

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1815

H. P. 1402

House of Representatives, April 7, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Rideout of Mapleton.
Cosponsor: Mr. Bowie of Gardiner.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Repeal the Maine Consumer Credit Code.

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

Whereas, the provisions of the Maine Consumer Code, Title 9-A of the Revised Statutes, presently are such as to create substantial questions of application of the law to the business community of the State in these difficult economic times; and

Whereas, many merchants and professional people in the State are unduly burdened by the effect and uncertainties of the code; and

Whereas, many provisions of said code are subject to substantial dispute as to their interpretation and effect; and

Whereas, it is not in the best interest of consumers in this State to be subjected to the possible additional costs and administrative work that the uncertainties in the interpretation and effect of the code may bring about; 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Sec. 1. 9 MRSA § 3, sub-§ 2, ¶ E, as last repealed by PL 1973, c. 762, § 2, is reenacted to read:

E. An advisory committee made up of licensed small loan agency officials or directors or both, chosen by the Maine Consumer Finance Association;

Sec. 2. 9 MRSA § 229 as last repealed by PL 1973, c. 762, § 2, is reenacted to read:

§ 229. Maximum legal interest rate on personal loans in excess of \$2,000

No person, copartnership or corporation shall, directly or indirectly, charge, contract for or receive any interest or consideration greater than 16% per year simple interest upon the nonbusiness or personal loan, use or forbearance of money, goods or choses in action, or upon the nonbusiness or personal loan, use or sale of credit, of the amount or value in excess of \$2,000.

Any such loan of the amount in excess of \$2,000, for which a greater rate of interest, consideration or charges than is permitted by this section has been charged, contracted for or received, wherever made, shall be void and the lender shall have no right to collect or receive any principal, interest or charges whatsoever. In any case in which it is found that a lender has violated this section, the court shall award reasonable attorney's fees incurred by the borrower.

This section shall not apply to the Motor Vehicle Sales Finance Act, Title 9, chapters 321 to 327, as amended, Home Repair Financing Act, Title 9, chapter 360 and the financing of retail sales.

Sec. 3. 9 MRSA § 2345, sub-§ 1, as last amended by PL 1973, c. 762, § 3, is further amended to read:

1. To borrow and lend money. To borrow money, to lend money and discount notes and bills of exchange, including trade acceptances and to deduct interest thereon in advance at a rate no greater than 12% annually;

Sec. 4. 9 MRSA § 2345, sub-§ 3, as repealed by PL 1973, c. 762, § 2, is reenacted to read:

3. To charge fees for expense of making loan. To charge for a loan made pursuant to this section \$1 for each \$50 or fraction thereof loaned, for expenses, including any examination or investigation of the character and circumstances of the borrower, comaker or surety, and the drawing and taking acknowledgment of necessary papers, or other expenses incurred in making the loan. No charge shall be collected, unless a loan shall have been made as a result of such examination or investigation and no such charge shall exceed \$5;

Sec. 5. 9 MRSA §§ 3001 to 3005, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3001. Compliance required

No loan of the amount of \$2,000 or less, for which a greater rate of interest, consideration or charges than is permitted by chapters 281 to 289, has been charged, contracted for or received, wherever made, shall be enforced in this State. Every person in anywise participating therein in this State shall be subject to chapters 281 to 289. The foregoing shall not apply to loans legally

made in any state to a person who is at that time a resident of that state, which has in effect a regulatory small loan law similar in principle to chapters 281 to 289. Any mail order loan made to a person residing in this State shall be governed by chapters 281 to 289.

§ 3002. Evasions; agents of nonresident borrowers

No person, corporation or partnership shall engage within this State in the business of acting as the agent or attorney of nonresident borrowers of money in sums of \$2,000 or less, with intent to evade the usury laws in force in the foreign state or territory in which the actual borrower has his residence when such loan, or any contract in connection therewith, is made. All such loans made or contracted for by such agent or attorney for a foreign principal, in violation of this section, shall be voidable at the option of the debtor, such option to be exercised by him in any foreign jurisdiction where any contract or promise made by him in connection with the making or procuring of such loan is attempted to be enforced.

§ 3003. Name; place of business; removals

No person, copartnership or corporation licensed under section 3042 shall make any loan or transact any business provided for by chapters 281 to 289 under any other name or at any other place of business than that named in the license. Not more than one office or place of business shall be maintained under the same license, but the superintendent may issue more than one license to the same person upon the payment of an additional license fee and the filing of an additional bond for each license. If a licensee wishes to change the location of his place of business to another municipality, he shall at once give written notice thereof and return his license to the superintendent, who may amend the license and return it to the licensee or he may refuse to amend the license because public convenience and advantage of the community in which the business is to be conducted will not be thereby promoted.

§ 3004. False statements

In the soliciting of loans in any manner or advertising the business in any manner, no person, copartnership or corporation licensed under section 3042 shall print, publish, broadcast, telecast or cause to be printed, published, broadcast, telecast or distributed, in any manner whatsoever, any written or printed statement with regard to the rates, terms or conditions for the lending of money, credit, goods or choses in action, in amounts of \$2,000 or less, which is false, misleading or deceptive.

§ 3005. Exceptions

Chapters 281 to 289 shall not apply to any person, copartnership or corporation doing business under any law of this State or of the United States relating to national banks, savings banks, industrial loan companies, trust companies or loan and building associations, nor shall they apply to any transactions involving extensions of credit pursuant to insurance premium finance agreements that are authorized by Part 13.

