

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
110TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. S-122)

COMMITTEE AMENDMENT "A" to S.P. 94, L.D. 213, Bill, "AN ACT to Conform the Maine Consumer Credit Code to the Federal Truth-in-Lending Simplification and Reform Act."

Amend the bill by inserting before the enacting clause the following:

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

Whereas, notwithstanding an effective date of April 1, 1982, the ~~federal~~ Truth-in-Lending Simplification and Reform Act permits creditors subject to that Act to begin making the transition from old regulations to new upon final adoption of new regulations by the Federal Reserve Board; and

Whereas, the Federal Reserve Board has finally adopted new regulations; and

Whereas, Maine enjoys an exemption from the ~~federal~~ Truth-in-Lending ~~Act~~ because Maine enacted and enforces its own comparable truth-in-lending law; and

Whereas, unless the following legislation, which conforms Maine's truth-in-lending law to the ~~federal~~ Truth-in-Lending Simplification and Reform Act, takes effect immediately, Maine creditors will be seriously harmed because they will be unable to make the transition from old to new regulations contemporaneously with other creditors who are subject to the ~~federal~~ Truth-in-Lending ~~Act~~; 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,

Further amend the bill by inserting after the enacting clause the following:

'Sec. 1. 9-A MRSA §1-202, sub-§8-A, as enacted by PL 1979, c. 660, §2, is repealed and the following enacted in its place:

8-A. Credit transactions entered into primarily for an agricultural purpose.'

Further amend the bill by inserting after section 4 the following:

'Sec. 5. 9-A MRSA §1-301, sub-§11, ¶A, sub-¶(iii), as enacted by PL 1973, c. 762, §1, is amended to read:

(iii) the goods, services or interest in land are purchased primarily for a personal, family, or household ~~or agricultural~~ purpose;

Further amend the bill by inserting after section 5 the following:

'Sec. 6. 9-A MRSA §1-301, sub-§13, ¶A, sub-¶(i), as enacted by PL 1973, c. 762, §1, is amended to read:

(i) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, or household ~~or agricultural~~ purpose;

Sec. 7. 9-A MRSA §1-301, sub-§14, ¶A, as enacted by PL 1973, c. 762, §1, is amended to read:

A. Except as provided in paragraph B, a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

- (i) the debtor is a person other than an organization;
- (ii) the debt is incurred primarily for a personal, family, or household ~~or-agricultural~~ purpose;
- (iii) either the debt is payable in instalments or a finance charge is made; and
- (iv) either the amount financed does not exceed \$25,000 or the debt, ~~other than one incurred primarily for an agricultural purpose,~~ is secured by an interest in land.'

Further amend the bill in section 8, in subsection 17, paragraph B, 2nd paragraph, 5th line (4th in LD) by striking out the underlined figure "2" and inserting in its place the underlined figure '4'

Further amend the bill by striking out all of section 10 and inserting in its place the following:

'Sec. 10. 9-A MRSA §1-301, sub-§28, as last amended by PL 1975, c. 350, §§1 and 2, is repealed and the following enacted in its place:

28. "Payable in installments" means that payment is required or permitted by agreement to be made in more than 4 periodic payments, excluding the down payment.'

Further amend the bill by inserting after section 10 the following:

'Sec. 11. 9-A MRSA §3-301, sub-§1, 3rd sentence, as enacted by PL 1973, c. 762, §1, is repealed as follows:

~~The seller may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose.~~

Sec. 12. 9-A MRSA §3-301, sub-§2, as enacted by PL 1973, c. 762, §1, is amended to read:

2. With respect to a consumer lease ~~other than a lease primarily for an agricultural purpose,~~ a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

Sec. 13. 9-A MRSA §3-303, sub-§1, first sentence, as enacted by PL 1973, c. 762, §1, is amended to read:

If debts arising from ^{two}/₂ or more consumer credit sales, other than sales ~~primarily for an agricultural purpose or~~ pursuant to open-end credit, are secured by cross-collateral, section 3-302 or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made.

D. OF R.

Sec. 14. 9-A MRSA §3-307, as enacted by PL 1973, c. 762, §1, is amended to read:

§3-307. Certain negotiable instruments prohibited

With respect to a consumer credit sale or consumer lease, ~~other than a sale or lease primarily for an agricultural purpose~~, the creditor may not take a negotiable instrument, other than a currently dated check or a draft payable within 7 days of such sale or lease.

