

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 503

S.P. 177

In Senate, February 23, 1987

Reference to the Committee on Banking and Insurance suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator CLARK of Cumberland.

Cosponsored by Senator DILLENBACK of Cumberland, Senator THERIAULT of Aroostook, Representative CURRAN of Westbrook.

STATE OF MAINE

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

AN ACT to Clarify and Simplify the Maine
Consumer Credit Code.

1
2
3

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

6 Sec. 1. 9-A MRSA §1-107, sub-§4, as enacted by
7 PL 1973, c. 762, §1, is amended to read:

8 4. A settlement in which the consumer waives or
9 agrees to forego rights or benefits under this Act is
10 invalid if the court, as a matter of law, finds the
11 settlement to have been unconscionable at the time it
12 was made. The competence of the consumer, any decep-
13 tion or coercion practiced upon him, the nature and
14 extent of the legal advice received by him and the
15 value of the consideration are relevant to the issue
16 of unconscionability. Any claim of unconscionability

1 must be raised in a judicial action within 6 years
2 after the date of settlement.

3 Sec. 2. 9-A MRSA §1-110, sub-§1, as repealed and
4 replaced by PL 1983, c. 720, §1, is amended to read:

5 1. Consumer credit transactions involving ~~mobile~~
6 homes manufactured housing as defined in section
7 1-301, subsection ~~24-A~~ 23-A;

8 Sec. 3. 9-A MRSA §1-111, as enacted by PL 1985,
9 c. 336, §1, is amended to read:

10 §1-111. Record retention

11 Every person subject to this Act shall maintain
12 records of all consumer credit transactions ~~entered~~
13 ~~into in conformity with generally accepted accounting~~
14 ~~principles and practices~~ in a manner that will enable
15 the administrator to determine whether that person or
16 his assignee is complying with the provisions of this
17 Act. The records need not be kept in the place of
18 business where the transaction was entered into, if
19 the administrator is given free access to the
20 records, wherever located. All records pertaining to
21 consumer credit transactions shall be retained for at
22 least 2 years after making the final entry on the ac-
23 count involved, except that in the case of open-end
24 credit, the 2 years shall be measured from the date
25 of each account entry.

26 Sec. 4. 9-A MRSA §1-201, sub-§1, as enacted by
27 PL 1973, c. 762, §1, is amended to read:

28 1. Except as otherwise provided in this section,
29 this Act applies to consumer credit transactions and
30 open-end credit plans made or entered into in this
31 State. For purposes of this Act, a consumer credit
32 transaction or open-end credit plan is made or en-
33 tered into in this State if:

34 A. A signed writing evidencing the obligation or
35 offer of the consumer is received by the creditor
36 in this State; or

37 B. The creditor, wherever located, induces the
38 consumer who is a resident of this State to enter

1 into the transaction or open-end credit plan by
2 face-to-face, mail or telephone solicitation in
3 this State.

4 Sec. 5. 9-A MRSA §1-201, sub-§2, as amended by
5 PL 1975, c. 658, is repealed.

6 Sec. 6. 9-A MRSA §1-201, sub-§3, as enacted by
7 PL 1973, c. 762, §1, is amended to read:

8 3. The Part on Limitations on Creditors' Remedies,
9 Part 1, of the Article on Remedies and Penalties,
10 Article 5, applies to actions ~~or~~ other proceedings
11 brought and nonjudicial collection activity
12 conducted in this State to enforce rights arising
13 from consumer credit sales, consumer leases, or consumer
14 loans, or extortionate extensions of credit,
15 wherever made.

16 Sec. 7. 9-A MRSA §1-201, sub-§6, as enacted by
17 PL 1973, c. 762, sub-§1, is amended to read:

18 6. For the purposes of this Act, the residence
19 of a consumer is the address given by him as his residence
20 in any writing signed by him in connection
21 with a credit transaction or open-end credit plan.
22 Until he notifies the creditor of a new or different
23 address in a writing for that purpose, the given address
24 is presumed to be unchanged.

25 Sec. 8. 9-A MRSA §1-202, sub-§1, as enacted by
26 PL 1973, c. 762, §1, is repealed and the following
27 enacted in its place:

28 1. Extensions of credit primarily for business,
29 commercial, agricultural purposes or to governments
30 or governmental agencies, instrumentalities or organiza-
31 tions;

32 Sec. 9. 9-A MRSA §1-202, sub-§3, as amended by
33 PL 1979, c. 127, §51, is repealed and the following
34 enacted in its place:

35 3. An extension of credit that involves public
36 utility services provided through pipe, wire, other
37 connected facilities, radio or similar transmission,
38 including extensions of these facilities, if the

1 charges for service, delayed payments or any dis-
2 counts for prompt payment are filed with or regulated
3 by any subdivision or agency of this State or of the
4 United States. This exemption does not apply to fi-
5 nanancing of goods or home improvements by a public
6 utility;

7 Sec. 10. 9-A MRSA §1-202, sub-§7, as repealed
8 and replaced by PL 1983, c. 641, §1, is amended to
9 read:

10 7. A loan or consumer credit sale made exclu-
11 sively for the purpose of deferring or financing edu-
12 cational expenses and on which the finance charge
13 does not exceed that rate per year on the unpaid bal-
14 ances of the amount financed, as shall be established
15 by federal law, or, for loans or consumer credit
16 sales for which federal law does not establish a
17 rate, the highest rate established for educational
18 loans under any federal program and which is insured,
19 guaranteed, subsidized or made directly by the Feder-
20 al Government, a state, a nonprofit private loan
21 guaranty or organization, by the educational institu-
22 tion itself or through an endowment or trust fund af-
23 filiated with such an institution; or