Sec. 6. 9 MRSA §§ 3041 to 3043, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3041. License required; fees; bonds

No person, copartnership or corporation shall engage in the business of making any loan of money, credit, goods or choses in action in the amount or to the value of \$2,000 or less, whether secured or unsecured, and charge, contract for or receive a greater rate of interest than 12% per year therefor, said interest rate to be computed on the basis of what is known as a true interest rate, without first obtaining a license from the superintendent. Application for such license shall be in writing and shall contain the full name and address, both of the residence and place of business, of the applicant, and if the applicant is a copartnership, of every member thereof, or if a corporation, of every officer thereof; and the county and municipality, with street and number, if any, where the business is to be conducted. Every such applicant, at the time of making such application, shall pay to the superintendent an annual license fee as follows: If no loans have been made or if the average amount of the loans outstanding during the preceding year ending November 30th has not exceeded \$20,000, a fee of \$50, and for every additional \$50,000 or fraction thereof, an additional fee of \$50. The applicant shall, at the same time, file with the superintendent a bond in which the applicant shall be the obligor, in the sum of \$1,000 with one or more sureties to be approved by said superintendent; which bond shall run to the superintendent for the use of the State and of any person or persons who may have a cause of action against the obligor of said bond under chapters 281 to 289, and shall be conditioned that said obligor will conform to and abide by each and every provision of said chapters, and will pay to the State and to any such person or persons any and all moneys that may become due or owing to the State and to such person or persons from said obligor, under and by virtue of chapters 281 to 289. If in the opinion of the superintendent the bond shall at any time appear to be insecure or exhausted, or otherwise doubtful, an additional bond in the sum of not more than \$1,000 satisfactory to the superintendent shall be filed, and upon failure of the obligor to file such additional bond, the license shall be revoked by the superintendent.

§ 3042. Issuance; hearing; expirations; appeal

Upon the filing of the application, approval of the bond and the payment of the fee, the superintendent shall investigate the facts concerning the application and the requirements provided for in this section. Within 10 days after the filing of such application, the superintendent shall mail notice of the receipt of such application to each licensee having a place of business in the community in which the applicant proposes to do business. If objections to the issuance of the license are filed with the superintendent within 20 days after notice of the application has been mailed by the superintendent, or if the superintendent has doubts that the applicant can meet the requirements provided for in this section, the superintendent shall so notify the applicant, in writing, within 10 days after the expiration of the 20 days' limitation for the filing of objections. The applicant may, within 15 days thereafter, request a hearing on the application and if such request is made, the superintendent

shall designate a time and place for such hearing, which time shall be not less than 7 days nor more than 30 days from the date such request for a hearing is made and the superintendent shall notify the applicant and any licensees that have filed objections of the time and place so designated.

If the superintendent shall find, after his investigation and after any hearing, that the financial responsibility, experience, character and general fitness of the applicant, and members thereof, if the applicant is a copartnership, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of chapters 281 to 289, and that allowing the applicant to engage in business will promote the public convenience and advantage of the community in which the business is to be conducted, and that the applicant has available for the purpose of making loans under chapters 281 to 289 at the specified location liquid assets of at least \$50,000, and that if the applicant is a corporation, that such corporation was formed or organized under the laws of the State of Maine, he shall thereupon enter an order granting such application, file his findings as a public record in his office and forthwith issue and deliver a license to the applicant. If he shall not so find, he shall enter an order denying the application, file his findings as a public record in his office, and forthwith notify the applicant of the denial.

The superintendent shall approve or deny every application within 60 days from the filing thereof with the fee and the approved bond, unless the period is extended by written agreement between the applicant and the superintendent. In the event of a hearing the superintendent's decision shall be made within 30 days after the conclusion of the hearing.

Each license shall remain in full force and effect until it is surrendered, suspended, revoked or has expired. Each license shall expire on the last day of December of the year in which issued or for which a license fee shall have been paid, unless prior to each December 15th, the licensee shall pay to the superintendent the fee provided for in section 3041 for each license held by him as a license fee for the succeeding calendar year, and file with the superintendent substantiation of the renewal or continuance of the bond provided for in section 3041. Such license shall not be assignable and shall be kept posted in the place of business of the licensee.

Upon the refusal of the superintendent to issue such license, an appeal may be taken in accordance with Title 5, chapters 305 and 307.

§ 3043. Revocation or suspension of license

Upon receiving evidence of a violation of any of the provisions of chapters 281 to 289 by a licensee, the superintendent, after notice and hearing thereon, may suspend or revoke a license. The superintendent shall give the licensee at least 10 days' written notice of the time and place of such hearing by registered mail addressed to the place of business of the licensee. The notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the superintendent and

shall be effective at a date stated in the superintendent's decree but not less than 10 days after such decree is forwarded by registered mail to the licensee at his place of business. Any appeal from such order may be taken in accordance with section 7. No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful loan contract. The suspension or revocation of a license shall include the suspension or revocation of the privilege to make loans subject to chapters 281 to 289. If the superintendent should find a violation of sections 3081 or 3082, he shall so notify the lender and the borrower of his findings.

Sec. 7. 9 MRSA §§ 3081 to 3086, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3081. Amount of loan and interest rate

Every person, copartnership and corporation licensed under chapters 281 to 289 may loan any sum of money, goods or choses in action not exceeding in amount or value the sum of \$2,000, any lower limitation of amount in its charter notwithstanding, and may charge, contract for and receive thereon interest at a rate not to exceed $2\frac{1}{2}\%$ per month on that part of the unpaid principal balance of any loan not in excess of \$300 and $1\frac{1}{2}\%$ per month on any remainder of such unpaid principal balance. A minimum charge of not exceeding 25¢ shall be allowable in all cases. No person shall owe any licensee at any time more than \$2,000 for principal. No contract of loan made under chapters 281 to 289 shall provide for a greater rate than 8% per year simple interest on the principal balance remaining unpaid at the expiration of 36 months on the original loan, including any additional amounts borrowed, any renewal, refinancing or extension of the contract made within such period; and thereafter, such unpaid principal balance shall not be directly or indirectly renewed or refinanced by the lender who made such loan, nor shall such lender grant any additional loan to any such borrower until such unpaid balance has been paid in full.

No licensee shall induce or permit any borrower or borrowers to split up or divide any loan, and all sums owed by any person at any one time directly or contingently shall be considered as one contract of loan for the purpose of computing the interest payable thereon. No licensee shall induce or permit any person, nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section.

