the specified range shall be the range used for that purpose; or

C. The unpaid balances of principal calculated according to the actuarial method.

3. A violation of this section is subject to section 5064.

§ 4095. Refund or credit required

1. Upon prepayment in full of a consumer credit transaction by the proceeds of consumer credit insurance, the customer or his estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the original creditor or any assignee or returned to either of them by the insurer.

2. This chapter does not require the creditor to grant a refund or credit if all the refunds and credits due to the customer under this act amount to less than \$1 and, except as provided in subsection 1, does not require the creditor to account to the debtor for any portion of a separate charge for insurance because:

A. The insurance is terminated by performance of the insurer's obligation;

B. The creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

C. The creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

3. Except as provided in subsection 2, the creditor shall promptly make or cause to be made an appropriate refund or credit to the customer with respect to any separate charge made to him for insurance if:

A. The insurance is not provided or is provided for a shorter term than that for which the charge to the debtor for insurance was computed; or

B. The insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

4. A refund or credit required by subsection 3, is appropriate as to amount if it is computed according to either section 4019 or a method prescribed or approved by the Commissioner of Insurance.

§ 4096. Deferral, refinancing and consolidation agreements

1. The creditor may not receive a separate charge for insurance in connection with a deferral section 4014, a refinancing section 4015 or a consolidation section 4016, unless:

A. The customer agrees in writing at the time of deferral, refinancing or consolidation that a specific charge may be made;

B. The customer is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing or consolidation;

C. The customer receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated section 4095; and

D. The charge does not exceed the amount permitted by this subchapter, section 4094.

2. A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

3. A violation of this section is subject to the provisions of section 6063.

§ 4097. Term of insurance

1. Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the customer becomes obligated to the creditor or when the customer applies for the insurance, whichever is later except as follows:

A. If any required evidence of insurability is not furnished until more than 30 days after the term would otherwise commence, the term may

commence on the date when the insurer determines the evidence to be satisfactory; or

B. If the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

2. In the case where the commencement of the insurance is delayed, the customer to the extent he has paid a premium charge for any period of time before the insurance became effective, shall be entitled to a rebate or credit of such premium according to section 4095.

3. The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the obligation, except as follows:

A. If the insurance relates to an open-end credit plan, the term need extend only until the payment of the account and may be sooner terminated after at least 30 days' notice to the customer; or

B. If the customer is advised in writing in a clear and conspicuous manner that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

4. The term of the insurance shall not extend more than 15 days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the customer or as an incident to a deferral, refinancing or consolidation agreement.

§ 4098. Amount of insurance

1. The amount of credit life insurance shall not exceed the initial indebtedness however the indebtedness may be repayable, but:

A. In cases where an indebtedness is repayable in substantially equal instalments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater; and

B. In cases where credit life insurance is provided on consumer credit transactions for an agricultural purpose, such insurance may be written up to the amount of the loan commitment on a nondecreasing or level-term plan.

2. The total amount of indemnity payable by credit accident and health insurance in the event of a disability, shall not exceed the aggregate of the periodic scheduled unpaid instalments of the indebtedness, and the amount of each periodic indemnity payable shall not exceed the original indebtedness divided by the number of periodic instalments.

§ 4099. Filing and approval of rates and forms

1. A creditor may not use a form or a schedule of premium rates or charges, the filing of which is required by this section, if the commissioner of insurance has disapproved the form or schedule and has notified the insurer of this disapproval. A creditor may not use a form or schedule unless:

A. The form or schedule has been on file with the commissioner of insurance for 30 days, or has earlier been approved by him; and

B. The insurer has complied with this section with respect to the insurance.

2. Except as provided in subsection 3, all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to credit accident and health insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the commissioner of insurance. Within 30 days after the filing of any form or schedule, he shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provisions of the insurance laws of this state, or of any rule or regulation promulgated thereunder. The benefits provided by any such policy shall be presumed reasonable in relation to the premium charged or to be charged if the ratio of losses incurred to premiums earned is 50% or may reasonably be expected to be 50%. If the ratio of losses incurred to premiums earned is less or can reasonably be expected to be less than 50%, the benefits provided shall be presumed unreasonable in relation to the premium charged. Determination of a reasonable relation of benefits to premiums shall be made by the commissioner for each policy form filed for approval. The commissioner may limit the use of any such form to those creditors or customers whose experience was the basis for approval and such other creditors or customers likely to experience similar mortality or morbidity.

3. Not later than 6 months following the effective date of this section, the commissioner of insurance shall, by rule, promulgate premium rates for credit life and credit accident and health insurance based upon the 50% loss ratio standard as set forth in subsection 2 which rates shall be acceptable without further justification. No charge may be made for credit life or credit accident and health insurance which exceeds such rates except as provided in this subsection. The commissioner of insurance shall from time to time raise or lower the acceptable premium charges permitted for such insurance for any particular creditor, class of creditor or classes of transactions whenever the commissioner of insurance determines that the actual loss experience for the particular creditors, class of creditors or class of transactions produces a ratio of losses to premiums which differs substantially based on credible data in the most recent 2-year period from the 50% loss ratio established by subsection 2.

4. In order to implement this section, insurers shall, under regulation of the commissioner of insurance, file an annual report setting forth data pertaining to actual losses in relation to premiums and such other information as may be required by the commissioner of insurance in order to further the purposes of this Act.

5. No individual policy of credit accident and health insurance or group policy of credit accident and health insurance shall be delivered or issued

for delivery in this state if the benefits are payable after a waiting period of less than 14 days, regardless of whether the payment of benefits are retroactive to the first day of disability.

6. If a group policy has been delivered in another state, the forms to be filed by the insurer with the commissioner of insurance are the group certificates and notices of proposed insurance. He shall approve them if:

- A. They provide the information that would be required if the group policy were delivered in this State;
- B. The applicable premium rates or charges do not exceed those established by his rules or by this Act; and
- C. They do not contain provisions which are unjust, unfair, inequitable or deceptive, or encourage misrepresentation of the coverages, or are contrary to any provisions of the insurance laws of this State, or of any rule promulgated thereunder.