24 Sec. 11. 9-A MRSA §1-202, sub-§8, as amended by
25 PL 1985, c. 336, §2, is repealed and the following
26 enacted in its place:

27 8. A loan made by a supervised lender to finance
28 or refinance the acquisition of real estate or the
29 initial construction of a dwelling, or a loan made by
30 a supervised lender secured by a first mortgage on
31 real estate, if the security interest in real estate
32 is not made for the purpose of circumventing or evad-
33 ing this Act, provided that:

34 A. With respect to advances of additional funds
35 on the loan made more than 30 days after the ini-
36 tial advance, this exclusion shall apply only to
37 advances made:

38 (1) Pursuant to the terms of a construction
39 loan agreement;

40 (2) To protect the security or to perform
41 the covenants of the consumer;

1 (3) As negative amortization of principal
2 under the terms of the loan agreement; or

3 (4) From funds withheld at consummation
4 pending the resolution of matters which oth-
5 erwise would tend to delay or prevent clos-
6 ing, including, without limitation, remedy
7 of title defects or repairs to meet apprais-
8 al standards;

9 B. The exemption provided by this subsection
10 does not apply to the requirements on servicing
11 of assigned supervised loans, section 2-310; and

12 C. With respect to a supervised lender other
13 than a supervised financial organization, the ex-
14 emption provided by this subsection shall apply
15 to the following provisions and no others: Maxi-
16 imum finance charge limitations, sections 2-308
17 and 2-401; limitations on security interest, sec-
18 tion 2-307; delinquency charges, sections 2-502
19 and 3-402; limitations on attorneys fees, section
20 2-507; right to prepay, section 2-509; rebate
21 upon prepayment, section 2-510; notice to consum-
22 er, section 3-202; and notice of right to cure
23 default, sections 5-110 and 5-111.

24 Sec. 12. 9-A MRS §1-202, sub-§8-A, as repealed
25 and replaced by PL 1981, c. 243, §§1 and 26, is re-
26 pealed.

27 Sec. 13. 9-A MRS §1-301, sub-§2-A is enacted to
28 read:

29 2-A. "Advertisement" means a commercial message
30 in any medium that promotes, directly or indirectly,
31 a consumer credit transaction.

32 Sec. 14. 9-A MRS §1-301, sub-§5-A, as enacted
33 by PL 1979, c. 660, is repealed and the following
34 enacted in its place:

35 5-A. "Arranger of credit" means a person who
36 regularly provides or offers to provide consumer
37 credit or a lease which is or will be extended by an-
38 other person under a business or other relationship
39 pursuant to which the person arranging the credit or
40 lease:

1 A. Receives or will receive a fee, compensation
2 or other consideration for the service; or

3 B. Has knowledge of the credit or lease terms
4 and participates in the preparation of the con-
5 tract documents required in connection with the
6 extension of credit or the lease.

7 The term does not include a person who honors a cred-
8 it card or similar device when no finance charge is
9 imposed at the time of that transaction nor does it
10 include insurance agents who act in the capacity of
11 an arranger in which insurance premium finance agree-
12 ments are involved.

13 A person regularly arranges for the extension of con-
14 sumer credit only if he arranged credit more than 25
15 times or more than 5 times for transactions secured
16 by a dwelling in the preceding calendar year. If a
17 person did not meet these numerical standards in the
18 preceding calendar year, the numerical standards
19 shall be applied to the current calendar year.

20 Sec. 15. 9-A MRSA §1-301, sub-§6, as enacted by
21 PL 1973, c. 762, §1, is repealed and the following
22 enacted in its place:

23 6. "Billing cycle" or "cycle" means the interval
24 between days or dates of regular periodic statements.
25 These intervals shall be equal and no longer than a
26 quarter of a year. An interval shall be considered
27 equal if the number of days in the cycle does not
28 vary more than 4 days from the regular day or date of
29 the periodic statement.

30 Sec. 16. 9-A MRSA §1-301, sub-§§6-A, 6-B and 6-C
31 are enacted to read:

32 6-A. "Business day" means a day on which a cred-
33 itor's offices are open to the public for carrying on
34 substantially all of its business functions. For pur-
35 poses of rescission, the term means all calendar
36 days, except Sundays and the holidays established by
37 Title 9-B, section 141, subsection 1.

38 6-B. "Cardholder" means the same as defined in
39 section 8-103.

1 6-C. "Card issuer" means the same as defined in
2 section 8-103.

3 Sec. 17. 9-A M RSA §1-301, sub-§8, as amended by
4 PL 1981, c. 235, §1, is further amended to read:

5 8. "Closing costs," provided they are bona fide,
6 reasonable in amount and not for the purpose of cir-
7 cumvention or evasion of this Act, with respect to a
8 debt secured by an interest in land or a ~~loan for~~
9 consumer credit transaction involving manufactured
10 housing as that term is defined in Title 10, section
11 9002, subsection 7, include:

12 A. Fees or premiums for title examination, ab-
13 stract of title, title insurance or similar pur-
14 poses and for required related property surveys;

15 B. Fees for preparation of deeds, settlement
16 statements or other documents;

17 C. Amounts required to be placed or paid into an
18 escrow or trustee account for future payments of
19 ~~taxes, insurance and water, sewer and land rents;~~

20 D. Fees for notarizing deeds and other docu-
21 ments;

22 E. Appraisal fees; and

23 F. Credit reports.

24 Sec. 18. 9-A M RSA §1-301, sub-§10, as amended by
25 PL 1981, c. 243, §5, is repealed and the following
26 enacted in its place:

27 10. "Consumer" means a cardholder or a natural
28 person to whom consumer credit is offered or extended
29 and includes a cosigner. For purposes of rescission,
30 the term includes a natural person in whose principal
31 dwelling a security interest is or will be retained
32 or acquired, if that person's ownership interest in
33 the dwelling is or will be subject to the security
34 interest.