§ 3082. Interest; no additional charges except lawful fees

Interest, consideration or charges for the use of money payable under chapters 281 to 289 shall not be deducted or received in advance and shall be computed on unpaid principal balances. Such interest, consideration or charges shall not be compounded; provided that, if part or all of the principal amount of any loan contract is the unpaid principal balance of a prior loan, the unpaid interest, consideration or charges for the use of money on such prior loan which have accrued within 60 days before the making of such loan contract may be incorporated as interest bearing principal in the principal

amount of such loan contract, and for the purposes of this section any such new loan shall be deemed a separate loan transaction. In addition to the interest provided for, no further or other charge or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received, except insurance premiums for group life insurance and group accident and health insurance and any gain or return to the licensee therefrom, and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing or recording in any public office any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter. No accident and health insurance shall be sold unless there is a waiting period of 30 days or more, a minimum payment of \$40 per month and the loan must be for at least 18 months. If interest or charges in excess of those permitted by this section and section 3081, including insurance premiums and filing fees, shall be charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever. Upon a finding by the District or Superior Court that interest or charges in excess of those permitted by this section and section 3081 have been charged, contracted for or received, the licensee shall forfeit to the borrower the amount of all payments made as principal and interest payments, and he shall mark and return the note and other papers as provided in section 3083, subsection 3. Reasonable attorneys' fees and costs shall be awarded to the borrower if he is the prevailing party in such action. Each licensee shall annually report to the superintendent the amount of insurance sold, premiums charged therefor, and claims paid on a form prescribed by the commissioner and a summary of these reports will be included in the annual report of the superintendent.

§ 3083. Duties of lender

Every licensee shall:

1. Statement. Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged. Upon such statement there shall be printed in English a copy of sections 3081 and 3082;
2. Receipt. Give to the borrower a plain and complete receipt of all payments made on account of any such loan at the time such payments are made; and
3. Payment of loan in full. Upon payment of a loan in full by cash, renewal or a new loan, mark plainly every note signed by the borrower with the words "Paid in Full" or "Cancelled" and return to the borrower, and restore any pledge, cancel any assignment and release or provide the borrower, and restore any pledge, cancel any assignment and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the licensee, and properly record said discharge or lease of any mortgage or security interest, the borrower to pay the statutory fee for the same.

§ 3084. Restrictions on security

No licensee under chapters 281 to 289 shall take any confession of judgment or any power of attorney; nor shall he take any note, promise to pay or security that does not state the actual amount of the loan, the time for which it is made and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

§ 3085. Assignments of wages

No assignment of any salary or wages, earned or to be earned, given to secure a loan made under chapters 281 to 289 shall be valid, unless in writing signed in person by the borrower; nor, if the borrower is married, unless it shall be signed in person by both husband and wife; nor shall such assignment be valid unless given to secure a debt contracted simultaneously with its execution. All such assignments shall be subject to Title 26, section 627.

§ 3086. Maximum interest; evasions

No person, copartnership or corporation, except as authorized by chapters 281 to 289, shall, directly or indirectly, charge, contract for or receive any interest or consideration greater than 12% per year, said interest rate to be computed on the basis of what is known as a true interest rate, upon the loan, use or forbearance of money, goods or choses in action, or upon the loan, use or sale of credit, of the amount or value of \$2,000 or less. This prohibition shall apply to any person who, as security for any such loan, use or forbearance of money, goods or choses in action, or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who, by any device or pretense of charging for his services, or otherwise, seeks to obtain a greater compensation than is authorized by chapter 281 to 289.

Sec. 8. 9 MRSA §§ 3121 and 3122, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3121. Duties of superintendent

The superintendent, as he deems necessary, may either personally, or by any person designated by him, at any time and as often as he may desire, examine the loans and business of every licensee and of every person, copartnership and corporation by whom or by which any such loan shall be made, whether such person, copartnership or corporation shall act, or claim to act, as principal, agent or broker, or under, or without the authority of chapters 281 to 289. He shall have free access to the books, papers, records and vaults of all such persons, copartnerships and corporations. He shall have authority to examine, under oath, all persons whose testimony he may require relative to such loans or business. In connection with such investigations and examinations he, and any person designated by him, shall examine the loans, business and records of all such persons, copartnerships and corporations to determine whether the laws with reference to credit life and credit accident and health insurance are being complied with and upon discovery of any violation or supposed violation thereof shall forthwith report the same to the Insurance Superintendent and any other appropriate enforcement agency for prosecution.

The superintendent is authorized and empowered to make such general rules and regulations, and such specific rulings, demands and findings as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of chapters 281 to 289 in addition hereto and not inconsistent herewith. Regulations shall be made in the manner prescribed in section 6, subsection 4.

§ 3122. Form and contents of report; book and records

Every person, copartnership or corporation licensed under chapters 281 to 289 shall annually on or before the 15th day of April file with the superintendent a report for the preceding calendar year, or for such portion of the preceding calendar year during which said person, copartnership or corporation has been licensed under chapters 281 to 289. Such report shall give information with respect to the financial condition of such licensee and shall include: The name and address of the licensee; balance sheets at the end of the accounting period; a statement of income and expenses for said period; a reconciliation of surplus or net earnings with the balance sheets, a schedule of assets used and useful in the small loan business; an analysis of charges, size of loans and types of security on loans of \$2,000 or less; an analysis of delinquent accounts; an analysis of suits, repossessions and sales of chattels and such other relevant information as the superintendent may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the superintendent who shall make and publish biennially an analysis and summary of such reports. In the event any person or corporation holds more than one license in the State, a composite annual report, covering all such licensed offices, may be filed.

In addition to the foregoing report the superintendent may require reports from licensees at any time, containing such information as he deems necessary to the proper supervision of licensees under this section.

Each licensee shall keep such books and records as may be prescribed by the superintendent and shall preserve books and records used in such business for a period of at least 4 years after making the final entry of, or relative to any loan recorded therein.

Sec. 9. 9 MRSA §§ 3161 and 3162, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3161. Examiner; compensation

For the enforcement of chapters 281 to 289, the superintendent is authorized to appoint, subject to the Personnel Law, an examiner, who shall receive in addition to his salary his necessary traveling expenses. The salary, traveling expenses and all expenses of administration and enforcement of said chapters shall be paid out of such amounts as the Legislature may appropriate. Fees received from licenses issued under said chapters shall be paid to the Treasurer of State for deposit in the General Fund.