PART 3

PROPERTY INSURANCE

§ 5001. Restrictions on property insurance

1. A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

- A. The insurance covers a substantial risk of loss or damage to property, other than household furnishings, which is collateral for the credit transaction;
- B. The amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and
- C. The term of the insurance is reasonable in relation to the terms of credit.

2. The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

3. A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is \$800 or more, and the value of the property is \$800 or more.

§ 5002. Insurance on creditor's interest only

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the customer is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

§ 5003. Cancellation by creditor

1. A creditor shall not request cancellation of a policy of property or liability insurance except after the customer's default section 5023, or in accordance with a written agreement by the customer at any time other than when the original transaction is entered into. In either case the cancellation does not take effect until written notice is delivered to the customer or mailed to him at his address as stated by him. The notice shall state that the policy may be canceled on a date not less than 30 days after the notice is delivered, or, if the notice is mailed, not less than 33 days after it is mailed.

2. Following cancellation, the customer shall be entitled to a rebate or credit for any prepaid charges which represent the premium for a period following cancellation.

PART 4

ADMINISTRATION

§ 5010. Cooperation between administrator and commissioner of insurance

The administrator and the commissioner of insurance are authorized and directed to consult and assist one another in maintaining compliance with this chapter. They may jointly pursue investigations, prosecute suits and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this chapter, or of the insurance laws, rules and regulations of this State, he shall advise the commissioner of insurance of the circumstances.

§ 5011. Administrative action of commissioner of insurance

To the extent that his responsibility under this chapter requires, the commissioner of insurance shall issue rules with respect to insurers and with respect to refunds section 4095, forms, schedules of premium rates and charges section 4099, and his approval or disapproval thereof and, in case of violation, may make an order for compliance.

SUBCHAPTER 5

REMEDIES AND PENALTIES

PART 1

CREDITORS' REMEDIES

§ 5021. Short title

This subchapter shall be known and may be cited as the Maine Consumer Act — Remedies and Penalties.

§ 5022. Scope

This subchapter applies to actions or other proceedings brought by a creditor to enforce rights arising from consumer credit transactions and to extortionate extensions of credit under section 5028.

§ 5023. Accrual of cause of action; "default"

1. Notwithstanding any term or agreement to the contrary, no cause of action with respect to the obligation of a customer in a consumer credit transaction shall accrue in favor of a creditor except by reason of a default, as defined in subsection 2.

2. "Default," with respect to a consumer credit transaction, means without justification under any law:

A. With respect to a transaction other than one pursuant to an open-end plan, if the interval between scheduled payments is 2 months or less, to have outstanding 2 or more scheduled payments which have remained unpaid for more than 10 days after their original or deferred due dates, or the failure to pay the first payment or the last payment, or in the case of a transaction for an agricultural purpose, the failure to pay any instalment within 40 days of its original or deferred due date, or if the interval between scheduled payments is more than 2 months, to have outstanding one scheduled payment which has remained unpaid for more than 60 days after its original or deferred due date;

B. With respect to an open-end plan, failure to pay when due on 2 occasions within any 12-month period; or

C. To observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the creditor's right in any collateral securing the transaction or materially impairs the customer's ability to pay amounts due under the transaction.

3. A cause of action with respect to the obligation of a customer in a consumer credit transaction shall be subject to this subchapter, including the provisions relating to cure of default (sections 5024 and 5025).

4. A cause of action arising from a transaction which resulted in the creation of a security interest in personal property shall also be subject to the limitations provided in Part 2.

§ 5024. Notice of customer's right to cure default

1. A merchant who believes that a customer is in default may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure any such default (section 5025).

2. Any notice given under this section shall contain the name, address and telephone number of the creditor, a brief identification of the consumer credit transaction, a statement of the nature of the alleged default and a clear statement of the total payment, including an itemization of any delinquency charges, or other performance necessary to cure the alleged default, the exact date by which the amount must be paid or performance tendered and the name, address and telephone number of the person to whom any payment must be made, if other than the creditor.

§ 5025. Cure of default

1. A merchant may not accelerate the maturity of a consumer credit transaction, commence any action except as provided in section 5045, sub-

section 6, or demand or take possession of collateral other than by accepting a voluntary surrender of collateral (section 5044) unless he believes the customer to be in default section 5023, and then only upon the expiration of 15 days after a notice is given pursuant to section 5024 if the customer has the right to cure under this section.

2. Except as provided in subsection 3, for 15 days after such notice is given, a customer may cure a default under a consumer credit transaction by tendering the amount of all unpaid instalments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, and by tendering performance necessary to cure any default other than nonpayment of amounts due. The act of curing a default restores to the customer his rights under the agreement as though no default had occurred.

3. A right to cure shall not exist if the following occurred twice during the preceding 12 months:

- A. The customer was in default on the same transaction or open-end credit plan;
- B. The creditor gave the customer notice of the right to cure such previous default in accordance with sections 5024; and
- C. The customer cured the previous default.

4. With respect to consumer credit transactions in which the creditor has a security interest in, and possession of, instruments or documents (Title 11, section 9.105) which threaten to decline speedily in value, this section does not restrict the creditor's rights to dispose of such property pursuant to Title 11, section 9.504 and the terms of his security agreement.

§ 5026. Exempt property

1. Except to the extent that the merchant has a valid security interest which is permitted by this Act or has a lien in such property, where the transaction is for medical or legal services and there has been no finance charge actually imposed the following property of the customer shall be exempt from levy, execution, sale, and other similar process in satisfaction of a judgment for an obligation arising from a consumer credit transaction:

A. Unpaid earnings equivalent to the greater of:

- (1) Seventy-five per cent of the customer's earnings remaining after all deductions required by law to be withheld; or
- (2) Fifteen dollars per dependent, other than the customer, as claimed by the customer for federal income tax withholding purposes, plus 40 times the federal minimum hourly wage prescribed by the fair labor standards act, 29 U.S.C. s. 206(a) (1), as amended at the time the earnings are payable;
- (3) In the case of earnings not payable by the week, the administrator shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subsection 2.