35 Sec. 19. 9-A M RSA §1-301, sub-§11, ¶B, as
36 amended by PL 1981, c. 243, §7, is repealed and the
37 following enacted in its place:

1 B. A "consumer credit sale" does not include,
2 except for the purposes of Article VIII, or un-
3 less the sale is made subject to this Act by
4 agreement, section 1-109, a sale of an interest
5 in land if the finance charge does not exceed 12
6 1/4% a year calculated according to the actuarial
7 method on the unpaid balances of the amount fi-
8 nanced on the assumption that the debt will be
9 paid according to the agreed terms and will not
10 be paid before the end of the agreed terms.

11 Sec. 20. 9-A MRSA §1-301, sub-§13, as amended by
12 PL 1981, c. 243, §8, is repealed and the following
13 enacted in its place:

14 13. A "consumer lease" is a lease of goods:

15 A. Which a lessor regularly engaged in the busi-
16 ness of leasing makes to a person, other than an
17 organization, who takes under the lease primarily
18 for a personal, family or household purpose;

19 B. In which the amount payable under the lease
20 does not exceed \$25,000;

21 C. Which is for a term exceeding 4 months; and

22 D. Which is not made pursuant to a lender credit
23 card.

24 Sec. 21. 9-A MRSA §1-301, sub-§14-A is enacted
25 to read:

26 14-A. "Cosigner" means a natural person who as-
27 sumes personal liability for the obligation of a con-
28 sumer without receiving goods, services or money in
29 return for the obligation or, in the case of an open-
30 end credit obligation, without receiving the contrac-
31 tual right to obtain extensions of credit under the
32 account. The term includes any person whose signature
33 is requested as a condition to granting credit to a
34 consumer or as a condition of forbearance on collec-
35 tion of a consumer's obligation that is in default.
36 The term does not include a spouse whose signature is
37 required on a credit obligation to perfect a security
38 interest pursuant to state law. A person who meets
39 the definition of this subsection is a cosigner

1 whether or not the person is designated as such on
2 the credit obligation. The term does not include a
3 person who becomes liable in a transaction to finance
4 or refinance the acquisition or initial construction
5 of real property.

6 Sec. 22. 9-A MRSA §1-301, sub-§16, as repealed
7 and replaced by PL 1981, c. 243, §11, is repealed and
8 the following enacted in its place:

9 16. "Credit card" means any card, plate, coupon
10 book or other single credit device that may be used
11 from time to time to obtain credit.

12 Sec. 23. 9-A MRSA §1-301, sub-§17, as repealed
13 and replaced by PL 1981, c. 243, §12, is amended to
14 read:

15 17. "Creditor" means a person who both:

16 A. Regularly extends credit in consumer credit
17 transactions; and

18 B. Is the person to whom the debt arising from
19 the consumer credit transactions is initially
20 payable on the face of the evidence of indebted-
21 ness or, if there is no such evidence of indebt-
22 edness, by agreement. Notwithstanding the previ-
23 ous sentence, a person who regularly arranges for
24 the extension of consumer credit from persons who
25 are not creditors is a creditor and in the case
26 of an open-end credit plan involving a credit
27 card, the card issuer and any person who honors
28 the credit card and offers a discount which is a
29 finance charge are creditors.

30 For the purposes of the requirements imposed un-
31 der section 8-205, subsection 1, paragraphs E, F,
32 G, and subsection 2, paragraphs A, B, C, D, I, K,
33 and Article VIII, Parts 3 and 4, the term "credi-
34 tor" also includes card issuers whether or not
35 the amount due is payable by agreement in more
36 than 4 installments or the payment of a finance
37 charge is or may be required, and the administra-
38 tor shall, by regulation, apply these require-
39 ments to those card issuers, to the extent appro-
40 priate, even though the requirements are by their

1 terms applicable only to creditors offering open-
2 end credit plans.

3 A person regularly extends consumer credit only if he
4 extended credit more than 25 times, or more than 5
5 times for transactions secured by a dwelling, in the
6 preceding calendar year. If a person did not meet
7 these numerical standards in the preceding calendar
8 year, the numerical standards shall be applied to the
9 current calendar year.

10 Sec. 24. 9-A MRSA §1-301, sub-§19, as amended by
11 PL 1983, c. 720, §4, is repealed and the following
12 enacted in its place:

13 19. "Finance charge" means the cost of consumer
14 credit as a dollar amount. It includes any charge
15 payable directly or indirectly by the consumer and
16 imposed directly or indirectly by the creditor as an
17 incident to or a condition of the extension of cred-
18 it. It does not include any charge of a type payable
19 in a comparable cash transaction.