§ 3162. Penalties

Whoever either individually or as the officer or employee of any corporation or association violates any of the provisions of chapters 281 to 289 shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both.

Sec. 10. 9 MRSA § 3203, 4th and 5th sentences, as last amended by PL 1973, c. 762, § 4, are further amended to read:

Within 30 days after the first publication of said notice, the subscribers to said agreement shall apply to said superintendent for a certificate that public convenience and advantage of the community in which the business is to be conducted would be promoted by the establishment of such loan company of fitness and character. The superintendent shall issue such a certificate if, after investigation, he shall find that the financial responsibility, experience, character and general fitness of the subscribers are such as to command the confidence of the community and warrant the belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter and, for small loan companies, chapters 281 to 289 and that public convenience and advantage of the community in which the business is to be conducted will be promoted by the organization of such loan company.

Sec. 11. 9 MRSA § 3442, sub-§ 1, ¶ B, as last amended by PL 1973, c. 762, § 5, is further amended to read:

B. Willful failure to comply with any provision of Title 9-A, the Maine Consumer Credit Code 321 to 327 relating to retail instalment contracts;

Sec. 12. 9 MRSA §§ 3481 to 3484, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3481. Requirements and prohibitions

I. General Requirements.

A. A retail installment contract shall be in writing and shall be signed by both the buyer and the seller.

B. The printed portion of the contract shall contain the following language set out in a conspicuous manner:

(1) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

(2) The following notice: "Notice to the Buyer: 1. Read this contract before signing. 2. You are entitled to an exact copy of the contract you sign."

C. The seller shall deliver to the buyer or mail to him at his address shown on the contract a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his agreement and to receive a refund of all pay-

ments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be conspicuous and, if contained in the contract, shall appear directly above the buyer's signature.

D. The contract shall contain the names of the seller and the buyer, the place of business of the seller, the legal residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks.

E. The printed material explaining the interest rate disclosure required by subsection 2, paragraph I shall be printed in at least 12 point bold-face type.

2. Contract items. The contract shall contain the following:

A. The cash sale price of the motor vehicle;

B. The amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods;

C. The difference between paragraphs A and B;

D. The amount, if any, included for insurance and other benefits specifying the types of coverage and benefits, unless such amount is included in the finance charge;

E. The amount of documentary fees;

F. The principal balance, which is the sum of paragraphs C, D and E;

G. The amount of the finance charge and specification of the type of insurance coverage and benefits, if included therein;

H. The time balance, which is the sum of paragraph F and G, payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

I. The percentage that the finance charge bears to the principal balance, expressed upon the basis of a true interest rate.

The paragraphs in this subsection need not be stated in the sequence or order set forth. Additional paragraphs may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

3. Insurance. The amount, if any, included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the Insurance Superintendent. If dual interest insurance on the motor vehicle is purchased by the holder he shall, within 30 days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing such insurance

from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

4. **Cancelled insurance.** If any insurance is cancelled, unearned insurance premium refunds received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

5. **Delinquency and collection charge.** The holder may, if the contract so provides, collect a delinquency and collection charge on each installment in default for a period not less than 10 days in an amount not in excess of 5% of each installment or 6% per annum on the total unpaid balance, whichever is greater. In addition to such delinquency and collection charge, the contract may provide for the payment of reasonable attorneys' fees where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract plus the court costs.

6. **Blank spaces; recording instrument; buyer's acknowledgment.** No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information, and the due date of the first installment, may be inserted in the contract after its execution; and except that said contract may be so signed provided the buyer is given at the time of such execution a bill of sale, invoice or similar memorandum setting forth all information required to be set forth by Chapter 2 of Title 1 of the Federal Consumer Credit Protection Act or chapter 372 of this Title whichever may be applicable. The buyer's written acknowledgment, conforming to the requirements of subsection 1, paragraph C, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed did not contain any blank spaces except as provided, and of compliance with this section in any action or proceeding by or against the seller or the holder of the contract.

7. **Statements and receipts to buyer.** Upon written request from the buyer at reasonable intervals, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written or stamped receipt for any payment when made in cash.

8. **Relieving seller's liability.** No provision in a retail installment contract relieving the seller from liability for any legal remedies which the buyer may have under chapters 321 to 327 against the seller under the contract, or any separate instrument executed in connection therewith, shall be enforceable.

§ 3482. Credit charge limitations

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

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

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

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

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

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

4. Purchase of contracts by sales finance companies. Nothing in this section shall be deemed to regulate the terms and conditions of any purchase, acquisition or agreement to purchase or acquire or any sales contract by any sales finance company from any seller. (1963, c. 362, § 21.)

§ 3483. Prepayment without penalty

Notwithstanding any retail installment contract to the contrary, any buyer may pay in full at any time before maturity the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the charge after first deducting from such credit charge an acquisition cost of \$25, as the sum of the monthly balances after the month in which prepayment is made bears to the sum of all the monthly balances under the schedule of payments in the contract. Where the amount of credit is less than \$1, no refund need be made.

§ 3484. Extension of contract

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

If the extension is made by agreement to refinance the unpaid balance of the original contract and provide a new schedule of payments, the holder may contract for and receive from the buyer in consideration thereof a credit

charge, at an annual effective rate not in excess of that charged in the original contract, computed on the sum of the unpaid balance of the original contract, plus delinquency and collection charges accrued, documentary fees expended incidental to the extension and the cost of continuing over the period of the extension insurance coverage and other benefits provided in the original contract; but after deduction of a refund credit on the original contract of not less than that to which the buyer would be entitled under section 3483 had he prepaid in full, except that the holder shall not be allowed the acquisition cost of \$25. The buyer shall be furnished a copy of such an agreement, signed by the parties thereto.

Sec. 13. 9 MRSA § 3521, as last amended by PL 1973, c. 762, § 6, is further amended to read:

§ 3521. Complaints and investigations

The superintendent shall have power to make such investigations as he shall deem necessary, and may examine the books, accounts, records and files of a retail seller or the holder of a retail installment contract. Any retail buyer having reason to believe there is a violation of ~~Title 9-A, the Maine Consumer Credit Code~~ section 3481 or 3482, as relating to his retail installment contract may file a written complaint with the superintendent.

