

MAINE STATE LEGISLATURE

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(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1766

H. P. 1657

House of Representatives, January 7, 1980

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

EDWIN H. PERT, Clerk of the House

Presented by Mr. Paradis of Augusta.

Cosponsor: Mr. Gwadosky of Fairfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Amend the Maine Consumer Credit Code to Apply to Arrangers of Credit and to Revise Provisions Relating to Agricultural Loans, Residences, Security and Fines.

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

Sec. 1. 9-A MRSA § 1-301, sub-§ 5-A is enacted to read:

5-A. "Arrange for the extension of credit or for lease of personal property" means to provide or offer to provide consumer credit or a lease which is or will be extended by another person under a business or other relationship pursuant to which the person arranging the credit or lease:

A. Receives or will receive a fee, compensation or other consideration for the service; or

B. Has knowledge of the credit or lease terms and participates in the preparation of the contract documents required in connection with the extension of credit or the lease.

It does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction nor does it include insurance agents who act in the capacity of an arranger in which insurance premium finance agreements are involved.

Sec. 2. 9-A. MRSA § 1-301, sub-§ 17 as enacted by PL 1973, c. 762, § 1 is amended to read:

17. "Creditor" means the person who grants credit or arranges for the extension of credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his assignor. In the case of credit granted pursuant to a credit card, the "person who grants credit" is the card issuer and not another person honoring the credit card.

Sec. 3. 9-A MRSA 2-201 sub-§ 9, as last amended by PL 1977, c. 161, §§ 1, 2 is repealed and the following enacted in its place:

9. Notwithstanding any other provision, the finance charge on a transaction involving the financing of a sale of a motor vehicle as defined in this subsection may not exceed the following:

A. On any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, 18% per year on the unpaid balance of the amount financed;

B. On any new motor vehicle not included in paragraph A and on 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, 20% per year on the unpaid balance of the amount financed; or

C. On any used motor vehicle not included in paragraph B, 23.5% per year on the unpaid balance of the amount financed.

"Motor vehicle" means any self-propelled vehicle not operated exclusively on tracks, except agricultural machinery and any other devices which do not constitute consumer goods, as defined in Title 11, section 9-109, subsection 1.

Sec. 4. 9-A MRSA § 2-307, sub-§§ 2 and 3 are enacted to read:

2. With respect to a supervised loan, a lender may not take a security interest in the principal residence of the consumer in which the amount financed is \$1,500 or less.

3. The amount of \$1,500 in subsection 2 is subject to change pursuant to the provisions on adjustment of dollar amounts in section 1-106.

Sec. 5. 9-A MRSA 2-504, 2nd sentence, as last amended by PL 1975, c. 173, § 2 is repealed and the following enacted in its place:

Consumer loans secured by a savings deposit or time deposit shall be exempt from the rate increase of this section, provided that any increase in that rate beyond ¼ of 1% shall be necessary in order to conform the loan to the requirements of 12 Code of Federal Regulations Part 217, Regulations Q.

Sec. 6. 9-A MRSA 2-504, sub-§ 1, as enacted by PL 1973, c. 762, § 1 is amended to read:

1. If the transaction was not precomputed, the total of the unpaid balance and the accrued charges, **with the exception of any minimum charge**, on the date of the refinancing, or, if the transaction was precomputed, the amount which the consumer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment, section 2-510, on the date of refinancing, except that for the purpose of computing this amount no minimum charge shall be allowed; and

Sec. 7. 9-A MRSA § 5-201, sub-§ 1, first sentence, as amended by PL 1975, c. 134, § 2 is further amended to read:

If a creditor has violated the provisions of this Act applying to collection of excess charges or enforcement of rights, section 1-201, subsection 5, waiver clauses, section 1-107, use of multiple agreements, section 3-304, certain negotiable instruments, section 3-307, assignee subject to defenses, sections 3-403 and 3-404, restrictions on liability in consumer leases, section 3-401, balloon payment, section 3-308, security in sales or leases, section 3-301, cross-collateral, sections 3-302 and 3-303, assignments of earnings, section 3-305, attorney's fees, section 2-507, limitations on default charges, section 3-402, authorizations to confess judgment, section 3-306, restrictions on interests in land as security, section 2-307, limitations on the schedule of payments or loan term for regulated loans, section 2-308, for credit insurance, section 4-104, separate charges for excess charge for property insurance, section 4-301, restrictions on deficiency judgments, section 5-103, garnishment before judgment, section 5-104, or limitations on garnishment, section 5-105, **cure of default, section 5-111**, misrepresentation, section 5-115, illegal, fraudulent or unconscionable conduct in an attempted collection of debts, section 5-116, any aggrieved consumer has a right to recover actual damages from a person violating this Act, or in lieu thereof any consumer named as a plaintiff in the complaint as originally filed has a right to recover from a person violating this Act an amount determined by the court not less than \$250 nor more than \$1,000.