20 A. Except for charges specifically excluded by
21 paragraph B, the term includes:

22 (1) Interest, time price differential and
23 any amount payable under an add-on or dis-
24 count system of additional charges;

25 (2) Service, transaction, activity and car-
26 rying charges and early withdrawal penalties
27 on time deposit accounts, including any
28 charge imposed on a checking or other depos-
29 it account to the extent that the charge ex-
30 ceeds the charge for a similar account with-
31 out a credit feature;

32 (3) Points, loan fees, assumption fees,
33 finder's fees and similar charges;

34 (4) Appraisal, investigation and credit re-
35 port fees;

36 (5) Premiums or other charges for any guar-
37 antee or insurance protecting the creditor
38 against the consumer's default or other
39 credit loss;

1 (6) Charges imposed on a creditor by another
2 person for purchasing or accepting a consumer's
3 obligation, if the consumer is required to pay the
4 charges in cash, as an addition to the obligation or
5 as a deduction from the proceeds of the obligation;
6

7 (7) Premiums or other charges for credit
8 life, accident, health or loss-of-income insurance
9 or insurance against loss of or damage to property
10 or against liability arising out of the ownership or
11 use of property, written in connection with a credit
12 transaction, unless the applicable requirements of
13 section 2-501 and section 8-105, subsections
14 2 and 3 are met; and
15

16 (8) Discounts for the purpose of inducing
17 payment by a means other than the use of
18 credit.

19 B. The term does not include:

20 (1) Application fees charged to all applicants
21 for credit, whether or not credit is actually
22 extended;

23 (2) Charges as a result of default, additional
24 charges, delinquency charges or deferral charges
25 to the extent permitted by section 2-501, 2-502
26 or 2-503;

27 (3) Charges for actual unanticipated late
28 payment in a transaction that is not otherwise
29 subject to a finance charge or payable in
30 installments;

31 (4) Charges imposed by a financial institution
32 for paying or returning an item that overdraws
33 an account, except where the charge is imposed
34 pursuant to a written agreement to extend credit
35 to fund overdrafts;
36

37 (5) Fees permitted by section 2-501 to be
38 charged for participation in a credit plan,
39 whether assessed on an annual or other
40 periodic basis;

- 1 (6) Seller's points;
- 2 (7) Closing costs as defined in subsection
3 8;
- 4 (8) The discount, when a creditor purchases
5 or satisfies obligations of a cardholder
6 pursuant to a credit card and the purchase
7 or satisfaction is made at less than the
8 face amount of the obligation;
- 9 (9) Any discount offered by a creditor or
10 seller for the purpose of inducing payment
11 by cash, check or other means to be made at
12 the time of sale not involving the use of a
13 credit card, if that discount is offered to
14 all prospective buyers and its availability
15 is disclosed to all prospective buyers
16 clearly and conspicuously; and
- 17 (10) Official fees as defined in subsection
18 25, if they are itemized and disclosed.

19 Sec. 25. 9-A MRSA §1-301, sub-§21, as enacted by
20 PL 1973, c. 762, §1, is repealed.

21 Sec. 26. 9-A MRSA §1-301, sub-§22, as enacted by
22 PL 1973, c. 762, §1, is repealed and the following
23 enacted in its place:

24 22. "Lender credit card" means a credit card is-
25 sued by a supervised lender. The term does not in-
26 clude any device to the extent that it accesses a bo-
27 na fide asset account, notwithstanding any overdraft
28 or other line of credit agreement which may be ac-
29 cessed as a result of a debit to that asset account.

30 Sec. 27. 9-A MRSA §1-301, sub-§23, ¶B, as en-
31 acted by PL 1973, c. 762, §1, is amended to read:

32 B. A "loan" does not include the payment or
33 agreement to pay money to a third party for the
34 account of a debtor if the debt of the debtor
35 arises from a sale or lease and results from use
36 of either a credit card issued by a person pri-
37 marily in the business of selling or leasing
38 goods or services ~~or any other credit card which~~

1 may be used for the purchase of goods or services
2 and which is not a lender credit card.

3 Sec. 28. 9-A MRSA §1-301, sub-§23-A is enacted
4 to read:

5 23-A. "Manufactured housing" means manufactured
6 housing as defined in Title 10, section 9002, subsec-
7 tion 7.

8 Sec. 29. 9-A MRSA §1-301, sub-§24-A, as enacted
9 by PL 1981, c. 618, §2, is repealed.

10 Sec. 30. 9-A MRSA §1-301, sub-§§32 and 36, as
11 enacted by PL 1973, c. 762, §1, are repealed.

12 Sec. 31. 9-A MRSA §2-201, sub-§9, as amended by
13 PL 1981, c. 470, Pt. A, §17, is further amended to
14 read:

15 9. Notwithstanding any other provision, the fi-
16 nance charge on a ~~transaction involving the financing~~
17 of a consumer credit sale of a motor vehicle as de-
18 fined in this subsection may not exceed the
19 following:

20 A. On any new motor vehicle designated by the
21 manufacturer by a year model not earlier than the
22 year in which the sale is made, 18% per year on
23 the unpaid balances of the amount financed;

24 B. On any new motor vehicle not included in par-
25 agraph A and on any used motor vehicle designated
26 by the manufacturer by a year model of the same
27 or not more than 3 years prior to the year in
28 which the sale is made, 20% per year on the un-
29 paid balances of the amount financed;

30 C. On any used motor vehicle not included in
31 paragraph B, 23.5% per year on the unpaid bal-
32 ances of the amount financed; or

33 D. Notwithstanding paragraph A, on any new motor
34 vehicle designated by the manufacturer by a year
35 model not earlier than the year in which the sale
36 is made, 18% per year on the unpaid balances of
37 the amount financed until June 1, 1981. This
38 paragraph shall be repealed on June 1, 1981.