If after notice and hearing, the superintendent should find a violation of ~~Title 9-A~~ section 3481 or 3482, he shall notify the retail seller, retail buyer and holder of the retail installment contract of his findings.

Sec. 14. 9 MRSA § 3523, sub-§ 2, as last repealed by PL 1973, c. 762, § 2, is reenacted to read:

2. Violations of section 3481 or 3482. Upon complaint to the District Court or Superior Court by a retail buyer, and upon a finding that a violation of section 3481 or 3482 has occurred, the retail seller or holder, whoever is responsible for the violation, shall forfeit to the retail buyer the finance charge contracted for and the amount of any delinquency, collection, extension or refinance charge imposed. Reasonable attorneys' fees and costs shall be awarded to the retail buyer if he is the prevailing party in such action.

Sec. 15. 9 MRSA §§ 3729 and 3730, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3729. Credit charges; prohibitions

1. Credit charge limitation. A home repair contractor may impose and receive a credit charge not more than the following: \$3 per \$100 per year computed on the principal balance, or \$25, whichever is greater.

2. Prohibited charges. No home repair contractor or any other person shall charge, collect or receive from any owner, directly or indirectly, any further or other amount for costs, charges, examination, appraisal service, brokerage, commission, interest, discount, expense, fee, fine, penalty or other thing of value in connection with a home repair contract other than the charges permitted by this chapter, except court costs, attorney's fees, the expenses of retaking and storing repossessed goods which are authorized by law, and insurance premiums as authorized by Title 24-A, chapter 37.

§ 3730. Delinquency charges and attorney's fees

1. **Delinquency and collection charge.** A home repair contract may provide for a delinquency or collection charge for default in the payment of any such contract or any installment thereof, if such default continues for a period of 10 days. Such charge shall not exceed 5% of the amount of the installment in default or \$5 whichever is the lesser and may be collected in cash or charged to the owner's account. The delinquency charge for any one installment shall not be charged or collected more than once. If charged to the owner's account, such charge shall be made within 35 days from the date of such default and written notification that such charge has been made shall be mailed to the owner within 5 days from the date when such charge was made.

2. **Attorney's fees.** The home repair contract may provide for the payment of reasonable attorney's fees when a payment in default for a period of 10 days is referred to an attorney, not a salaried employee of the holder of the contract, for collection.

Sec. 16. 9 MRSA §§ 3732 to 3734, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3732. Prepayment without penalty

Any buyer may pay in full at any time before maturity the debt of any home repair contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the credit charge after first deducting from such credit charge an acquisition cost of \$25, as the sum of the periodical time balances after the date of prepayment bears to the sum of all the periodical time balances under the schedule of payments in the contract. Where the amount of credit is less than \$1, no refund need be made.

§ 3733. Extension or deferment

The holder of a home repair contract, upon agreement in writing with the owner, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The holder may charge and contract for the payment of an extension or deferral charged by the owner and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment, or part thereof, would have been payable in the absence of such extension or deferral to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.

§ 3734. Refinancing

The holder of a home repair contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinance charge by the owner and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of official fees and reasonable attorney's fees incident to such refinancing and the cost of continuing insurance coverage provided in the original contract after the deduction of a refund credit on the credit charge and any insurance premium in an amount equal to that to which the owner would have been entitled under section 3732, if he had prepaid in full his obligations under the contract, computed without allowance for any acquisition cost. Such refinance charge shall not exceed the rate of credit charge provided under this chapter. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, any additional official fees, the cost of continuing insurance coverage provided in the original contract, the amount of the refinance charge under the refinancing agreement, the new unpaid time balance and the new schedule of installment payments.

Sec. 17. 9 MRSA § 3737, as last repealed by PL 1973, c. 762, § 2, is reenacted to read:

§ 3737. Unauthorized charges

All costs and charges in connection with such contract which are not authorized by this chapter shall be unenforceable. Any payment of such costs or charges shall be applied to the next maturing installment or, if the contract has been fully paid, remitted to the owner and the owner shall be entitled to recover all such costs or charges.

Sec. 18. 9 MRSA § 3745, sub-§ 2, as last amended by PL 1973, c. 762, § 7, is further amended to read:

2. Violation of law. Knowingly or without the exercise of due care failed to comply with or violated any provisions of this chapter ~~or of Title 9-A, the Maine Consumer Credit Code~~:

Sec. 19. 9 MRSA § 3753, 2nd ¶, as last repealed by PL 1973, c. 762, § 8, is reenacted to read:

Any person who violates section 3738 shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$500 for each offense.

Sec. 20. 9 MRSA §§ 3981 to 3993, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 3981. Definitions

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

1. "Superintendent" refers to the Bank Superintendent of the State of Maine.

2. "Creditor" means a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit.

3. "Customer" means a natural person to whom consumer credit is offered or to whom it is or will be extended, and includes a comaker, endorser, guarantor or surety for such natural person who is or may be obligated to repay the extension of consumer credit.

4. "Holder" means any person who is entitled to the rights of a creditor under a revolving credit account.

5. "Organization" means a corporation, trust, estate, partnership, cooperative, association, government or governmental subdivision, agency or instrumentality.

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

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

8. "Truth-in-Lending Act" means Title 1 of the Federal Consumer Credit Protection Act or chapter 372 of this Title, whichever may be applicable.

§ 3982. Establishment of revolving credit account authorized

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

§ 3983. Disclosures

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

§ 3984. Finance charges

1. Rate. Notwithstanding any other provision of law, a creditor or holder under a revolving credit account may assess a finance charge upon the customer which shall not exceed $1\frac{1}{2}\%$ per month computed upon the outstanding unpaid balance thereunder, from month to month, which need not be calendar month, or other regular period. The outstanding unpaid balance

shall be determined consistent with subsection 3. If the amount of any finance charge is less than 50¢ for any month, 50¢ may be assessed, provided that no finance charge is assessed for a zero balance.

