

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 656

7 S.P. 219

In Senate, February 9, 1983

8 Submitted by the Department of Business Regulation pursuant to Joint
9 Rule 24.

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Clark of Cumberland.

Cosponsors: Representative Weymouth of West Gardiner, Representative
11 Tuttle of Sanford and Representative LaPlante of Sabattus.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Amend the Maine Consumer
18 Credit Code.
19

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

22 Sec. 1. 9-A MRSA §1-202, sub-§7, as amended by
23 PL 1981, c. 638, §1, is further amended to read:

24 7. A loan made for the purpose of financing
25 expenses related to attendance at an institution of
26 post-secondary education, and on which the finance
27 charge does not exceed that rate per year on the
28 unpaid balances of the amount financed as shall be
29 established by federal law or, for loans for which
30 federal law does not establish a rate, the highest
31 rate established for educational loans under any fed-
32 eral program, and which is insured, guaranteed or
33 subsidized by the Federal Government or a state or by
34 a nonprofit private loan guaranty or organization or

1 by the institution of higher education itself or
2 through an endowment or trust fund affiliated with
3 such an institution; ~~or~~

4 Sec. 2. 9-A MRSA §1-202, sub-§8, as repealed and
5 replaced by PL 1981, c. 618, §1, is amended to read:

6 8. A loan made by a supervised lender when the
7 loan is secured by a first mortgage on real estate
8 and the security interest in real estate is not made
9 for the purpose of circumventing or evading this Act.
10 With respect to a supervised lender other than a
11 supervised financial organization, the exemption pro-
12 vided by this subsection shall be limited to residen-
13 tial mortgage transactions as defined in section
14 8-103, subsection 1, paragraph H or the refinancing
15 of those residential mortgage transactions, and shall
16 apply to the following provisions and no others:
17 Maximum finance charge limitations, sections 2-308
18 and 2-401; limitations on security interest, section
19 2-307; delinquency charges, section 2-502; limita-
20 tions on attorney's fees, section 2-507; notice to
21 consumer, section 3-202; and notice of right to cure
22 default, sections 5-110 and 5-111; or

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

25 Unless a person is a supervised financial orga-
26 nization or has first obtained a license pursuant to
27 this Act or the Insurance Premium Finance Company
28 Act, Title 9, section 4054, from the administrator
29 authorizing him to make supervised loans, he shall
30 not engage in the business of:

31 Sec. 4. 9-A MRSA §2-301, sub-§2, as amended by
32 PL 1975, c. 179, §1, is further amended to read:

33 2. Taking assignments of and undertaking direct
34 collection of payments from or enforcement of rights
35 in this State against debtors arising from supervised
36 loans.

37 Sec. 5. 9-A MRSA §2-302, sub-§2, ¶A, as enacted
38 by PL 1973, c. 762, §1, is amended to read:

1 A. Every applicant shall also, at the time of
2 filing such application, file with the adminis-
3 trator, if he so requires, a bond satisfactory to
4 the administrator in an amount not to exceed
5 \$5,000 \$25,000. The bond shall run to the State
6 for the use of the State and of any person or
7 persons who may have a cause of action against
8 the licensee under this Act. The bond shall be
9 conditional that the licensee will faithfully
10 conform to and abide by the provisions of this
11 Act and to all rules and regulations lawfully
12 made by the administrator hereunder and will pay
13 to the State and to any such person or persons
14 any and all amounts of money that may become due
15 or owing to the State or to such person or per-
16 sons from the licensee under and by virtue of
17 this Act during the calendar year for which the
18 bond is given;

19 Sec. 6. 9-A MRSA §3-310, sub-§1, ¶F, as enacted
20 by PL 1981, c. 138, is amended to read:

21 F. The identity of the index or method based on
22 factors beyond ~~the~~ any creditor's control that
23 will be the determinant of any increase or
24 decrease in the annual percentage rate;