Sec. 15. 9-A MRSA §3-308, first ¶, as enacted by PL 1973, c. 762, §1, is amended to read:

With respect to a consumer credit transaction other than one ~~primarily for an agricultural purpose or~~ one pursuant to open end credit:

Sec. 16. 9-A MRSA §3-401, first sentence, as enacted by PL 1973, c. 762, §1, is amended to read:

The obligation of a lessee upon expiration of a consumer lease ~~other than one primarily for an agricultural purpose~~, may not exceed twice the average payment allocable to a monthly period under the lease.

Sec. 17. 9-A MRSA §3-403, sub-§1, first ¶, as enacted by PL 1973, c. 762, §1, is amended to read:

With respect to a consumer credit sale or consumer lease, ~~other than one primarily for an agricultural purpose~~, is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding that:

OF R.

Sec. 18. 9-A MRSA §3-404, sub-§1, first ¶, as enacted by PL 1973, c. 762, §1 is amended to read:

A lender who makes a consumer loan for the purpose of enabling a consumer to buy from a seller goods or services, ~~other than primarily for an agricultural purpose,~~ is subject to all claims and defenses of the consumer against the seller arising from the sale of the goods and services if:

D. OF R.

Further amend the bill in section 13 in that part designated
(same in LD)
"§8-104." subsection 2, first line, by striking out the underlined
word "may" and inserting in its place the \leftarrow \rightarrow underlined word
'shall'

Further amend the bill in section 13 in that part designated
"§8-104." by inserting at the end the following:

'3. Any regulation of the administrator, or any amendment
or interpretation thereof, requiring any disclosure which differs
from the disclosures previously required by this Article shall have
an effective date of October 1st which follows by at least 6 months
the date of promulgation, or the effective date of the comparable
regulatory action taken by the Federal Reserve Board, whichever is
earlier. This requirement shall not prevent the administrator from
taking action to lengthen the time period for compliance or to
shorten the length of time for compliance when he makes a specific
finding that such action is necessary to comply with the findings of a
court or to prevent unfair or deceptive disclosure practices. Any
creditor may comply with newly promulgated disclosure requirements
prior to the effective date of the requirements.'

Further amend the bill in section 13 in that part designated
"§3-201." by striking out at the beginning of the first line the
designation "§3-201." and inserting in its place the designation '§8-201.

Further amend the bill in section 13 in that part designated
"§3-201." by striking out all of subsection 1 and inserting in its
place the following:

'1. Subject to subsection 2, a creditor shall disclose to the person who is obligated on a consumer credit transaction the information required under this Article. In a transaction involving more than one obligor, a creditor, except in a transaction under section 8-204, need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.'

Further amend the bill in section 13 in that part designated "§8-204." in subsection 5 by striking out all of paragraphs B and C and inserting in their place the following:

'B. A transaction which constitutes a refinancing or consolidation, with no new advances, of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

C. A transaction in which an agency of a state is the creditor;
or

D. Advances under a preexisting open-end credit plan if a security interest has already been retained or acquired in conformance with this section and such advances are in accordance with a previously established credit limit for such plan adopted in conformance with this section. This paragraph shall cease to be effective on April 1, 1985.'

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Further amend the bill in section 13 in that part designated "§8-208." subsection 8, by inserting at the end the following:

'D. In the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery is~~←~~→applicable, and the total recovery for any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of \$500,000 or 1% of the net worth of the creditor. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the

creditor, the resources of the creditor, the number of persons adversely affected and the extent to which the creditor's failure of compliance was intentional.'

Further amend the bill in section 13 in that part designated "§8-303." in subsection 3, 2nd line (first line in LD) by striking out the underlined words "not in excess of 5%"

Further amend the bill by striking out all of section 14.

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting at the end, before the statement of fact, the following:

'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 amendment is to add an emergency enactor to the bill to enable Maine creditors to begin making the transition from old to new disclosure rules at the same time as other creditors who are subject to federal law. In addition, this amendment makes the following specific changes.

1. It excludes altogether application of the Consumer Credit Code to agricultural loans,
2. It relaxes certain code definitions to conform to the analogous federal definition of credit transactions,

D. C. R.

3. It requires the Bureau of Consumer Protection to publish model disclosure forms for common types of credit transactions,
4. It ensures that the phase-in of new regulations takes place at the same time as analogous new federal regulations,
5. It clarifies that disclosure need be given to the principal debtor only,
6. It adopts the federal rule regarding the exemption from the right of rescission for advances under a 3-year open-end credit plan,
7. It limits creditor liability in truth-in-lending class actions in conformity with analogous federal limitations,
8. It excludes common cash discounts from the definition of "finance charge."

Reported by the Committee on Business Legislation.

Reproduced and distributed pursuant to Senate Rule 11-A.

April 15, 1981

(Filing No. S-122)