

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 454

H. P. 323

House of Representatives, January 29, 1975

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

EDWIN H. Pert, Clerk

Presented by Mrs. Boudreau of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Transfer Authority for Truth-in-lending Examinations and Enforcement from the Bureau of Banks and Banking to the Bureau of Consumer Protection.

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

Whereas, the State of Maine must continue its examination responsibilities under the Truth-in-lending Act in order to retain its exemption under the federal law; and

Whereas, the personnel responsible for conducting these examinations for the Bureau of Banks and Banking have been transferred to the newly formed Bureau of Consumer Protection; and

Whereas, the businesses and financial institutions which are to be examined for compliance with the Maine Consumer Credit Code are in almost every case subject to the provisions of the State's Truth-in-lending Act; and

Whereas, the truth-in-lending examinations would be conducted as part of the Consumer Credit Code examinations as soon as this legislation was enacted; and

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

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

Sec. 1. 9 MRSA, c. 372, as enacted by PL 1969, c. 423, § 35 and as amended, is repealed.

Sec. 2. 9-A MRSA, Art. VII, is enacted to read:

ARTICLE VII
TRUTH-IN-LENDING
PART I
GENERAL PROVISIONS

§ 7.101. Short title

This Article may be cited as the "Maine Consumer Credit Code — Truth-in-lending."

§ 7.102. Findings and declaration of purpose

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

§ 7.103. Definitions and rules of construction

1. Definitions. As used in this Article, unless the context otherwise clearly indicates, the following words shall have the following meanings:

A. Accepted credit card. The term "accepted credit card" means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit.

B. Adequate notice. The term "adequate notice," as used in section 7.127 means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

C. Cardholder. The term "cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

D. Card issuer. The term "card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

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

F. Credit card. The term "credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit.

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

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

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

J. Unauthorized use. The term "unauthorized use," as used in section 7.127, means a use of a credit card by a person other than the cardholder who does not have actual, implied or apparent authority for such use and from which the cardholder receives no benefit.

2. Rules of construction. The following rules of construction set forth in this subsection are applicable for the purpose of this Article.

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

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

§ 7.104. Exempted transactions

This Article does not apply to the following:

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

2. Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission;

3. Credit transactions, other than real property transactions, in which the total amount to be financed exceeds \$25,000;

4. Transactions under public utility tariffs, if the administrator determines that a state regulatory body regulates the charges for the public utility services involved, the charges for delayed payment and any discount allowed for early payment.

§ 7.105. Regulations

The administrator shall prescribe regulations to carry out the purposes of this Article. These regulations may contain such classifications, differentiations or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the administrator are necessary or proper to effectuate the purposes of this Article, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Any regulations prescribed under authority of this Article shall not be subject to the procedures provided by sections 6.404 and 6.405 and shall become effective on the date designated by the regulation.

§ 7.106. Determination of finance charge

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

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

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

A. The coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

B. In order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirma-

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

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

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

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

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

C. Taxes;

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

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

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

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

C. Escrows for future payments of taxes and insurance;

D. Fees for notarizing deeds and other documents;

E. Appraisal fees;

F. Credit reports.

§ 7.107. Determination of annual percentage rate

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

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

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

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

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

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

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

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

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

§ 7.108. Application to Federal Reserve Board

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

§ 7.109. Views of other agencies

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

1. Before adopting, amending and repealing regulations, advise and consult with administrators in other jurisdictions which enact truth-in-lending laws; and
2. In adopting, amending and repealing regulations, take into consideration:
 - A. The regulations so prescribed by the Board of Governors of the Federal Reserve System; and
 - B. The regulations of administrators in other jurisdictions which enact truth-in-lending laws.

§ 7.110. Effect on other laws

1. This Article does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of this State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this Article extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.
2. In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this Article in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.
3. Except as specified in sections 7.117 and 7.122 this Article and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under state or federal law.

§ 7.111. Criminal liability for willful and knowing violation

Whoever willfully and knowingly:

1. Gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this Article or any regulation issued thereunder;
2. Uses any chart or table authorized by the administrator under section 7.107 in such a manner as to consistently understate the annual percentage rate determined under section 7.107, subsection 1, paragraph A, subparagraph (1); or
3. Otherwise fails to comply with any requirement imposed under this Article, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or by both.

§ 7.112. Penalties inapplicable to governmental agencies

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

§ 7.113. Report by administrator

The administrator shall include in the report required in Title 9, section 4 information concerning the administration of his functions under this Article including such recommendations as he deems necessary or appropriate including his assessment of the extent to which compliance with the requirements imposed under this Article is being achieved.

§ 7.114. General requirement of disclosure

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

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

§ 7.115. Form of disclosure; additional information

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

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

§ 7.116. Effect of subsequent occurrence

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

§ 7.117. Right of rescission as to certain transactions

1. Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the 3rd business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this Article, whichever is later, by notifying the creditor, in accordance with regulations of the administrator, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the administrator, to any obligor in a transaction subject to this section the rights

of the obligor under this section. The creditor shall also provide, in accordance with regulations of the administrator, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

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

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

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

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

§ 7.118. Content of periodic statements

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

1. The annual percentage rate of the total finance charge.
2. The date by which, or the period, if any, within which payment must be made in order to avoid additional finance charges or other charges.
3. Such of the items set forth in section 7.119, subsection 2, as the administrator may by regulation require as appropriate to the terms and conditions under which the extension of credit in question is made.

