

# MAINE STATE LEGISLATURE

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L.D. 1487

(Filing No. S- 166 )

STATE OF MAINE  
SENATE  
112TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 558, L.D. 1487, Bill, "AN ACT to Amend the Maine Consumer Credit Code."

Amend the bill in section 1 in that part designated "§1-111." in the 2nd and 3rd lines (page 1, lines 24 and 25 in L.D.) by striking out the following: "required to file notification, or his assignee," and inserting in its place the following: 'subject to this Act'

Further amend the bill in section 7 in that part designated "§4-204." by striking out all of the last underlined sentence (page 3, lines 26 to 29 in L.D)

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

'Sec. 8. 9-A MRSA §5-110, sub-§1, as amended by PL 1979, c. 417, §§1 and 2, is further amended to read:

1. With respect to a consumer credit transaction, after a consumer has been in default for 10 days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer the notice described in this section. For purposes of this section, goods that are collateral shall include any right of set-off that the creditor may have.

A creditor gives notice to the consumer under this section by mailing the notice to the consumer's residence last known address:

A. By certified mail, return receipt requested. For purposes of this paragraph, the time when no-

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1            tice is given shall be the date the consumer  
2            signs the receipt or, if the notice is  
3            undeliverable, the date the post office last at-  
4            tempts to deliver it; or

5            B. By ordinary mail. For purposes of this para-  
6            graph, the time when notice is given shall be the  
7            date the consumer receives it. A post office de-  
8            partment certificate of mailing to the consumer  
9            shall be conclusive proof of receipt on the 3rd  
10          calendar day after mailing.

11          Sec. 9. 9-A MRSA §5-110, sub-§2, last ¶, as re-  
12          pealed and replaced by PL 1975, c. 429, §2, is  
13          amended to read:

14          If you are late again within the next 12 months  
15          in making your payments, we may exercise our rights  
16          without sending you another notice like this one. If  
17          you have questions, write or telephone the creditor  
18          promptly.

19          Sec. 10. 9-A MRSA §5-110, sub-§4, ¶B, as enacted  
20          by PL 1979, c. 402, is amended to read:

21          B. The first sentence in the last paragraph of  
22          the form of notice shall read: If you are late  
23          again within the next 12 months in making your  
24          payments, we may exercise our rights, including  
25          the right of setoff, without sending you another  
26          notice like this one.

27          Sec. 11. 9-A MRSA §5-111, sub-§1, as amended by  
28          PL 1977, c. 159, §3, is further amended to read:

29          1. With respect to a consumer credit transac-  
30          tion, except as provided in subsection 2, after a de-  
31          fault consisting only of the consumer's failure to  
32          make a required payment, a creditor, because of that  
33          default, may neither accelerate maturity of the un-  
34          paid balance of the obligation, nor take possession  
35          of or otherwise enforce a security interest in goods

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1 that are collateral until ~~20~~ 14 days after a notice  
2 of the consumer's right to cure, as provided in sec-  
3 tion 5-110, is given, nor with respect to a transac-  
4 tion subject to the Insurance Premium Finance Company  
5 Act, give notice of cancellation as provided in sub-  
6 section 4 until 10 days after a notice of the consum-  
7 er's right to cure, as provided in section 5-110, is  
8 given. For purposes of this section, goods that are  
9 collateral shall include any right of set-off that  
10 the creditor may have. Until expiration of the mini-  
11 mum applicable period after the notice is given, the  
12 consumer may cure all defaults consisting of a fail-  
13 ure to make the required payment by tendering the  
14 amount of all unpaid sums due at the time of the  
15 tender, without acceleration, plus any unpaid delin-  
16 quency or deferral charges. Cure restores the consum-  
17 er to his rights under the agreement as though the  
18 defaults had not occurred.

19 Sec. 12. 9-A MRSA §5-111, sub-§2, as repealed  
20 and replaced by PL 1975, c. 429, §2, is amended to  
21 read:

22 2. With respect to defaults on the same obliga-  
23 tion other than an obligation subject to the Insur-  
24 ance Premium Finance Company Act and subject to sub-  
25 section 1, after a creditor has once given a notice  
26 of consumer's right to cure, as provided in section  
27 5-110, this section gives the consumer no right to  
28 cure and imposes no limitation on the creditor's  
29 right to proceed against the consumer or goods that  
30 are collateral with respect to a default that occurs  
31 within 12 months after an earlier default as to which  
32 a creditor has given a notice of consumer's right to  
33 cure, as provided in section 5-110. For the purpose  
34 of this section, in open-end credit, the obligation  
35 is the unpaid balance of the account and there is no  
36 right to cure and no limitation on the creditor's  
37 rights with respect to a default that occurs within  
38 ~~12 months after an earlier default as to which a~~  
39 ~~creditor has given a notice of consumer's right to~~  
40 ~~cure, as provided in section 5-110.'~~

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1 STATEMENT OF FACT

2 This amendment clarifies the scope of the bill to  
3 make it clear that federally-chartered institutions  
4 are also required to maintain records of their con-  
5 sumer credit transactions for at least 2 years.

6 The amendment also allows a creditor to choose  
7 the least costly and burdensome method to notify a  
8 consumer of his credit insurance coverage.

9 The primary purpose of this amendment is to more  
10 equitably balance the respective rights and responsi-  
11 bilities of consumers and creditors concerning de-  
12 faults on consumer credit obligations. This amend-  
13 ment shortens by 6 days the period in which consumers  
14 have to cure default and catch up on late payments.  
15 This leaves the total number of days which a creditor  
16 must wait before exercising his rights to accelerate  
17 the balance due or reposses collateral still at al-  
18 most one month.

19 The amendment also imposes on creditors the obli-  
20 gation to send a "Notice of Right to Cure" at least  
21 once every 12 months if a consumer again goes into  
22 default on his contract. Under current law, in  
23 closed-end financing, such as automobile loans, a  
24 cure notice need be sent only on the first default.  
25 If the consumer is late more than 10 days a 2nd time,  
26 his car may be repossessed without notice. In view  
27 of the fact that automobile loans now commonly extend  
28 to 4 and 5 years, it is unfair to give consumers only  
29 one warning, particularly when the consequences are  
30 so severe. This amendment assures that if a consumer  
31 is late in making payments a 2nd time, which is more  
32 than 12 months after a prior default, he will receive  
33 a warning before the creditor may repossess or take  
34 other action.

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1           The amendment requires creditors to send cure no-  
2           tices to the consumer's last known address rather  
3           than his residence. Residences frequently change,  
4           particularly in cases of divorce. Because divorce  
5           does not end legal liability on a note, the ex-spouse  
6           deserves notice of default at his new address. This  
7           amendment accomplishes that.

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Reported by Senator Danton for the Committee on Business and  
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