1 "Motor vehicle" means any self-propelled vehicle not
2 operated exclusively on tracks, except agricultural
3 machinery and any other devices which do not consti-
4 tute consumer goods, as defined in Title 11, section
5 9-109, subsection 1.

6 Sec. 32. 9-A MRSA §2-201, sub-§10, as repealed
7 and replaced by PL 1983, c. 87, §1, is amended to
8 read:

9 10. Notwithstanding any other subsection, the
10 finance charge on a mobile home transaction to fi-
11 nance or refinance the acquisition of, or secured by,
12 manufactured housing, not involving a security inter-
13 est in real estate, may not exceed the greater of the
14 following:

15 A. A rate 2% greater than the maximum rate es-
16 tablished by federal regulations pursuant to the
17 United States Code, ~~Title 12, Section 1709-1, Na-~~
18 ~~tional Housing Act, as amended, or the United~~
19 ~~States Code, Title 38, Section 1819(f), Veterans~~
20 ~~Housing Act of 1970, as amended, and published~~
21 ~~from time to time in the Federal Register, 24~~
22 ~~Code of Federal Regulations, Part 201 or 38 Code~~
23 ~~of Federal Regulations, Part 36, respectively.~~
24 ~~In the event of a difference between these rates,~~
25 ~~the higher rate established for a transaction in-~~
26 ~~volving a mobile home without land shall form the~~
27 ~~basis for computing this rate; or~~

28 B. 18% per year.

29 In the event no specific maximum rate is established
30 by federal regulation in accordance with this subsec-
31 tion, this subsection shall not apply.

32 Sec. 33. 9-A MRSA §2-301, sub-§2, as amended by
33 PL 1983, c. 212, §4, is further amended to read:

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

38 Sec. 34. 9-A MRSA §2-302, sub-§2, ¶A, as amended
39 by PL 1983, c. 212, §5, is further 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 \$25,000. The bond shall run to the State for the
6 use of the State and of any person or persons who
7 may have a cause of action against the licensee
8 under this Act. The bond shall be conditional
9 that the licensee will faithfully conform to and
10 abide by the provisions of this Act and to all
11 rules and regulations lawfully made by the admin-
12 istrator hereunder and will pay to the State and
13 to any such person or persons any and all amounts
14 of money that may become due or owing to the
15 State or to such person or persons from the li-
16 censee under and by virtue of this Act during the
17 ~~calendar year~~ period for which the bond is given;

18 Sec. 35. 9-A MRSA §2-302, sub-§5, as enacted by
19 PL 1973, c. 762, §1, is amended to read:

20 5. A licensee may conduct the business of making
21 supervised loans only at or from any place of busi-
22 ness for which he holds a license and not under any
23 other name than that in the license. For purposes of
24 this subsection, the closing of a supervised loan,
25 secured by an interest in real estate, made by the
26 licensee, at the office of an attorney or land title
27 company, shall not be considered the making of a su-
28 pervised loan at the place of business other than the
29 licensee's licensed location. Loans made pursuant to
30 a lender credit card do not violate this subsection.

31 Sec. 36. 9-A MRSA §2-305, as amended by PL 1981,
32 c. 235, §2, is repealed.

33 Sec. 37. 9-A MRSA §2-307, sub-§1, as enacted by
34 PL 1973, c. 762, §1, is repealed.

35 Sec. 38. 9-A MRSA §2-310, as enacted by PL 1983,
36 c. 720, §10, is amended to read:

37 §2-310. Servicing requirements of assigned super-
38 vised loans

39 No supervised loan secured by a mortgage on real
40 estate may be assigned under this Article unless:

1 1. The supervised lender making the loan retains
2 servicing of the loan and either maintains a place of
3 business in this State or maintains a toll-free tele-
4 phone number or other free means of oral communica-
5 tion that is disclosed to mortgagors and staffed in
6 the manner described in subsection 2; or

7 2. The assignee or servicing agent retained to
8 collect the loan maintains a toll-free telephone num-
9 ber, or other free means of oral communication, that
10 is disclosed to mortgagors in each coupon book or on
11 each periodic billing notice or statement of account
12 and that is staffed during normal business hours for
13 mortgagors to use to communicate with the assignee or
14 servicing agent concerning the supervised loan.

15 Sec. 39. 9-A MRSA §2-401, sub-§1, as enacted by
16 PL 1973, c. 762, §1, is repealed.

17 Sec. 40. 9-A MRSA §2-401, sub-§2; as amended by
18 PL 1985, c. 763, Pt. A, §3, is repealed and the fol-
19 lowing enacted in its place:

20 2. With respect to a consumer loan, other than a
21 loan pursuant to open-end credit, a lender may con-
22 tract for and receive a finance charge calculated ac-
23 ording to the actuarial method, not exceeding the
24 equivalent of the greater of either of the following:

25 A. The total of:

26 (i) 30% per year on that part of the unpaid
27 balances of the amount financed which is
28 \$700 or less;

29 (ii) 21% per year on that part of the un-
30 paid balances of the amount financed which
31 is more than \$700 but does not exceed
32 \$2,000; and

33 (iii) 15% per year on that part of the un-
34 paid balances of the amount financed which
35 is more than \$2,000; or