25 Sec. 7. 9-A MRSA §3-310, sub-§4, as enacted by
26 PL 1981, c. 138, is amended to read:

27 4. This section does not apply to a consumer
28 loan ~~if the debt is payable in a single installment~~
29 ~~either on demand or at a specified time, if the loan~~
30 ~~is secured by a savings or time deposit subject to~~
31 ~~federal law or regulations governing interest on~~
32 ~~deposits, and if the difference between the rate of~~
33 ~~interest on the savings or time deposit and the~~
34 ~~annual percentage rate on the loan at no time exceeds~~
35 ~~the difference between the 2 when the loan was made.~~

36 Sec. 8. 9-A MRSA §6-104, sub-§2, as enacted by
37 PL 1973, c. 762, §1, is amended to read:

38 2. Except for refund of an excess charge, no
39 liability is imposed under this Act for an act done
40 or omitted in conformity with a rule or advisory
41 ruling of the administrator notwithstanding that

1 after the act or omission the rule or advisory ruling
2 may be amended or repealed or be determined by judi-
3 cial or other authority to be invalid for any reason.

4 Sec. 9. 9-A MRSA §6-108, sub-§1, as amended by
5 PL 1977, c. 694, §155-F, is further amended to read:

6 1. After notice and hearing, the administrator
7 may order any person to cease and desist from engag-
8 ing in violations of this Act or any lawful regula-
9 tion issued by the administrator. Notice and hearing
10 need not be provided, when, in the opinion of the
11 administrator, immediate action is required to pro-
12 tect the public interest, and

13 A. The creditor has not complied with section
14 6-202; or

15 B. The creditor does not maintain a permanent
16 place of business in this State.

17 A respondent aggrieved by an order of the administra-
18 tor may obtain judicial review of the order ~~and the~~
19 ~~administrator may, through the Attorney General,~~
20 ~~obtain an order of the court for enforcement of its~~
21 ~~order~~ in the Superior Court. The proceeding for
22 review ~~or enforcement~~ is initiated and conducted in
23 accordance with Title 5, chapter 375, subchapter VII.

24 Sec. 10. 9-A MRSA §6-110, 2nd ¶, as amended by
25 PL 1975, c. 134, §3, is further amended to read:

26 In such an action, the court may make such orders
27 or judgments as may be necessary to prevent the use
28 or employment by a person of any practices prohibited
29 by this Act, to reform contracts to conform to this
30 Act or to rescind contracts in which a violation has
31 tended to induce the debtor to contract with the
32 creditor, even though the debtors are not parties to
33 the action. In such an action, the court may, in its
34 discretion, award the administrator his reasonable
35 costs of investigation and reasonable attorneys' fees
36 incurred in bringing the action. An action under this
37 section and an action under section 6-113, ~~subsection~~
38 ~~1,~~ may be brought jointly using a single complaint.

39 Sec. 11. 9-A MRSA §6-408, as amended by PL 1977,
40 c. 694, §155-O, is repealed.

1 Section 6 makes clear that creditors who rely on
2 an index to trigger changes in the interest rate in a
3 variable rate contract must use an index that is not
4 subject to internal controls by any creditor, such as
5 the use of another bank's prime rate.

6 Section 7 expands the exemption from variable
7 rate disclosures to include time or installment notes
8 secured by a passbook savings or certificate of
9 deposit account.

10 Section 8 gives a creditor immunity from suit if
11 he acts in conformity with an advisory ruling, as
12 well as a rule, issued by the administrator.

13 Section 9 conforms the code to the Maine Adminis-
14 trative Procedure Act, Title 5, chapter 375, so that
15 a creditor must seek a stay of a bureau order in the
16 courts.

17 Section 10 allows the Attorney General to join
18 both a claim for injunction and civil penalty in one
19 complaint.

20 Section 11 repeals a provision for a declaratory
21 judgment action on an advisory ruling. Such an ac-
22 tion would probably be dismissed by the courts in any
23 case and has already been called into question by the
24 Maine Supreme Judicial Court.

25 Section 12 adopts the same rule concerning admis-
26 sion of evidence as that contained in the Maine
27 Administrative Procedure Act, Title 5, chapter 375,
28 to avoid potential conflict.

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