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

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

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

The creditor or holder shall mail or deliver to the customer a statement for each billing cycle, at least 9 days before the end of the next succeeding billing cycle. If the creditor or holder fails to mail or deliver such statement within the specified period, he shall not be entitled to any finance charge with respect to the next succeeding billing cycle based upon the previous balance of such next succeeding billing cycle. If any such finance charge is assessed or collected, the customer shall receive a credit or refund for any such finance charge assessed or collected other than in accordance with this section within the 2 billing cycles following such assessment or collection. The failure to provide such credit or refund within the period specified shall subject the creditor or holder to the penalties provided in section 3989.

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

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

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

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

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

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

§ 3989. Violation as misdemeanor

Any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$500 for each offense.

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

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

§ 3991. Correction of failure of compliance

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

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

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

§ 3993. Administrative enforcement

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

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

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

Sec. 21. 9 MRSA §§ 4001 to 4021, as last repealed by PL 1973, c. 762, § 2, are reenacted to read:

§ 4001. Short title

This Act shall be known and may be cited as "The Insurance Premium Finance Company Act."

§ 4002. Definitions

The following words and phrases, when used in this Part, shall have the following meanings, unless a different meaning is clearly required by the context.

1. Authorized insurer and insurance contract. "Authorized insurer" and "insurance contracts" have the respective meanings assigned to them by the Maine Insurance Code, Title 24-A.

2. Superintendent. "Superintendent" means the Bank Superintendent.

3. Credit charge. "Credit charge" means that amount by which the balance payable by the insured exceeds the principal balance.

4. Financial institution. "Financial institution" has the meaning assigned to it by the Maine Banking Laws, Title 9.

5. Insurance agent and insurance broker. "Insurance agent" and "insurance broker" means, respectively, an insurance agent or broker duly licensed as such under the Maine Insurance Code, Title 24-A.

6. Insurance premium finance agreement. "Insurance premium finance agreement" means a promissory note or other written agreement by which an insured promises or agrees to pay to, or to the order of, either an insurance premium finance company or an insurance agent or broker the amount advanced or to be advanced under the agreement to an authorized insurer or to an insurance agent or broker in payment of premiums on an insurance contract, together with a credit charge, and where the unearned premium on the insurance contract is assigned as security or collateral for repayment of the debt.

7. Insurance premium finance company. "Insurance premium finance company" means a person engaged, in whole or in part, in the business of acquiring insurance premium finance agreements from insurance agents or brokers or other insurance premium finance companies, and an insurance agent, broker or other person who is engaged, in whole or in part, in the business of entering into and holding insurance premium finance agreements made and delivered by insureds to him or his order.

8. Insured. "Insured" means a person who enters into an insurance premium finance agreement with an insurance premium finance company or makes and delivers an insurance premium finance agreement to, or to the order of, an insurance agent or broker, whether or not he is insured under

an insurance contract, premiums for which are advanced or to be advanced under the insurance premium finance agreement.

9. Licensee. "Licensee" means an insurance premium finance company holding a license issued by the superintendent under this Part.

10. Person. "Person" means an individual, corporation, business trust, estate, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

§ 4003. Assignments

No person shall assign, transfer or sell any insurance premium finance agreement to any person who is not authorized under this Part to do the business of an insurance premium finance company in this State.

§ 4004. Licenses

No person shall engage in the business of an insurance premium finance company in this State without first obtaining a license from the superintendent as provided for in this Part. Any financial institution, credit union, national bank or federal savings and loan association authorized to do business in this State or any authorized insurer engaging in the business of an insurance premium finance company shall do so subject to all of the provisions of this Part, except that such institutions shall not be required to obtain a license or pay a license fee under this Part. Nothing contained in this Part shall be deemed to have any effect whatever upon any existing law regulating the power of or the conditions and limitations under which such institutions may engage in the business of an insurance premium finance company. Any license issued under this Part shall be kept conspicuously posted in the office of the licensee and shall not be transferable or assignable.

§ 4005. Application for license

1. Contents. Application for a license under this Part shall be in writing, under oath, and shall be in the form prescribed by the superintendent. The application shall state the name and residence and business addresses of the applicant, and, if the applicant is a copartnership or association, of every member thereof, and, if a corporation, of each officer and director thereof. It shall state the address where the business is to be conducted, demonstrate the financial responsibility of the applicant and set forth any other information the superintendent may require.

2. For each office. When an applicant has more than one office, application for license shall be made for each such office.

3. Fee. Each applicant for an insurance premium finance company license shall pay to the superintendent at the time of making the application, and annually thereafter upon renewal, a license fee of \$100 for each office where the business of an insurance premium finance company is conducted.

4. Abatement; expiration. No abatement in the amount of said license fee shall be made, if the license is issued for less than one year, nor if the license is surrendered, suspended or revoked prior to the expiration of the period for

which such license was issued. Each license shall remain in full force and effect until it is surrendered, suspended, revoked or has expired. Each license shall expire on the last day of December of the year in which issued or for which a license fee shall have been paid unless prior to December 15th, the licensee shall pay to the Bank Superintendent the fee provided for in subsection 3 as a license fee for the succeeding calendar year.

5. Application. Any person engaged in the business of an insurance premium finance company on the effective date of this Part may continue in operation in accordance with this Part, but must obtain a license for each office at which he engages in such business by January 1, 1974.

6. Change of location. No licensee shall transact any business subject to this Part under any other name or maintain an office at any location other than that designated in the license. In case such location be changed, the superintendent shall endorse the change of location on the license without charge.

§ 4006. Action by superintendent on license application

1. Duty. Within 60 days after the filing of an application for a license accompanied by payment of the required license fee, the superintendent shall:

A. Issue license. Issue and deliver to the applicant a license to engage in the business of an insurance premium finance company in accordance with this Part; or

B. Refuse to issue license. Refuse to issue the license for any reason for which he may suspend, revoke or refuse to renew any license under this Part.

2. Refusal. If the superintendent refuses to issue a license, he shall notify the applicant of the denial, the grounds for such denial and of his right to request a hearing within 10 days; and

A. License fee. If the applicant does not request a hearing, return the sum paid as a license fee; or

B. Hearing. If the applicant requests such a hearing, hold a hearing after having given 10 days' notice thereof, and within 30 days after such hearing the superintendent shall file a written decision containing his findings and conclusions and serve a copy thereof on the applicant.