§ 7.119. Open-end consumer credit plans

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

- A. The conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finance charge;
- B. The method of determining the balance upon which a finance charge will be imposed;
- C. The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge;
- D. Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;
- E. If the creditor so elects,
 - (1) The average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or
 - (2) Whenever circumstances are such that the computation of a rate under subparagraph (1) would not be feasible or practical or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan;

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

- F. The conditions under which any other charges may be imposed and the method by which they will be determined;
 - G. The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.
2. The creditor of any account under an open-end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:
- A. The outstanding balance in the account at the beginning of the statement period;
 - B. The amount and date of each extension of credit during the period, and, if a purchase was involved, a brief identification, unless previously furnished, of the goods or services purchased;
 - C. The total amount credited to the account during the period;
 - D. The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge;

E. Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable and, unless the annual percentage rate determined under section 7.107, subsection 1, paragraph B, is required to be disclosed pursuant to paragraph F, the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;

F. Where the total finance charge exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate determined under section 7.107, subsection 1, paragraph B, except that if the finance charge is the sum of 2 or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable;

G. At the election of the creditor, the average effective annual percentage rate of return, or the projected rate, under the plan as prescribed in subsection 1, paragraph E;

H. The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed;

I. The outstanding balance in the account at the end of the period;

J. The date by which, or the period, if any, within which, payment must be made to avoid additional finance charges.

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

§ 7.120. Sales not under open end credit plans

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

A. The cash price of the property or service purchased;

B. The sum of any amounts credited as downpayment, including any trade-in;

C. The difference between the amount referred to in paragraph A and the amount referred to in paragraph B;

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

E. The total amount to be financed, the sum of the amount described in paragraph C plus the amount described in paragraph D;

F. Except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable;

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

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

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

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

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

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

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

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

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

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

§ 7-121. Consumer loans not under open-end credit plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.122. Civil liability

1. Except as otherwise provided in this section, any creditor who fails in

connection with any consumer credit transaction to disclose to any person any information required under this Article to be disclosed to that person is liable to that person in an amount equal to the sum of:

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

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

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

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

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

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

§ 7.123. Written acknowledgement as proof of receipt

Except as provided in section 7.117, subsection 3, and except in the case of actions brought under section 7.122, subsection 4, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this Article shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this Article. This section does not affect the rights of the obligor in any action against the original creditor.

§ 7.124. Conformity with federal law

It is declared to be the legislative intent that the state law shall require

disclosure of items of information substantially similar to the requirements of any applicable federal law. To effectuate this intent, the administrator is specifically authorized, empowered and directed to adopt such interim regulations governing the information to be disclosed and the manner of disclosure so as to assure that the requirements of state law meet the requirements of such applicable federal law. Such regulations shall remain in full force and effect until 90 days after the close of the next regular session of the Legislature. Title 9, section 6, subsection 4, shall not apply to regulations issued under this Article.

§ 7.125. Exemption from Federal Truth-in-lending Act

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

§ 7.126. Issuance of credit cards

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

§ 7.127. Liability of holder of credit card

A cardholder shall be liable for the unauthorized use of a credit card only if the card is an accepted credit card, the liability is not in excess of \$50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped notification to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after September 23, 1971, and, after January 24, 1972, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless the conditions of liability specified in the preceding sentence are met and the card issuer has provided a method whereby the user of such a card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee or agent of the card issuer does in fact receive such information.

In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in the first paragraph of this section, have been met.

Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

Sec. 3. 9-A MRSA, § 1.202, sub-§ 8, is enacted to read:

8. The exclusions set forth in subsections 2, 4, 5 and 7 shall not apply to the Maine Consumer Credit Code, Truth-in-lending, Article VII.

Sec. 4. **Transitional provisions.** The authority for the examination and prosecution of acts or practices in violation of Title 9, chapter 372, as amended, including any rules or regulations promulgated thereunder, is hereby transferred from the Bureau of Banks and Banking to the Bureau of Consumer Protection. It is the intention of the Legislature to ensure the continuity of examination and prosecution by the State of Maine for any acts and practices in violation of Title 9, chapter 372 when such acts or practices occurred prior to the repeal of Title 9, chapter 372.

The Bureau of Banks and Banking Regulation No. 6, as amended, Truth-in-lending, shall continue in effect and operation on the effective date of this Act and shall be transferred to Title 9-A, MRSA and shall be retitled as "Bureau of Consumer Protection, Regulation No. 1, Truth-in-lending."

The Superintendent of the Bureau of Consumer Protection shall be authorized to make the changes to Bureau of Banks and Banking, Regulation No. 6 necessary or proper to effectuate the transfer to the Maine Consumer Credit Code, Title 9-A, MRSA. The changes authorized under this section shall take effect immediately upon the order of the Superintendent of the Bureau of Consumer Protection. To ensure the prompt transfer of this regulation, it shall not be necessary to effectuate these changes in compliance with sections 6.404 and 6.405 of Title 9-A, MRSA.

All records of the Bureau of Banks and Banking relating to chapter 372 of Title 9, MRSA, as amended, shall be transferred to the Bureau of Consumer Protection on the effective date of this Act or as soon thereafter as is reasonably possible.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

FISCAL NOTE

The Bureau of Consumer Protection operates on dedicated revenue secured from consumer credit grantors (banks, finance companies, etc.) operating in Maine. The examinations for Truth-in-Lending will be paid for by the credit grantors examined by the bureau.

STATEMENT OF FACT

This Act will transfer Maine's Truth-in-Lending law from the Bureau of Banks and Banking to the newly formed Bureau of Consumer Protection. This Act is an emergency measure in order that Maine may retain its exemption to the federal Truth-in-Lending laws.