B. Clothing of the customer or his dependents and the following: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware; and

C. Real property used as the principal residence of the customer or his dependents, to the extent that the fair market value of such property, less all amounts secured by mortgages and liens outstanding against it, is \$15,000 or less.

2. Nothing in this section shall be construed to displace other provisions of law which afford additional or greater protection to the customer.

3. An order or process in violation of this section is void.

§ 5027. Unconscionability

1. With respect to a consumer credit transaction, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court shall, in addition to the remedy and penalty authorized in section 5, either refuse to enforce the transaction against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.

2. Specific practices forbidden by the administrator in rules promulgated pursuant to section 5098 shall be presumed to be unconscionable.

3. Without limiting the scope of subsection 1, the court may consider, among other things, the following as pertinent to the issue of unconscionability:

A. That the practice unfairly takes advantage of the lack of knowledge, ability, experience or capacity of customers;

B. That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved;

C. That there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value;

D. That the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors;

E. That the terms of the transaction require customers to waive legal rights;

F. That the terms of the transaction require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction;

G. That the natural effect of the practice would reasonably cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties thereunder;

H. That the writing purporting to evidence the obligation of the customer in the transaction contains terms or provisions or authorizes practices prohibited by law; and

I. Definitions of unconscionability in statutes, regulations, rulings and decisions of legislative, administrative or judicial bodies.

4. Any charge or practice expressly permitted by this Act is not in itself unconscionable but even though a practice or charge is authorized by this Act, the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct.

5. In addition to the protections afforded in subsection 1, the customer shall be entitled upon a finding of unconscionability to recover from the creditor or the person responsible for the unconscionable conduct a remedy and penalty in accordance with section 5063.

§ 5028. Extortionate extensions of credit

1. If it is the understanding of the creditor and the customer during any time that an extension of credit is outstanding, that delay in making repayment could result in the use of violence to cause harm to the person or property of any person, the extension of credit shall be unenforceable in accordance with section 5065, and the customer shall additionally recover triple the penalty provided in section 5064, subsection 1.

2. If it is shown that an extension of credit was made at an annual rate exceeding that permitted by or referred to in section 4011 on maximum charges and that the creditor had a reputation for the use or threat of use of violence to cause harm to the person or property of any person to collect extensions of credit or to punish the nonpayment thereof, it shall be presumed that the extension of credit was a violation under this Act under subsection 1.

§ 5029. Pleading

1. A complaint by a creditor to enforce a cause of action shall set forth specifically the facts constituting the alleged default of the customer, the amount to which the creditor is allegedly entitled, and the figures necessary for computation of such amount and, in the case of a transaction other than one pursuant to an open-end plan, shall be accompanied by an accurate copy of the writing, if any, evidencing the transaction.

2. No judgment shall be entered upon a complaint which fails to comply with this section.

§ 5030. No discharge from employment for garnishment

1. No employer shall discharge an employee because a merchant has subjected or attempted to subject unpaid earnings of the employee to garnish-

ment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction.

2. If an employer violates this section, an employee shall recover back wages and be reinstated, if the employee files an action for such relief within 90 days of the employee's discharge.

§ 5031. Attachment before judgment

1. Prior to entry of judgment in an action subject to this subchapter, no process, other than a restraining order to protect collateral (section 5047) shall issue with respect to amounts that are owing or are claimed to be owing or may be owing by the customer to any third person, whether by way of attachment, garnishment or other process.

2. With respect to property of the customer other than that described in subsection 1, process may issue to establish a lien upon such property, except that such process shall not be effective to take, or to divest the customer of possession of, the property until final judgment is entered.

3. If the court finds that the creditor probably will recover on the action, and that the customer is acting, or is about to act, with respect to property of the customer upon which a lien has been established under subsection 2, in a manner which substantially impairs the creditor's prospects for satisfying the judgment against such property, the court may issue an order restraining the customer from so acting with respect to that property until final judgment is entered.

§ 5032. Stay of execution

At the time of or at any time after the entry of a judgment in favor of a creditor against a customer in an action arising from a consumer transaction, the court, for cause and upon motion of a party or on its own motion, may stay enforcement of the judgment by order upon just and equitable conditions, and continue, modify or revoke the order as the interests of justice may require.

§ 5033. Body attachments

1. No merchant shall cause or permit a warrant against the person of a customer to issue under subchapter 3 with respect to a claim arising from a consumer credit transaction. Any process issued in violation of this section is void.

2. A violation of this section is subject to section 5065.

PART 2

ENFORCEMENT OF SECURITY INTERESTS IN COLLATERAL

§ 5041. Scope

This Part applies to the enforcement by a creditor of security interests in collateral.

§ 5043. Definition: “collateral”

For purposes of this Part, “collateral” means goods subject to a security interest in favor of a merchant which secures a customer’s obligations under a consumer credit transaction.

§ 5044. Enforcement of security interests

1. Upon the default (section 5023) of the customer in a consumer credit transaction, the merchant shall have only those rights and remedies provided in this subchapter with respect to any collateral securing the customer’s obligations.

2. Upon such default and the expiration of the period for cure of the default, if applicable (section 5025), the merchant may either:

A. Waive the security interest and enforce the cause of action as an unsecured claim; or

B. Enforce such security interest and the cause or causes of action which it secures in accordance with this subchapter.

§ 5045. Voluntary surrender of collateral

1. Notwithstanding a waiver by the creditor of the security interest in collateral under section 5044, subsection 2 or any other law, the customer shall have the right at any time to voluntarily surrender all of his rights and interests in the collateral to the merchant.