36 B. 18% per year on the unpaid balances of the
37 amount financed.

1 Sec. 41. 9-A MRSA §2-401, sub-§3, ¶C, as enacted
2 by PL 1973, c. 762, §1, is repealed.

3 Sec. 42. 9-A MRSA §2-401, sub-§3, ¶C, as enacted
4 by PL 1973, c. 762, §1 and as repealed, is reenacted
5 to read:

6 C. If the finance charges for closed-end super-
7 vised loans are not precomputed and part or all
8 of the principal amount of the loan contract is
9 the unpaid principal balance of a prior loan, on-
10 ly such unpaid finance charge for use of money or
11 such prior loan which has accrued within 60 days
12 before the making of such loan contract may be
13 incorporated as interest-bearing principal in the
14 principal amount of such loan contract.

15 Sec. 43. Effective date. Section 42 of this Act
16 shall take effect October 1, 1989.

17 Sec. 44. 9-A MRSA §2-401, sub-§8, as repealed
18 and replaced by PL 1983, c. 87, §2, is amended to
19 read:

20 8. Notwithstanding any other subsection, the fi-
21 nance charge on a mobile home transaction to finance
22 or refinance the acquisition of, or secured by, manu-
23 factured housing, not involving a security interest
24 in real estate, may not exceed the greater of the
25 following:

26 A. A rate 2% greater than the maximum rate es-
27 tablished by federal regulations pursuant to the
28 United States Code, Title 12, Section 1709-1, Na-
29 tional Housing Act, as amended, or the United
30 States Code, Title 38, Section 1819(f), Veterans
31 Housing Act of 1970, as amended, and published
32 from time to time in the Federal Register, 24
33 Code of Federal Regulations, Part 201 or 38 Code
34 of Federal Regulations, Part 36, respectively.
35 In the event of a difference between these rates,
36 the higher rate established for a transaction in-
37 volving a mobile home without land shall form the
38 basis for computing this rate; or

39 B. 18% per year.

1 In the event that no specific maximum rate is estab-
2 lished by federal regulation in accordance with this
3 subsection, this subsection shall not apply.

4 Sec. 45. 9-A MRSA §2-402, as amended by PL 1977,
5 c. 421, §§3 and 4, is further amended to read:

6 §2-402. Finance charge for loans on open-end credit

7 1. With respect to purchases or leases of goods
8 or services loans made on open-end credit pursuant to
9 a lender credit card, a creditor may contract for and
10 receive a finance charge not in excess of that per-
11 mitted in this section.

12 2. A charge may be made in each billing cycle
13 which is a percentage of an amount not exceeding the
14 greatest of:

15 A. The average daily balance in the billing cy-
16 cle for which the charge is made, which is the
17 sum of the amount unpaid each day during that cy-
18 cle, divided by the number of days in that cycle.
19 The amount unpaid on a day is determined by add-
20 ing to the balance, if any, unpaid as of the be-
21 ginning of that day all advances and other debits
22 and cash advances, but excluding all purchases or
23 leases of goods and services made on that day and
24 deducting all payments and other credits made or
25 received as of that day, provided that loans made
26 pursuant to a lender credit card to finance the
27 purchase or lease of goods and services shall not
28 be included in the amount unpaid if a finance
29 charge on these amounts is prohibited under sub-
30 section 4; or

31 B. The unpaid balance at the beginning of the
32 first day of the billing cycle after all payments
33 on account, returns and other credits made or
34 given during the first 25 days of the billing cy-
35 cle, if the billing cycle is monthly, shall have
36 been first deducted; provided that returns and
37 other credits may be deducted only to the extent
38 that the purchase to which the credit or return
39 relates has been reflected in the previous bal-
40 ance. If the billing cycle is not monthly, such
41 deduction shall be made for payments on account,

1 returns and other credits made or given during
2 that part of the billing cycle that bears the
3 same relation to the billing cycle that 25 does
4 to 30.

5 3. If the billing cycle is monthly, the charge
6 may not exceed 1 1/2% of the amount pursuant to sub-
7 section 2. If the billing cycle is not monthly, the
8 maximum charge is that percentage which bears the
9 same relation to the applicable monthly percentage as
10 the number of days in the billing cycle bears to 30.
11 A billing cycle is monthly if the closing date of the
12 cycle is the same date each month or does not vary by
13 more than 5 4 days from the regular date.

14 4. ~~Except~~ With respect to loans made pursuant to
15 a lender credit card, except for cash advances, no
16 finance charge shall may be imposed on purchases or
17 leases of goods or services purchased during the
18 billing cycle, provided that they are paid for not
19 later than 25 days after the closing date of the
20 billing cycle in which the purchase or lease oc-
21 curred.

22 Sec. 46. 9-A MRSA §2-501, sub-§1, as amended by
23 PL 1983, c. 384, §§1 and 2, is further amended to
24 read:

25 1. In addition to the finance charge permitted
26 by the Parts of this Article on maximum finance
27 charges for consumer credit sales and consumer loans,
28 Parts 2 and 4, a creditor may contract for and re-
29 ceive the following additional charges in connection
30 with a consumer credit transaction or an open-end
31 credit plan:

32 A. Official fees and taxes;

33 B. Charges for insurance as described in subsec-
34 tion 2;

35 C. Annual charges, payable in advance, for the
36 privilege of using a credit card, other than a
37 lender credit card, which entitles the user to
38 purchase goods or services from at least 100 per-
39 sons not related to the issuer of the credit
40 card, under an arrangement pursuant to which the

1 debts resulting from the purchases are payable to
2 the issuer;

3 D. "Closing costs" as defined in section 1-301,
4 subsection 8; and

5 E. An annual charge, not to exceed \$12 on each
6 account, for the privilege of using a lender
7 credit card; and A charge assessed pursuant to
8 this paragraph may be assessed only on the renew-
9 al date of the lender credit card or on the anni-
10 versary thereof. No charge may be assessed pur-
11 suant to this paragraph before January 1, 1984.

