

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

(After Deadline)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1518

S.P. 502

In Senate, April 26, 1983

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Clark of Cumberland.

Cosponsor: Representative Brannigan of Portland.

STATE OF MAINE

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

AN ACT to Clarify the Authority
of the Superintendent of the Bureau of
Consumer Credit Protection.

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

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

1. After notice and hearing, the administrator may order any person to cease and desist from engaging in violations of this Act or any lawful regulation issued by the administrator and may further order that the person take appropriate corrective action to reimburse consumers in cases where consumers have been charged amounts in excess of those permitted by this Act. Notice and hearing need not be provided, when, in the opinion of the administrator, immediate action is required to protect the public interest, and:

1 A. The creditor has not complied with section
2 6-202; or

3 B. The creditor does not maintain a permanent
4 place of business in this State.

5 A respondent aggrieved by an order of the administra-
6 tor may obtain judicial review of the order and the
7 administrator may, through the Attorney General,
8 obtain an order of the court for enforcement of its
9 order in the Superior Court. The proceeding for
10 review or enforcement is initiated and conducted in
11 accordance with Title 5, chapter 375, subchapter VII.

12 STATEMENT OF FACT

13 The purpose of this bill is to clarify the
14 authority of the Superintendent of the Bureau of Con-
15 sumer Credit Protection.

16 The superintendent is charged with carrying out
17 the purposes of the Maine Consumer Credit Code, one
18 purpose of which is the protection of consumers.

19 In 1979, with the adoption of enforcement policy
20 guidelines, the superintendent, through a rule,
21 explicitly stated his authority to order refunds in
22 appropriate cases relying on Title 9-A, section
23 6-104, subsection 1, paragraph E, which expressly
24 authorizes the superintendent to adopt rules to carry
25 out the purposes of the Act and on Title 9-A, section
26 8-103, subsection 3, which expressly permits the
27 ordering of reimbursement to consumers for over-
28 charges in violations of Title 9-A, Article 8, deal-
29 ing with Truth-in-Lending.

30 This rule was not challenged at the time and has,
31 in fact, been relied upon on almost a daily basis
32 since then to obtain refunds due consumers for excess
33 charges.

34 On March 31, 1983, the Kennebec County Superior
35 Court in Prevost v. Maine Bureau of Consumer Credit
36 Protection (CV82-419) held that the superintendent
37 was without express statutory authority to adopt
38 rules authorizing the right to order refunds for

1 violations of Title 9-A, Articles 1 to 6. Without
2 this authority the superintendent's only recourse to
3 obtain refunds is by having the Attorney General
4 bring a civil action in Superior Court. This prac-
5 tice would result in needless expense and delay for
6 all concerned. Moreover, any creditor subject to the
7 superintendent's order to refund is always free to
8 challenge the appropriateness of that order by
9 appealing to Superior Court.

10 This bill explicitly declares the
11 superintendent's authority to order "appropriate cor-
12 rective actions to reimburse consumers." Such ac-
13 tions include ordering that a credit be placed on the
14 consumer's account where there is still a current
15 relationship between the consumer and creditor and
16 ordering a direct cash refund when a business rela-
17 tionship no longer exists between them. By clari-
18 fying the scope of the superintendent's authority
19 this bill will ratify the practice that has been fol-
20 lowed by the superintendent for years and thereby
21 ensure that consumers who have been overcharged
22 receive prompt reimbursement of those excess charges.

23

3234041583