2. The rights and obligations of the merchant and customer with respect to collateral voluntarily surrendered as defined in this section shall be governed by Title 11, sections 9.504 to 9.507.

3. The surrender of collateral by a customer is not a voluntary surrender if it is made pursuant to a request or demand by the merchant for the surrender of the collateral, or if it is made pursuant to a threat, statement or notice by the merchant that the merchant intends to take possession of the collateral.

§ 5046. Action to recover collateral

1. Except as provided in section 5047, a creditor seeking to obtain possession of collateral shall commence an action for replevin of such collateral. Such actions shall be conducted in accordance with Title 14, sections 7451, et seq. notwithstanding Title 14, section 7451 and the value of the collateral sought to be recovered, except that:

A. Notwithstanding Title 14, sections 7452 and 7453, process may be issued to, and such action may be commenced by, an officer or agent of a merchant on the merchant’s behalf even though such officer or agent is not an attorney authorized to practice law in this State;

B. The summons shall be in the form prescribed in subsection 2, and a complaint in the form described in subsection 3, shall be served with the summons;

3. The complaint in such action shall contain :

A. An identification of the consumer credit transaction ;

B. A description of the collateral ;

C. A specification of the circumstances constituting the alleged default ;

D. A statement that the customer will have the right to redeem pursuant to section 5049 and the actual or estimated total payments required for redemption of the collateral, itemized in accordance with section 5049, subsection 1 ;

E. The estimated amount of any deficiency claim which may be available to the merchant (section 5040) and which he intends to assert (section 5051) if the customer fails to redeem the collateral ; and

F. If applicable, a statement that the customer has the right to cure, pursuant to a notice given under section 5024 and the total payment or other performance necessary to cure the alleged default and the exact date by which it must be made ;

G. An accurate copy of the writing, if any, evidencing the transaction, except that with respect to claims arising under open-end credit plans, the complaint shall state that the creditor will produce writings evidencing the customer's obligation, upon receipt of the customer's written request therefor on or before the return day.

4. Upon the written request of the customer, the creditor shall produce an accurate copy of writings evidencing any transactions pursuant to an open-end credit plan upon which the creditor's claim is made, and judgment shall not be entered for the creditor until he does so.

5. Upon entry of judgment for the plaintiff, the plaintiff shall have the right to :

A. Have execution issue to require the sheriff of the county where the collateral may be to take the same from the defendant and deliver it to the plaintiff, pursuant to Title 14, section 7304 or

B. Immediately exercise his right to nonjudicial recovery of the collateral, subject to section 5047.

6. Action pursuant to this section may be commenced at any time after the customer is in default, but the return day of process may not be set prior to the expiration of the period for cure of the default by the customer (section 5025), if applicable.

§ 5047. Nonjudicial enforcement limited

1. Notwithstanding any other provision of law, no creditor shall take possession of collateral by means other than legal process in accordance with this subchapter except when :

A. The customer has surrendered the collateral ; or

B. Judgment for the creditor has been entered in a proceeding for recovery of collateral under section 5046.

2. In taking possession of collateral, no merchant shall commit a breach of the peace, nor enter a dwelling used by the customer as his residence except at the voluntary request of a customer.

3. A violation of this section is subject to section 5065.

§ 5048. Restraining order to protect collateral

If the court finds that the creditor probably will recover possession of the collateral, and that the customer is acting, or is about to act, with respect to the collateral in a manner which substantially impairs the creditor's prospect for realization of his security interest, the court may issue an order restrain the customer from so acting with respect to the collateral, and need not require a bond by the creditor.

§ 5049. Customer's right to redeem

1. For a period of 15 days following exercise by the creditor of nonjudicial enforcement rights (section 5047) or issuance of process (section 5046) with regard to the collateral, the customer shall be entitled to redeem the goods by tendering:

A. The total of all unpaid amounts, including any unpaid delinquency or deferral charges due at the time of tender, without acceleration; plus

B. Performance necessary to cure any default other than non-payment of amounts due; plus

C. Any court costs, filing and service fees, and bond premium charges incurred by the creditor; plus

D. A performance deposit, in the amount of 3 scheduled instalments (or minimum payments in the case of an open-end credit plan), or one-third of the total obligation remaining unpaid with respect to the consumer credit transaction, whichever is less.

2. Tender of the payment and performance pursuant to subsection 1 restores to the customer his rights under the agreement as though all payments and performance had been made as scheduled.

3. Upon such redemption, any process under which the collateral has been held shall be vacated, any pending action shall be dismissed, and the collateral shall be returned to the customer.

4. The performance deposit shall be held by the merchant to secure, and may be applied at any time to, the remaining obligations of the customer under the consumer transaction.

5. The existence of the deposit does not cure any subsequent default of the customer, and the deposit need not be credited to the customer's account until the remaining unpaid balance of the transaction becomes equal to the deposit. In the event of a subsequent default, prepayment, or other occur-

rence (except deferral) which requires the computation under this Act of the outstanding obligation of the customer, the deposit shall be credited to the amount paid for the purposes of such computation.

6. The creditor shall not dispose of the collateral or enter into a contract for the disposition of the collateral, until the expiration of the period for redemption provided in this section, unless the collateral is perishable or threatens to decline speedily in value. Upon the expiration of such period any disposition of the collateral shall be subject to Title 11, sections 9.504, 9.505 and 9.506, except that the customer may be liable for a deficiency only to the extent provided in sections 5050 and 5051.

§ 5050. Restrictions on deficiency judgments

1. This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales (section 4018), a customer is not liable for a deficiency unless the merchant has disposed of the goods in good faith and in a commercially reasonable manner.

