

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 692

S. P. 243

In Senate, February 22, 1979

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

Presented by Senator Najarian of Cumberland.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

AN ACT to Amend the Maine Consumer Credit Code.

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

Sec. 1. 9-A MRSA § 5-110, sub-§ 4, is enacted to read:

4. If the consumer credit transaction is subject to the right of setoff, the notice shall conform to the requirements of subsection 2 and a notice in substantially the form specified in that subsection complies with this subsection, except for the following.

A. The next to the last paragraph of the form of notice specified in subsection 2 shall read: If you do not pay by that date, we may exercise our rights under the law, including the right to set off funds in your checking account or savings account, or both, that you may have with us to be applied to your delinquent account.

B. The last paragraph of the form of notice shall read: If you are late again in making your payment(s), we may exercise our rights without sending you another notice like this one, unless your obligation is subject to the right of setoff. If you have questions, write or telephone the creditor promptly.

Sec. 2. 9-A MRSA § 5-111, sub-§ 2, as repealed and replaced by PL 1975, c. 429, § 2, is amended to read:

2. With respect to defaults on the same obligation other than an obligation subject to the Insurance Premium Finance Company Act and subject to subsection 1, **or an obligation subject to the right of setoff and subject to subsection 1**, after a creditor has once given a notice of consumer's right to cure, as provided in section 5-110, this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral. For purpose of this section, in open-end credit, the obligation is the unpaid balance of the account and there is no right to cure and no limitation on the creditor's rights with respect to a default that occurs within 12 months after an earlier default as to which a creditor has given a notice of consumer's right to cure, as provided in section 5-110, **unless the obligation is subject to the right of setoff and subject to subsection 1.**

#### STATEMENT OF FACT

Presently, a financial institution may exercise the right to setoff to withdraw funds from a consumer's checking or savings account to satisfy all or part of a delinquent credit transaction with limited regulation. On credit transactions subject to the Maine Consumer Credit Code, the right of setoff is a form of collateral for the transaction, thus requiring the creditor to send a notice of right to cure prior to taking any action. The intent of the notice is calculated to give the consumer enough information to understand his predicament and to encourage him to take appropriate steps to alleviate it. With the exception of open-end credit transactions, the code imposes no limitations on the creditor's rights to proceed against a consumer or goods that are collateral with respect to reoccurring defaults on the same obligation. The purpose of this bill is to require a creditor to issue the notice prior to exercising the right of setoff only for failure to make a required payment even if a prior notice had been issued and to expand the language in the notice so that the consumer will clearly understand the meaning and effect of the setoff.

The impact of utilizing the right of setoff on a checking account without any forewarning places the consumer in a situation where checks are unwittingly written on a depleted checking account.

Undue hardship and embarrassment are encountered by the consumer in attempting to cover the bad checks that were written in good faith.