

MAINE STATE LEGISLATURE

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(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1903

H. P. 1784

House of Representatives, January 25, 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 Include Arrangers of Credit under the Maine Consumer Credit Code and to Amend the Law Concerning Agricultural Loans, Residences, Security and Fines.

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

Sec. 1. 9-A MRSA § 1-202, sub-§ 8, last sentence, as amended by PL 1979, c. 541, Pt. A, § 86, is further amended to read:

For the purposes of this subsection, "mobile home" shall mean a structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; or

Sec. 2. 9-A MRSA § 1-202, sub-§ 8-A is enacted to read:

8-A. Extensions of credit in excess of \$10,000 for agricultural purposes.

Sec. 3. 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 when 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. 4. 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. 5. 9-A MRSA § 2-307, sub-§ 2 is 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 \$1,000 or less.

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 amended to read:

If the 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 payment 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 may 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 § 7-105, last sentence, as enacted by PL 1975, c. 446, § 2, is amended to read:

Any regulations prescribed under authority of this Article shall ~~not~~ be subject to the procedures provided by sections 6-404 and 6-405 ~~and shall become effective on the date designated by the regulation.~~

STATEMENT OF FACT

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

Sections 1 and 2 will delete from the code agricultural loans in excess of \$10,000 on the grounds that transactions in excess of this amount are more typically "commercial" rather than consumer transactions.

Sections 3, 4 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 bill will insure that contracts "arranged" in Maine with out-of-state lenders will conform to the Maine law.

Section 5 prohibits 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 \$1,000 or less. A consumer should not be made to pledge his home as security for loans for \$1,000 or less.

Section 6 prohibits 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 provides 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.

Section 10 deletes an exemption from the Maine Administrative Procedures Act for those rules adopted under Article VII-Truth-in-Lending of the code. The exemption is no longer necessary.