2. If the merchant repossesses or accepts voluntary surrender of goods which were the subject of the sale and in which he has a security interest, the customer is not personally liable to the merchant for the unpaid balance of the debt arising from the sale of a commercial unit of the goods of which the amount owing at the time of default was \$1,000 or less, and the merchant is not obligated to resell the collateral unless the customer has paid 60% or more of the cash price and has not signed after default a statement renouncing his rights in the collateral.

3. If the merchant repossesses or accepts voluntary surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the amount owing at the time of default was \$1,000 or less, the customer is not personally liable to the merchant for the unpaid balance of the debt arising from the sale, and the merchant's duty to dispose of the collateral is governed by the provisions on disposition of collateral under Title 11.

4. If the lender takes possession or accepts voluntary surrender of goods in which he has a security interest to secure a debt arising from a consumer loan in which the lender is subject to defenses arising from sales (section 4018) and the amount owing at the time of default of the loan paid to or for the benefit of the customer were \$1,000 or less, the customer is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral under Title 11.

5. The customer may be liable in damages to the merchant if the customer has wrongfully damaged the collateral or if, after default and demand, the customer has wrongfully failed to make the collateral available to the merchant.

6. If the merchant elects to bring an action against the customer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to defenses arising from sales (section 4018) when under this section he would not be entitled to a deficiency judgment if he took possession of the collateral, and obtains judgment:

A. He may not take possession of the collateral; and

B. The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

§ 5051. Computation of deficiency

If the creditor is entitled to a deficiency judgment pursuant to section 5050, subsection 1, the creditor shall be entitled to recover from the customer the deficiency, if any, remaining after deducting the fair market value of the collateral from the unpaid balance.

PART 2

CUSTOMER'S REMEDIES

§ 5061. Remedies to be liberally administered

1. The remedies provided by this subchapter shall be liberally administered to the end that the customer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with this Act. Recoveries under this Act shall not in themselves preclude the award of punitive damages in appropriate cases.

2. Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

3. Notwithstanding any other section of this Act, a customer shall not be entitled to recover specific penalties provided in sections 5062, subsection 1, paragraph A, 5063, subsection 1, 5064, subsection 1 or 5065, subsection 1, if the person violating this Act shows by a preponderance of the 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.

§ 5062. Remedy and penalty for certain violations

1. A person who commits a violation to which this section applies is liable to the customer in an amount equal to:

A. Twenty-five dollars; and

B. The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

2. This section also applies to all violations for which no other remedy is specifically provided.

§ 5063. Remedy and penalty for certain violations

A person who commits a violation to which this section applies is liable to the customer in an amount equal to:

1. One hundred dollars; and
2. The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

§ 5064. Remedy and penalty for certain violations

A person who commits a violation to which this section applies is liable to the customer in an amount equal to the greater of:

1. Twice the amount of the finance charge in connection with the transaction, except that the liability under this subsection shall not be less than \$100 nor greater than \$1,000; or
2. The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

§ 5065. Transactions which are void

1. In a transaction to which this section applies, the customer shall be entitled to retain the goods, services or money received pursuant to the transaction without obligation to pay any part of the transaction total.

2. In addition, the customer shall be entitled to recover any sums paid to the merchant pursuant to the transaction.

§ 5066. Unenforceable obligations

1. Any charge, practice, term, clause, provision, security interest or other action or conduct in violation of this Act, to the extent that the same is in violation of this Act, shall confer no rights or obligations enforceable by action.

2. This section shall not affect the enforcement of any provision that is not prohibited by this Act.

§ 5067. Limitation of action

1. Any action brought by a customer to enforce rights pursuant to this Act shall be commenced within one year after the date of the last violation of this Act, 2 years after consummation of the agreement or one year after last payment, whichever is later, except with respect to transactions pursuant to open-end credit plans which shall be commenced within 2 years after the date of the last violation; but in no event shall an action be commenced more than 6 years after the date of the last violation.

2. Rights under this Act may be asserted as a defense, setoff or counterclaim to an action against the customer without regard to this time limitation.

§ 5068. Reasonable attorney's fees

1. If the customer prevails in an action arising from a consumer transaction, he shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorney's fee.

2. The award of attorney's fees shall be in an amount sufficient to compensate attorneys representing customers in actions arising from consumer transactions. In determining the amount of the fee, the court may consider:

- A. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause;
- B. The customary charges of the bar for similar services;
- C. The amount involved in the controversy and the benefits resulting to the client or clients from the services;
- D. The contingency or the certainty of the compensation;
- E. The character of the employment, whether casual or for an established and constant client; and
- F. The amount of the costs and expenses reasonably advanced by the attorney in the prosecution or defense of the action.

§ 5069. Class actions

Class actions are governed by section 5100.

§ 5070. Liability of corporate officers

Damages or penalties awarded to a customer or the administrator for a violation of this Act which cannot be collected from a corporation by reason of its insolvency or dissolution shall be recoverable against the principal agents of the corporation including, but not limited to, officers, managers and assistant managers who knew of, should have known of or willfully participated in such a violation, if a meaningful part of the corporation's activities were in violation of this Act.

§ 5071. Evidence of violation

Title 11, section 2.202 and any other statute restricting admissibility of parol evidence shall be inoperative to exclude or limit the admissibility of evidence of an act or practice in violation of this Act.

PART 4

CRIMINAL PENALTIES

§ 5081. Willful violations; misdemeanor

A person who willfully and knowingly engages in any conduct or practice in violation of this Act may be fined not more than \$2,000.

SUBCHAPTER 6
ADMINISTRATION

PART 1

POWERS AND FUNCTIONS OF ADMINISTRATOR

§ 5091. Short title

This subchapter shall be known and may be cited as **Maine Consumer Act—Administration**.

§ 5092. Applicability

This subchapter applies to persons who in this State:

1. Make or solicit consumer approval transactions (section 4061), or consumer credit transactions or modifications thereof; or
2. Directly collect payments from or enforce rights against customers arising from such transactions, wherever made.

§ 5093. Administrator

“Administrator” means the Bank Commissioner.