Sec. 8. 9-A MRSA § 6-201, as enacted by PL 1973, c. 762, § 1, is amended to read:

§ 6-201. Applicability

This Part applies to a person engaged in this State in entering into **or arranging for the extension of** consumer credit transactions and to a person having an office or place of business in this State who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these transactions.

Sec. 9. 9-A MRSA § 6-204 is enacted to read:

§ 6-204. Fine

1. **The administrator may impose a fine of \$5 per day on any person failing to comply with the notification and fee requirements of this Part.**

2. **No fine shall be imposed if the fee required of section 6-203 is paid not more than 30 days after the date established in section 6-202, subsection 1.**

3. If a licensee fails to pay the fee required by section 6-203 on or before February 20th of any year, the failure may be treated by the administrator as grounds for revocation of the license.

Sec. 10. 9-A MRSA § 7-119, sub-§ 1, ¶ G, as enacted by PL 1975, c. 446, § 2 is amended to read:

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 ; and

Sec. 11. 9-A MRSA § 7-119, sub-§ 1, ¶ H is enacted to read:

H. A statement of the protection provided by sections 7-128 and 7-131 to an obligor and the creditor's responsibilities under sections 7-129 and 7-131. The statement shall be transmitted at least annually to each obligor to whom the creditor is required to transmit a statement pursuant to subsection 2 for that billing cycle.

Sec. 12. 9-A MRSA § 7-119, sub-§ 2, ¶ J, as repealed and replaced by PL 1975, c. 567, § 6 is amended to read:

J. The date by which, or the period, if any, within which payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period ; and

Sec. 13. 9-A MRSA § 7-119, sub-§ 2, ¶ K is enacted to read:

K. The address to be used by the creditor for the purpose of receiving billing inquiries.

Sec. 14. 9-A MRSA § 7-128 is enacted to read:

§ 7-128. Correction of billing errors

1. A creditor shall take the action set out in subsection 2 if, within 60 days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, he receives at the address disclosed under section 7-119, subsection 2, paragraph K a written notice, other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 7-119, subsection 1, paragraph H, from the obligor in which the obligor:

A. Sets forth or otherwise enables the creditor to identify the name and account number, if any, of the obligor;

B. Indicates the obligor's belief that the statement contains a billing error and the amount of the billing error; and

C. Sets forth the reasons for the obligor's belief, to the extent applicable, that the statement contains a billing error.

2. Following receipt of a notice pursuant to subsection 1, the creditor shall, unless the obligor has, after giving the written notice and before the expiration of the time limits herein specified, agreed that the statement was correct:

A. Not later than 30 days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in paragraph B is taken within the 30-day period;

B. Not later than 2 complete billing cycles of the creditor, in no event later than 90 days, after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under subsection 1, paragraph B, either:

(1) Make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of the corrections and the creditor's explanation of any change in the amount indicated by the obligor under subsection 1, paragraph B and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(2) Send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to the error.

3. For the purpose of this section a "billing error" consists of any of the following:

A. A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on the statement;

B. A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof;

C. A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction;

D. The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor;

E. A computation error or similar error of an accounting nature of the creditor on a statement; or

F. Any other error described in regulations of the administrator.

4. For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under subsection 1, paragraph B" does not include the sending of statements of account to the obligor following written notice from the obligor as specified under subsection 1:

A. the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under subsection 1, paragraph B; and

B. The creditor indicates the payment of the amount is not required pending the creditor's compliance with this section. Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

5. Pursuant to regulations of the administrator, a creditor operating an open-end consumer credit plan may not, prior to the sending of the written explanation or clarification required under subsection 2, paragraph B, subparagraph (2), restrict or close an account with respect to which the obligor has indicated, pursuant to subsection 1, that he believes the account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

6. Any creditor who fails to comply with the requirements of this section or section 7-129 forfeits any right to collect from the obligor the amount indicated by the obligor under subsection 1, paragraph B, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed \$50.

Sec. 15. 9-A MRSA § 7-129 is enacted to read:

§ 7-129. Regulation of credit reports

1. After receiving a notice from an obligor as provided in section 7-128, subsection 1, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 7-128, subsection 1, paragraph B and the amount may not be reported as delinquent to any 3rd party until the creditor has met the requirements of section 7-128 and has allowed the obligor the same number of days, not less than 10, thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

2. If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection 1, a creditor may not report to any 3rd party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 7-128, subsection 1, paragraph B, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

3. A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection 2 to the parties to whom the delinquencies were initially reported.

Sec. 16. 9-A MRSA § 7-130 is enacted to read:

§ 7-130. Excess payments; returns

1. whenever an obligor transmits funds to a creditor in excess of the total balance due on an open-end consumer credit account, the creditor shall promptly:

- A. Upon request of the obligor refund the amount of the overpayment; or
- B. Credit the amount to the obligor's account.