§ 4007. Revocation, suspension or refusal to renew license

The superintendent may suspend, revoke or refuse to renew any license issued under this Part upon 10 days' notice in writing, forwarded by registered or certified mail to the principal place of business or residence of such licensee, stating the contemplated action and in general, the grounds therefor, after reasonable opportunity to be heard, if he shall find that the licensee or any owner, director, officer, member, partner, employee or agent of such licensee has:

1. Misstatements. Made any material misstatement in the application;

2. Violation of law. Knowingly or without the exercise of due care failed to comply with or violated any provisions of this Part;

3. Fraud. Defrauded any insured or willfully failed to perform any written agreement with any insured;

4. Misrepresentation. Willfully misrepresented or failed to disclose any of the material particulars or the nature thereof required to be stated or furnished to the insured under this Part;

5. Contracts signed in blank. Knowingly taken any instrument evidencing an insurance premium finance agreement or note which when signed contained blank spaces, except as provided by section 4014, subsection 3;

6. Bad faith. Otherwise demonstrated lack of financial responsibility, unworthiness, bad faith or dishonesty.

§ 4008. Investigation of licensees

The superintendent shall have the power to make such investigations as he shall deem necessary, and may examine the books, accounts, records and files of any person who is a party to or holder of an insurance premium finance agreement. The superintendent shall have the power to administer oaths and affirmations to any person whose testimony is required.

§ 4009. Superintendent's power of subpoena; contempt

The superintendent shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter pertaining to this Part.

In case of a failure of any person to comply with any subpoena issued by the superintendent or to testify to any matter concerning which he may be lawfully interrogated, the Superior Court, on application of the superintendent, may issue an order requiring the attendance of such person and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished as for contempt.

§ 4010. Records of transactions

Every insurance premium finance company shall keep within this State such books, accounts and records relating to all transactions under this Part as will enable the superintendent to enforce full compliance with this Part. The superintendent may authorize such records to be maintained outside of this State for good cause and he may prescribe the minimum information to be shown in and the procedures relating to the examination of such books, accounts and records.

§ 4011. Rules and regulations

The superintendent is authorized and empowered to make such general rules and regulations, and such specific rulings, demands, findings and orders as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this Part, in addition hereto and not inconsistent herewith.

§ 4012. Violations and penalties

1. **Knowingly.** Any person who shall knowingly violate this Part or shall directly or indirectly counsel, aid or abet such violation shall, upon conviction, be punished by a fine of not more than \$2,500 for each offense, or by imprisonment for not more than 90 days, or by both.

2. **Section 4004.** Any person who violates section 4004 shall, upon conviction, be punished by a fine of not less than \$100 nor more than \$500 for each offense.

3. **Other sections.** Upon complaint to the District Court or Superior Court or by an insured, and upon a finding that a violation of sections 4003, 4004, 4014, 4016 or 4017 has occurred in connection with an insurance premium finance agreement to which the insured and an insurance premium finance company are parties, the insurance premium finance company shall forfeit to the insured the credit charge under such agreement and the amount of any other charge imposed against the insured. Reasonable attorney's fees and costs shall be awarded to the insured, if he is the prevailing party in such action.

§ 4013. Statement of account

Upon written request by an insured, an insurance premium finance company shall give to the insured, within 10 days from the receipt of such request, a statement of the insured's account showing the date and amount of all payments made or credited to the account and the total amount, if any, unpaid under the agreement. Not more than 2 such statements shall be required in any 12-month period.

§ 4014. Form and content of insurance premium finance agreement

1. **Form.** An insurance premium finance agreement shall:

A. Be dated, signed by or on behalf of the insured and the printed portion thereof shall be in at least 8-point type.

B. Contain the name and place of business of the insurance agent or insurance broker negotiating the related insurance contract, the name and residence or place of business of the insured as specified by him, the name and place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium therefor; and

C. Set forth the following items where applicable:

- (1) The total amount of the premiums;
- (2) The amount of the down payment;
- (3) The principal balance (the difference between subparagraphs (1) and (2));
- (4) The amount of the credit charge;

(5) The balance payable by the insured (sum of subparagraphs (3) and (4));

(6) The number of installments required, the amount of each installment expressed in dollars and the due date or period thereof;

D. Contain a notice set out in a conspicuous manner and reading as follows: Notice to insured:

(1) Read this agreement before you sign;

(2) Do not sign this agreement if it contains blank spaces;

(3) You are entitled to a copy of this agreement at the time you sign;

(4) Keep your copy of this agreement to protect your legal rights;

E. If an insurance premium finance agreement is payable to, or to the order of, an insurance agent or broker not licensed as an insurance premium finance company, payments under the agreement must be payable at the office of an insurance premium finance company authorized under this Part to do business in the State to whom the agreement is by its terms to be and is subsequently assigned.

The item set out in paragraph C need not be stated in the sequence or order in which they appear in such clause and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

2. Delivery. The licensee or the insurance agent or insurance broker shall deliver to the insured a complete copy of the agreement.

3. Blanks. No premium finance agreement shall be signed by an insured when it contains any blank spaces to be filled in after it has been signed, except that if the insurance contract involved has not yet been issued, the name of the insurer and the policy number may be left blank and later inserted in the original agreement and notice thereof shall be given to the insured.

4. Shall not contain. No premium finance agreement shall contain:

A. Any power of attorney to confess judgment in this State;

B. Any acceleration clause under which any part or all of the balance not yet matured may be declared due and payable because the holder deems himself to be insecure;

C. Any provision relieving the insurance premium finance company from liability upon any claim which the insured may have under the contract;

D. Any provisions whereby the insured waives any right of action against the insurance premium finance company or any other person acting in its behalf for any act committed in the collection of the payments under the agreement;

E. Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned.