§ 5094. Powers of administrator; duty to report

1. In addition to other powers granted by this Act, the administrator within the limitations provided by law shall:

- A. Receive and act on complaints, take action designed to obtain voluntary compliance with this Act, commence administrative proceedings on his own initiative and commence civil actions solely through the Attorney General;
- B. Counsel persons and groups on their rights and duties under this Act;
- C. Make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public;
- D. Hold such public or private hearings as he deems necessary or proper to effectuate the purposes and policies of this Act;
- E. Adopt, amend, and repeal rules to carry out the purposes and policies of this Act, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

2. In addition to reporting biennially, the administrator shall report annually on practices in consumer transactions, on the use of consumer credit in the State, on problems attending the collection of debts, on the problems of persons of limited means in consumer transactions, and on the operation of this Act. For the purpose of making the report, the administrator may conduct research and make appropriate studies. The report shall include:

- A. A description of the examination and investigation procedures and policies of his office;
- B. A statement of policies followed in deciding whether to investigate or examine the offices of persons subject to this Act;
- C. A statement of policies followed in deciding whether to bring any action authorized under this Act;
- D. Such recommendations for modifications or additions to this Act as in the experience and judgment of the administrator are necessary; and
- E. Such other statements as are necessary or proper to achieve the purposes or policies of this section or to effectuate the purposes or policies of this Act.

3. The administrator shall make available upon request a list of all persons against whom complaints have been filed and the results of all investigations completed or not being actively pursued along with a brief description of the facts of each case and the action taken in each.

4.

A. No provision of this Act or of any statute to which this Act refers which imposes any penalty shall apply to any act done or omitted to be done in conformity with any rule or order of the administrator or any written opinion, interpretation or statement of the administrator, notwithstanding that such rule, order, opinion, interpretation or statement may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

B. Any act, practice or procedure which has been submitted to the administrator in writing and either approved in writing by the administrator or not disapproved by the administrator within 30 days after its submission to him shall not be deemed to be a violation of this Act or any other statute to which this Act refers notwithstanding that such approval of the administrator or nondisapproval by the administrator may be subsequently amended or rescinded to be determined by judicial or other authority to be invalid for any reason.

§ 5095. Administrative powers with respect to supervised financial organizations

1. All powers and duties of the administrator under this Act shall be exercised by him with respect to a supervised financial organization.

2. If the administrator receives a complaint or other information concerning noncompliance with this Act by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.

3. The administrator and any official or agency of this State having supervisory authority over a supervised financial organization shall consult and

assist one another in maintaining compliance with this Act. They may jointly pursue investigations, prosecute suits and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

§ 5096. Investigatory powers

1. At any time that the administrator has reason to believe that a person has engaged in or is about to engage in an act which is subject to action by the administrator, the administrator may make an investigation and with respect thereto, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence, and he shall have the right of access to and of examination of such books, documents or other tangible things. In any civil action brought on behalf of the administrator following such an investigation, the administrator may recover his costs of making the investigation if he prevails in the action.

2. If 5 or more persons file a verified complaint with the administrator alleging that a person has engaged in an act which is subject to action by the administrator, he shall immediately commence an investigation pursuant to subsection 1.

3. If the person's records are located outside this State, the person at his option shall either make them available to the administrator at a convenient location within this State or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

4. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to any court of record for an order compelling compliance.

§ 5097. Application of Title 5, sections 2301, et seq.

Except as otherwise provided, Title 5, sections 2301, et seq. applies to and governs all administrative action taken by the administrator pursuant to this Act. The decisions of the administrator are subject to judicial review as provided in Title 5, sections 2451, et seq.

§ 5098. Unconscionable conduct

The administrator shall promulgate rules declaring specific conduct in consumer credit transactions and the collection of debts arising therefrom to be unconscionable and prohibiting the use thereof. In promulgating such rules, the administrator shall consider, among other things:

1. That the practice unfairly takes advantage of the lack of knowledge, ability, experience or capacity of customers;
2. That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved;
3. That there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value;
4. The fact that the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors;
5. That the terms of the transaction require customers to waive legal rights;
6. That the terms of the transaction require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction;
7. That the natural effect of the practice is to cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties thereunder;
8. That the writing purporting to evidence the obligation of the customers in the transaction contains terms or provisions or authorizes practices prohibited by law; and
9. Definitions of unconscionability in statutes, rules, rulings and decisions of legislative, administrative or judicial bodies.

§ 5099. Temporary relief; injunctions

1. The administrator or any customer may bring a civil action to restrain by temporary or permanent injunction a person from violating this Act or the rules promulgated pursuant thereto, or to so restrain a merchant or a person acting on behalf of a merchant from engaging in false, misleading, deceptive, or unconscionable conduct in consumer credit transactions. It shall not be a defense to an action brought under this section that there exists an adequate remedy at law.

2. The administrator or customer may seek a temporary restraining order without written or oral notice to the adverse party or his attorney. If the court finds that there is reasonable cause to believe that the respondent is engaged in the conduct sought to be restrained and that such conduct violates this Act or rules or regulations promulgated pursuant to this Act, it may grant a temporary restraining order or any temporary relief it deems appropriate. A temporary restraining order granted without notice shall expire by its terms within a stated time after entry, not to exceed 30 days, as the court fixes, unless within this time it is extended by the court, or unless the party against whom the order is directed consents that it may be extended for a

longer period. When a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for a hearing at the earliest possible time. Upon notice to the party who obtained the temporary restraining order without notice, the adverse party may appear and move its dissolution or modification, and in this event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

§ 5100. Class actions; injunctions; declaratory relief

1. Either the administrator, or any customer affected by a violation of this Act or of the rules promulgated pursuant thereto or by a violation of the federal consumer credit protection act, or by conduct of a kind described in subsection 2, may bring a civil action on behalf of himself and all persons similarly situated, for actual damages by reason of such conduct or violation, together with penalties as provided in subsection 14; reasonable attorneys' fees and other relief to which such persons are entitled under this Act. Such customer filing such an action must give prompt notice thereof to the administrator, who shall be permitted, upon application within 30 days, to join as a party plaintiff. For purposes of apportionment of cost, the administrator need not be a party to the action.

