

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 495

H. P. 448

House of Representatives, January 29, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Jackson of Yarmouth.

Cosponsors: Representative Cahill of Woolwich and Representative J. Diamond of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Provide Notice to Cosigners and Others Similarly Situated in Consumer Credit Transactions.

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

9-A MRSA § 3-206 is enacted to read:

§ 3-206. Notice to cosigners and similar parties

1. Notice required. A natural person, other than the spouse of the consumer, is not obligated as a cosigner, comaker guarantor, endorser, surety or similar party with respect to a consumer credit transaction, unless before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement, the person receives a separate written notice that contains a completed identification of the debt he may have to pay and reasonably informs him of his obligation with respect to it.

2. Form of notice. A clear and conspicuous notice in substantially the following form complies with this section:

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services or money. You may be sued for payment

although the person who receives the property, services or money is able to pay. This notice is not the contract that obligates you to pay the debt. Read the contract for the exact terms of your obligation.

IDENTIFICATION OF DEBT YOU MAY HAVE TO PAY

(Name of Debtor)

(Name of Creditor)

(Date)

(Amount of Debt)

3. Exception. The notice required by this section need not be given to a seller, lessor or lender who is obligated to an assignee of his rights.

4. Copy of agreement. A person entitled to notice under this section shall also be given a copy of any writing setting forth the terms of the debtor's agreement and of any separate agreement of obligation signed by the person entitled to the notice.

5. Preconditions to cosigner's liability. No person entitled to notice under this section may be liable unless:

A. The person has been given all notices required by law to be given to the principal debtor; and

B. The creditor has reduced his claim against the principal debtor to judgment and execution has been returned unsatisfied, or the principal debtor has become insolvent, or it is otherwise apparent that it is useless to proceed against the principal debtor.

STATEMENT OF FACT

This bill requires that cosigners be fully informed of their potential liability before cosigning a note and that cosigners be given a copy of the note and any notice or disclosure given the principal debtor. In simple language, the notice would inform the cosigner of his obligations and potential liability. The bill also conditions the cosigner's liability on his being given all required notices and on the creditor's reasonable collection efforts against the principal debtor before proceeding against the cosigner.