§ 4015. Applicability of Truth-in-Lending Act

If a transaction subject to this Part is also subject to the provisions of Chapter 2 of Title 1 of the Federal Consumer Credit Protection Act or Part 12 of this Title, the provisions and requirements of said Act or Part 12 shall control in any case where they may conflict with the provisions of this Part.

§ 4016. Credit charge

An insurance premium finance company shall not charge, contract for, receive or collect a credit charge other than as permitted by this Part.

The credit charge shall be precomputed, using the United States Rule on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the insurance premium finance agreement, from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

The credit charge shall be precomputed at a maximum rate of 18% per annum or a charge of \$15 per insurance premium finance agreement, whichever is greater. However, any insured may prepay his insurance premium finance agreement in full at any time before the due date of the final installment and in such event the unearned finance charge shall be refunded. The amount of any such refund shall be calculated in accordance with the rule commonly known as the "Rule of 78ths", and shall represent at least as great a proportion of the credit charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount is less than \$1 no refund need be made.

§ 4017. Delinquency charge

1. Delinquency charge. An insurance premium finance agreement may provide for the payment by the insured of a delinquency and collection charge on each installment in default for a period of not less than 5 days in an amount of \$1 to a maximum not in excess of 5% of such installment or \$5, whichever is less, provided that only one such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default and, if the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency and collection charge imposed in respect to the installment in default and \$5.

2. Attorney's fees. An insurance premium finance agreement may also provide for the payment of attorney's fees not exceeding 20% of the amount due and payable under the agreement, if it is referred for collection to an attorney not a salaried employee of the insurance premium finance company holding the agreement.

3. Prerequisites. Notwithstanding this section, an insurance premium finance company shall not take or charge an insured any cancellation charge or attorney's fees unless, within 10 days after default in the payment of any installment of a premium finance agreement, the company has mailed a notice of the default to the insured at his address as shown on the agreement and to any insurance agent or broker named therein at his place of business as shown therein.

§ 4018. Unauthorized charges

All costs and charges in connection with an insurance premium finance agreement not authorized by this Part shall be unenforceable. Any payment of such costs or charges shall be applied to the next maturing payment or, if the agreement has been fully paid, remitted to the insured and the insured shall be entitled to recover all such costs or charges.

§ 4019. Exclusions

This Part shall not affect the inclusion of a charge for insurance on a bona fide sale of property, goods or services on installments, nor shall it apply to insurance premium financed by a loan contract which does not provide that the unearned premiums shall be security therefor.

§ 4020. Cancellation of insurance contract upon default

1. Power of attorney. When an insurance premium finance agreement contains a power of attorney enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled by the insurance premium finance company unless such cancellation is effectuated in accordance with this section.

2. Notice. Not less than 10 days' written notice shall be mailed to the insured of the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured within such 10-day period. A copy of said notice shall also be sent to the insurance agent or insurance broker indicated on the insurance premium finance agreement.

3. —further notice. After expiration of such 10-day period, the insurance premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be cancelled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract or contracts. The insurance premium finance company shall also mail a notice of cancellation to the insured at his last known address and to the insurance agent or insurance broker indicated on the insurance premium finance agreement. The effective date of such cancellation shall not be earlier than 3 days after the date of mailing of such notice to the insured and to the insurance agent or insurance broker.

4. Restrictions. All statutory, regulatory and contractual restrictions providing that the insurance contract may not be cancelled unless notice is given

to a governmental agency, mortgagee or other 3rd party shall apply where cancellation is effected under this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee or other 3rd party on or before the 2nd business day after the day it receives the notice of cancellation from the insurance premium finance company and shall determine the effective date of cancellation, taking into consideration the number of days' notice required to complete the cancellation.

§ 4021. Extension of contract

An insurance premium finance company may, upon agreement with the insured, extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The agreement for such extension or deferment must be in writing and signed by the parties thereto. The insurance premium finance company may charge and contract for the payment of an extension or deferral charge by the insured and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.

Sec. 22. 9-A MRSA, as enacted by PL 1973, c. 762, § 1 and as last amended by PL 19745, c. 63, is repealed.

Sec. 23. 11 MRSA § 2-313, sub-§ (1), ¶ (b), last sentence, as enacted by PL 1973, c. 762, § 9, is repealed as follows:

~~In the case of consumer goods sold by a merchant with respect to such goods, the description affirms that the goods are fit for the ordinary purposes for which such goods are used~~

Sec. 24. 11 MRSA § 9-203, sub-§ (2), as last amended by PL 1973, c. 762, § 10, is further amended to read:

(2) A transaction, although subject to this Article, is also subject to the applicable provisions of ~~Title 9-A, or~~ Title 9, chapters 281 to 289 and chapters 321 to 327, and to Title 30, section 3051 and sections 3151 to 3155 and in the case of conflict between the provisions of this Article and any such statute the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Sec. 25. 24-A MRSA § 2861, sub-§ 1, as last amended by PL 1973, c. 762, § 11, is further amended to read:

1. ~~The Except as provided in Title 9-A, section 4-104,~~ the premium or cost of such insurance when issued through any creditor shall not be deemed in-

terest, or charges, or consideration, or an amount in excess of permitted charges in connection with the loan or other credit transaction, and any benefit or return or other gain or advantage to the creditor arising out of the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, of the State of Maine.

Sec. 26. 32 MRSA § 4668, as last amended by PL 1973, c. 762, § 12, is further amended to read:

§ 4668. Limitation

This subchapter shall not apply to sales where the gross sales price, including any interest or carrying charges, is less than \$25, nor to any transaction covered by ~~Title 9-A, sections 3.501 to 3.507~~ Title 9, section 3919, nor shall it apply to any sale, by any dealer or agent or salesman of a registered dealer, registered pursuant to Title 32, chapter 13, of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to Title 32, chapter 13 or expressly exempt from registration thereof.

Sec. 27. Continuation of licensing. All persons licensed or otherwise authorized under Title 9, chapters 281 to 289 on the effective date of this Act or licensed or otherwise authorized under Title 9-A are licensed to make loans as heretofore authorized to do under Title 9, chapters 281 to 289.

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

STATEMENT OF FACT

The purpose of this Act is to repeal the Maine Consumer Credit Code.