2. Actions may be maintained under this section against any person who in making, soliciting or enforcing consumer credit transactions engages in any of the following kinds of conduct:

- A. Making or enforcing unconscionable terms or provisions of consumer credit transactions;
- B. False, misleading, deceptive or unconscionable conduct in inducing customers to enter into consumer credit transactions; or
- C. False, misleading, deceptive, or unconscionable conduct in enforcing debts or security interests arising from consumer credit transactions.

3. Notwithstanding this chapter, no class action may be maintained for conduct proscribed in subsection 2 or for a violation of sections 4071, 5027, 5098 or 5134, subsection 1, paragraph H, unless such conduct has been found to constitute a violation of this Act at least 30 days prior to the occurrence of the conduct involved in such class action by an appellate court of this State or by a regulation issued by the administrator as provided in sections 5034, subsection 1, paragraph E and 5098, specifying with particularity the act or practice in question.

4.

A. At least 30 days or more prior to the commencement of a class action for damages pursuant to the provisions of this section, any party must:

- (1) Notify the person against whom an alleged cause of action is asserted of the particular alleged claim or violation; and
- (2) Demand that such person correct, or otherwise remedy the basis for the alleged claim.

B. Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to such person at the place where the

transaction occurred, such person's principal place of business within this State, or, if neither will effect actual notice, the office of the Secretary of State of this State.

C. Except as provided in paragraph E, no action for damages may be maintained under this section if an appropriate remedy, which shall include actual damages and may include penalties, is given, or agreed to be given within a reasonable time, to such party within 30 days after receipt of such notice.

D. Except as provided in paragraph E, no action for damages may be maintained under this section upon a showing by a person against whom the alleged claim or violation is asserted that all of the following exist:

- (1) All customers similarly situated have been identified, or a reasonable effort to identify such other consumers has been made;
- (2) All customers so identified have been notified that upon their request such person shall make the appropriate remedy;
- (3) The remedy requested by such customers has been or in a reasonable time will be given; and
- (4) Such person has ceased from engaging, or if immediate cessation is impossible under the circumstances, such person will, within a reasonable time, cease to engage in any acts on which the alleged claim is based.

E. An action for injunctive relief may be commenced without compliance with paragraph A. Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with paragraph A the customer may amend his complaint without leave of court to include a request for damages. The appropriate provisions of paragraph C or D shall be applicable if the complaint for injunctive relief is amended to request damages.

5. The court shall permit the suit to be maintained on behalf of all members of the represented class only if:

- A. The class is so numerous that joinder of all members, if permissible, would be impracticable;
- B. There are questions of law and fact common to the class;
- C. The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class. This paragraph shall not apply if the administrator is a representative plaintiff;
- D. The representative parties will fairly and adequately protect the interests of the class.

6. An action may be maintained as a class action if the prerequisites of subsection 5 are satisfied, and in addition:

- A. The prosecution of separate actions by or against individual members of the class would create a risk of:

(1) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(2) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

B. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

C. The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(1) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(4) The difficulties likely to be encountered in the management of a class action.

7. As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits. If the court determines that the action may not be maintained as a class action, it shall allow the action to proceed on behalf of the parties appearing in the action.

8. In any class action maintained under subsection 6, paragraph C, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that:

A. The court will exclude him from the class if he so requests by a specified date;

B. The judgment, whether favorable or not, will include all members who do not request exclusion; and

C. Any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

9. The judgment in an action maintained as a class action under subsection 6, paragraph A or B, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection 6, paragraph C, whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection 8 was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

10. When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class, and this section shall then be construed and applied accordingly.

11. If the judgment is for a class of plaintiffs, the court shall render judgment in favor of the administrator and against the defendants for all costs of notice incurred by the administrator in such action.

12. In the conduct of actions to which this section applies, the court may make appropriate orders: determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; imposing conditions on the representative parties or on intervenors; requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; dealing with similar procedural matters. The orders may be altered or amended as may be desirable from time to time.

13. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

14. A merchant shall not be liable in a class action for specific penalties (section 5062, subsection 1, paragraph A; section 5063, subsection 1; section 5064, subsection 1; section 5065, subsection 1) for which it would be liable in individual actions by reason of violations of this Act or of conduct prescribed in subsection 2, unless it is shown by a preponderance of the evidence that the violation was a willful and knowing violation of this Act.

15. A plaintiff who prevails shall be awarded a reasonable attorney's fee. Notwithstanding section 5068, subsection 2, reasonable attorney's fees in a class action shall be determined by the value of the time reasonably expended by the attorney rather than by the amount of the recovery on behalf of the class. A legal aid society or legal services program which represents a class shall be awarded a reasonable service fee in lieu of reasonable attorney's fees, equal in amount to the amount of the attorney's fees as measured by this subsection.

16. The administrator, whether or not a party to an action, shall bear the costs of notice except that he may recover such costs from the defendant as provided in subsection 11.

§ 5101. Debtors' remedies not affected

The grant of powers to the administrator in this chapter does not affect remedies available to customers under this Act or under other principles of law or equity.

PART 2

NOTIFICATION AND FEES

§ 5111. Notification

1. This Part applies to persons who in this State:

A. Make or solicit consumer credit transactions in which a finance charge at a rate in excess of that permitted under Title 9, section 229 is imposed as part of the initial transaction, or modifications thereof, except a person who engages in consumer credit transactions solely through honoring credit cards issued by third parties not related to such person; or

B. Directly collect payments from or enforce rights against customers arising from such transactions, wherever made.

2. Each person subject to this subchapter shall file notification with the administrator within 30 days after commencing business in this State, and thereafter, on or before December 1st of each year. The notification shall state:

A. Name of the person;

B. Name in which business is transacted if different from paragraph A;

C. Address of principal office, which may be outside this State;

D. Address of all offices or retail stores, if any, in this State;

E. If consumer transactions or other business subject to this chapter are made otherwise than at an office or retail store in this State, a brief description of the manner in which they are made;

F. Address of designated agent upon whom service of process may be made in this State; and

G. Such other similar information as the administrator may from time to time require to effectuate the purposes and policies of this Act.