2. With respect to any sales transactions where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of the sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

Sec. 17. 9-A MRSA § 7-131 is enacted to read:

§ 7-131. Credit card restrictions

1. With respect to a credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check or similar means rather than use a credit card.

No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check or similar means.

2. With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 7-106 if the discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously.

3. Notwithstanding any agreement to the contrary, a card issuer may not

require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

4. A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless:

A. The action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open-end credit account by permitting the card issuer periodically to deduct all or a portion of the debt from the cardholder's deposit account; and

B. The action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

5. Subject to the limitation contained in this subsection, a card issuer who has issued a credit card to a cardholder pursuant to an open-end consumer credit plan shall be subject to all claims, other than tort claims, and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if:

A. The obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card;

B. The amount of the initial transaction exceeds \$50; and

C. The place where the initial transaction occurred was in the same state as the mailing address previously provided by the cardholder or was within 100 miles from that address, except that the limitations set forth in paragraphs A and B with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card:

- (1) Is the same person as the card issuer;
- (2) Is controlled by the card issuer;
- (3) Is under direct or indirect common control with the card issuer;
- (4) Is a franchised dealer in the card issuer's products or services; or
- (5) Has obtained the order for the transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into the transaction by using the credit card issued by the card issuer.

The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to the transaction at the time the

cardholder first notifies the card issuer or the person honoring the credit card of the claim or defense. For the purpose of determining the amount of credit outstanding in this paragraph, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: Late charges in the order of their entry to the account; finance charges in order of their entry to the account and debits to the account other than those set forth in this subsection in the order in which each debit entry to the account was made.

Sec. 18. 9-A MRS § 7-132 is enacted to read:

§ 7-132 Consumer lease disclosures

Each creditor shall give a consumer prior to the consummation of the lease a dated, written statement on which the creditor and consumer are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

1. A brief description or identification of the leased property;
2. The amount of any payment by the consumer required at the inception of the lease;
3. The amount paid or payable by the consumer for official fees, registration, certificate of title or license fees or taxes;
4. The amount of other charges payable by the consumer not included in the periodic payments, a description of the charges and that the consumer shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the consumer has such liability;
5. A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the consumer at the end of the term and whether or not the consumer has the option to purchase the leased property and at what price and time;
6. A statement identifying all express warranties and guarantees made by the manufacturer or creditor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;
7. A brief description of insurance provided or paid for by the creditor or required of the consumer, including the types and amounts of the coverages and costs;
8. A description of any security interest held or to be retained by the creditor in connection with the lease and a clear identification of the property to which the security interest relates, subject to the restriction of section 3-301;
9. The number, amount, and due dates or periods of payments under the lease and the total amount of the periodic payments;

10. Where the lease provides that the consumer shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration and the differential between them; and

11. A statement of the conditions under which the consumer or creditor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments or early termination, subject to the restrictions of Article II.

The disclosures required under this section may be made in the lease contract to be signed by the consumer. The administrator may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the creditor is not in a position to know exact information.

STATEMENT OF FACT

This bill incorporates a number of necessary and desirable changes in the Maine Consumer Credit Code.

Section 1, 2 and 8 extend the Code's provisions to "arrangers" of consumer credit to conform the definition of "creditor" to the Truth-in-Lending Act. This amendment will insure that contracts "arranged" in Maine with out-of-state lenders will conform to the Maine law.

Section 3 removes the 13% cap for new motor vehicle credit sales and removes mobile homes from the definition of motor vehicle.

Section 4 will prohibit any lender from using the principal residence of a consumer as security for supervised loans, loans in excess of 12 1/4%, in which the amount financed is \$1,500 or less. A consumer should not be made to pledge his home as security for loans for \$1,500 or less.

Section 5 clarifies a previous amendment to the Code in section 2-504 by removing certain consumer loans from the interest rate increase upon a refinancing, normally one quarter of 1%, in order to conform to federal banking laws.

Section 6 will prohibit a creditor from imposing a minimum charge, usually \$25 on a refinancing of a simple interest loan. This prohibition already exists for precomputed loans.

Section 7 will provide consumers with the remedies set forth in section 5-201 subsection 1 of the Code if a creditor fails to issue the Notice of Right to Cure required by sections 5-110 and 5-111. These sections require the creditor to alert a consumer of his predicament and specifies the amount that must be paid during a 20-day period after default in order to maintain a continual relationship with the creditor. The Code currently gives no remedy to a consumer if the creditor fails to give the required notice.

Section 9 proposes a late filing fine of \$5 per day for those creditors who fail to file notification and fees to the Bureau of Consumer Protection.

Sections 10-17 add the provisions of the Federal Fair Credit Billing Act to the Maine Consumer Credit Code.

Section 18 adds the Federal Consumer Leasing Act to the credit code.

The addition of these federal laws to the Code will impose no additional burden on Maine creditors but will enable the Consumer Credit Code to remain comprehensive and prevent duplicative federal-state compliance examinations.