3. The administrator shall adopt rules governing the filing of changes, additions or modifications of the notification required by this section, and shall adopt rules pertaining to form, verification and similar matters pertaining to the notification.

4. The following persons shall not be subject to this section solely by reason of their debt collection activities.

- A. Attorneys authorized to practice law in this State or professional service corporations composed of licensed attorneys;
- B. Duly licensed real estate brokers and real estate salesmen; and
- C. Duly licensed insurance companies subject to the supervision of the office of the Insurance Commissioner.

§ 5112. Fees

1.

A. Persons required to file notification shall on or before December 1st of each year pay to the administrator an annual fee on the amounts financed on which the annual percentage rate exceeds the rates permitted by Title 9, section 229, subsection 1, paragraph A or B, and which arise from consumer credit transactions made in this state within the preceding calendar year, or any 12-month period ending subsequent thereto and prior to December 1st, and held by the merchant for more than 30 days after the inception of the transaction giving rise to the obligations, or by an assignee who has not filed notification, according to the following schedule:

(1) Where the total volume of such amounts financed exceeds \$10,000 but does not exceed \$25,000, a fee of \$25;

(2) Where the total volume of such amounts financed exceeds \$25,000 but does not exceed \$100,000, an additional fee of \$40; or

(3) Where the total volume of such amounts exceeds \$100,000, an additional fee of \$40 plus \$10 on each \$100,000 or fraction thereof over \$100,000.

PART 3

VIOLETIONS AND ENFORCEMENT

§ 5121. Violations and enforcement

1. The administrator may recover in a civil action from a person who violates this Act or any rule made pursuant to any authority granted in this Act, a civil penalty of not less than \$100 and not more than \$1,000 for each violation.

2. In addition to the amount to which he shall be entitled under subsection 1, the administrator may recover in a civil action from a person who knowingly or willfully violates this Act or any rule made pursuant to any authority granted in this Act, a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation.

A. A refinancing of a consumer credit transaction resulting in an increase in the amount of an obligation is considered a new transaction to the extent of the amount of the increase.

3. A licensee under Title 9, sections 3442, 3041 and 3201 and et seq. and shall receive a credit for the amount of fees paid to the commissioner of banking under each of those sections for the fees in sub-§ (1).

4. A person required to file notification shall submit such financial and other data as the administrator may require which will support the computation of the amount of the fee.

5. The administrator shall bring an action in any court of record to recover any fees that he determines are due and owing under this section.

SUBCHAPTER 7 DEBT COLLECTION

§ 5131. Short title

This subchapter shall be known and may be cited as **Maine Consumer Act—Debt Collection**.

§ 5132. Scope

This subchapter applies to conduct and practices in connection with the collection of obligations arising from consumer transactions.

§ 5133. Definitions: “claim”; “debt collection”; “debt collector”

1. “Claim” means any obligation or alleged obligation arising from a consumer transaction.

2. “Debt collection” means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a merchant by a customer.

3. “Debt collector” means any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device or scheme, intended or calculated to be used to collect claims. The term does not include a printing company engaging in the printing and sale of forms.

§ 5134. Prohibited practices

1. In attempting to collect an alleged debt arising from a consumer credit transaction, a debt collector shall not:

A. Use or threaten force or violence to cause physical harm to the customer, his dependents or his property;

B. Threaten criminal prosecution;

C. Disclose or threaten to disclose information adversely affecting the customer’s reputation for credit worthiness with knowledge or reason to know that the information is false;

D. Initiate or threaten to initiate communication with the customer’s employer prior to obtaining final judgment against the customer, except as permitted by statute including specifically section 4034 but this paragraph does not prohibit a debt collector from communicating with the customer’s employer solely to verify employment status or earnings or where an employer has an established debt counseling service or procedure;

E. Disclose or threaten to disclose to a person other than the customer or his spouse information affecting the customer's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this paragraph does not prohibit the disclosure to another person of information permitted to be disclosed to him by statute;

F. Disclose or threaten to disclose information concerning the existence of a debt known to be reasonably disputed by the customer without disclosing the fact that the customer disputes the debt;

G. Communicate with the customer or a person related to him with such frequency or at such unusual hours or in such a manner as can reasonably be expected to threaten or harass the customer;

H. Engage in other conduct which can reasonably be expected to threaten or harass the customer or a person related to him;

I. Use obscene or threatening language in communicating with the customer or a person related to him;

J. Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist;

K. Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law when it is not;

L. Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt; or

M. Engage in conduct in violation of a rule adopted by the administrator after like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against false, misleading, deceptive or unconscionable agreements or conduct (sections 5099 and 5100).

§ 5135. Remedies

1. A person injured by violation of this subchapter may recover actual damages and the penalty provided in section 5064; but notwithstanding any other law actual damages shall include damages caused by emotional distress or mental anguish with or without accompanying physical injury proximately caused by a violation of this subchapter.

2. If a customer establishes that he was induced to surrender collateral (section 5042) by conduct of the merchant which violates this subchapter, the customer shall be entitled to a determination of the right to possession of the collateral pursuant to section 5045, subsection 1, paragraph E, in any action brought under this Part, and if he prevails on such issue, in addition to any other damages under this Part, the customer shall be entitled to recover possession of the collateral if still in the merchant's possession, together with actual damages for his loss of use of the collateral.

STATEMENT OF FACT

The purpose of this bill is reflected in the title.