12 F. Charges authorized as permissible additional
13 charges by rule adopted by the administrator, for
14 other benefits conferred on the consumer, if the
15 benefits are of value to him and if the charges
16 are reasonable in relation to the benefits or of
17 a type that is not for credit.

18 Sec. 47. 9-A MRSA §2-501, sub-§3 is enacted to
19 read:

20 3. Charges permitted under this section and any
21 other charges specifically excluded from the defini-
22 tion of "finance charge" in section 1-301, subsection
23 19, are permissible charges in addition to, and ex-
24 cluded from the calculation of, maximum finance
25 charges set forth in Parts 2 and 4. Unless otherwise
26 expressly prohibited by this Act, a creditor may con-
27 tract for and receive additional charges not autho-
28 rized by this section or by section 1-301, subsection
29 19, if such additional charges, together with all
30 other finance charges applicable to a consumer credit
31 transaction, do not exceed the applicable maximum fi-
32 nance charge under this Act.

33 Sec. 48. 9-A MRSA §2-502, sub-§4, as enacted by
34 PL 1979, c. 762, §1, is amended to read:

35 4. If two instalments or parts thereof of a
36 precomputed consumer loan are in default for 15 days
37 or more, the lender may elect to convert the loan
38 from a precomputed loan to one in which the finance
39 charge is based on unpaid balances. In this event he
40 shall make a rebate pursuant to the provisions on re-

1 bate upon prepayment, section 2-510, as of the matu-
2 rity date of the first delinquent instalment, and
3 thereafter may make a finance charge as authorized by
4 the provisions on loan finance charge for consumer
5 loans, subsection 1 of section 2-401, or the provi-
6 sions on finance charge for supervised loans, (sub-
7 section 2 of section 2-401), whichever is
8 appropriate. The amount of the rebate shall not be
9 reduced by the amount of any permitted minimum
10 charge, section 2-510. If the creditor proceeds under
11 this subsection, any delinquency or deferral charges
12 made with respect to instalments due at or after the
13 maturity date of the first delinquent instalment
14 shall be rebated, and no further delinquency or de-
15 fferal charges shall be made.

16 Sec. 49. 9-A MRSA §2-504, as amended by PL 1985,
17 c. 819, Pt. A, §12, is repealed and the following
18 enacted in its place:

19 §2-504. Finance charge on refinancing

20 With respect to a consumer credit transaction,
21 except a consumer lease, the creditor by agreement
22 with the consumer may refinance the unpaid balance
23 and contract for and receive a finance charge based
24 on the amount financed resulting from the refinancing
25 at a rate not exceeding that permitted by the provi-
26 sions on finance charge for consumer credit sales
27 other than open-end credit, section 2-201, if a con-
28 sumer credit sale is refinanced, or for consumer
29 loans, section 2-401, if a consumer loan is refi-
30 nanced. For the purpose of determining the finance
31 charge permitted, the amount financed resulting from
32 the refinancing is composed of the following:

33 1. An amount equal to:

34 A. If the transaction was not precomputed, the
35 total of the unpaid balance and the accrued
36 charges, with the exception of any minimum
37 charge, on the date of the refinancing; or

38 B. If the transaction was precomputed, the
39 amount which the consumer would have been re-
40 quired to pay upon prepayment pursuant to the
41 provision on rebate upon prepayment, section

1 2-510, on the date of refinancing, but for the
2 purpose of computing this amount no minimum
3 charge is permitted; and

4 2. Appropriate additional charges, section
5 2-501, payment of which is deferred.

6 Sec. 50. 9-A MRSA §2-504, first ¶, as amended by
7 PL 1985, c. 819, Pt. A, §12, and as repealed and re-
8 placed, is repealed and the following enacted in its
9 place:

10 Subject to section 2-308, with respect to a con-
11 sumer credit transaction, the creditor may, by agree-
12 ment with the consumer, refinance the unpaid balance
13 and may contract for and receive a finance charge
14 based on the amount financed resulting from the refi-
15 naning at a rate not exceeding by 1% per year the
16 rate charged in the original agreement and stated to
17 the consumer pursuant to the provisions on disclo-
18 sure. This section shall not apply to consumer loans
19 in which the principal of the loans is payable in a
20 single payment on demand or at a specified time and
21 the finance charge, calculated according to the actu-
22 arial method, does not exceed 12 1/4% per year, or to
23 consumer loans which, at the time of refinancing, are
24 secured by a savings or time deposit, provided that
25 the difference between the rate of interest charged
26 on the loan secured by the deposit does not exceed
27 the difference between the rate of interest earned on
28 the savings or time deposit and the rate of interest
29 charged on the loan secured by that deposit for the
30 loan that is being refinanced or upon voluntarily
31 providing different collateral other than that se-
32 curing the original loan, provided that the consumer
33 has not been in default on the loan with the creditor
34 within the 12-month period preceding the refinancing
35 of the loan. This section does not apply to consumer
36 loans in which the principal is payable in a single
37 payment on demand or at a specified time and the debt
38 is secured by an interest in securities, bonds, de-
39 bentures or other corporate obligations. For the
40 purpose of determining the finance charge permitted,
41 the amount financed resulting from the refinancing
42 comprises the following:

43 Sec. 51. Effective date. Section 50 of this Act
44 shall take effect October 1, 1989.

1 Sec. 52. 9-A MRSA §2-505, sub-§2, as enacted by
2 PL 1973, c. 762, §1, is amended to read:

3 2. If the debts consolidated arise exclusively
4 from consumer credit sales, the transaction is a con-
5 solidation with respect to a consumer credit sale and
6 the amount of the finance charge is governed by the
7 provisions on finance charge for consumer credit
8 sales other than open-end credit, section 2-201. If
9 the debts consolidated include a debt arising from a
10 consumer loan, the transaction is a consolidation
11 with respect to a consumer loan and the amount of the
12 finance charge is governed by the provisions on fi-
13 nance charge for consumer loans, ~~subsections 1~~ ~~er~~ ~~2~~
14 ~~ef~~ section 2-401, as appropriate.

15 Sec. 53. 9-A MRSA §2-506, sub-§1, as enacted by
16 PL 1973, c. 762, §1, is amended to read:

17 1. If the agreement with respect to a consumer
18 credit transaction contains covenants by the consumer
19 to perform certain duties pertaining to insuring or
20 preserving collateral and the creditor pursuant to
21 the agreement pays for performance of the duties on
22 behalf of the consumer, he may add the amounts paid
23 to the debt. Within a reasonable time after advancing
24 any sums, he shall state to the ~~buyer~~ consumer in
25 writing the amount of the sums advanced, any charges
26 with respect to this amount, and any revised payment
27 schedule and, if the duties of the consumer performed
28 by the creditor pertain to insurance, a brief de-
29 scription of the insurance paid for by the creditor
30 including the type and amount of coverages. No fur-
31 ther information need be given.

32 Sec. 54. 9-A MRSA §2-506, sub-§2, as enacted by
33 PL 1973, c. 762, §1, is amended to read:

34 2. A finance charge may be made for sums ad-
35 vanced pursuant to subsection 1 at a rate not exceed-
36 ing the rate stated to the consumer pursuant to law
37 in a disclosure statement, except that with respect
38 to open-end credit the amount of the advance may be
39 added to the unpaid balance of the debt and the cred-
40 itor may make a finance charge not exceeding that
41 permitted by the appropriate provisions on finance
42 charge for consumer credit sales pursuant to open-end

1 credit, section 2-202, or for consumer loans, subsec-
2 tions 1 or 2 of section 2-401 2-402, whichever is ap-
3 appropriate.

4 Sec. 55. 9-A MRSA §3-201, sub-§1, as enacted by
5 PL 1973, c. 762, §1, is amended to read:

6 1. No creditor shall may engage in this State in
7 false or misleading advertising concerning the terms
8 or conditions of credit with respect to a consumer
9 credit transaction or an open-end credit plan.

10 Sec. 56. 9-A MRSA §3-201, sub-§2, as amended by
11 PL 1985, c. 819, Pt. A, §13, is further amended to
12 read:

13 2. Without limiting the generality of subsection
14 1 and without requiring a statement of rate of fi-
15 nance charge if the finance charge is not more than
16 \$5 when the amount financed does not exceed \$75, or
17 \$7.50 when the amount financed exceeds \$75, an adver-
18 tisement with respect to a consumer credit transac-
19 tion made by the posting of a public sign, or by cat-
20 alog, magazine, newspaper, radio, television or simi-
21 lar mass media, or an open-end credit plan is mis-
22 leading if:

23 A. It states the rate of finance charge and the
24 rate is not stated in the form required by the
25 provisions on disclosure; or

26 B. It states the dollar amounts of the finance
27 charge or instalment payments, and does not also
28 state the rate of any finance charge and the num-
29 ber and amount of the installment payments.

30 Sec. 57. 9-A MRSA §3-206, sub-§1, as amended by
31 PL 1981, c. 638, §§2 and 3, is further amended to
32 read:

33 1. Notice required. A consumer is not obligated
34 as a cosigner, ~~co-maker, guarantor, endorser, surety~~
35 or similar party as that term is defined in section
36 1-301, subsection 14-A, with respect to a consumer
37 credit transaction, unless, before or contemporane-
38 ously with signing any separate agreement, or any
39 writing setting forth the terms of the debtor's

1 agreement or in the case of an open-end account or
2 plan prior to the first extension of credit pursuant
3 to the plan, the consumer receives a written notice
4 conforming to the requirements of subsection 2 and
5 the following notices required to be given to the
6 debtor as applicable:

7 A. Notice of the right to cure default under Ar-
8 ticle V;

9 B. The material disclosures required under Arti-
10 cle VIII;

11 C. Notices required under Title 11, Article 9;
12 and

13 D. Notices required under Title 14, chapter 713.

14 Sec. 58. 9-A MRSA §3-206, sub-§6, as repealed
15 and replaced by PL 1985, c. 134, §1, is repealed.

16 Sec. 59. 9-A MRSA §3-206, sub-§7, as enacted by
17 PL 1981, c. 638, §8, is amended to read:

18 7. Application. This section ~~shall apply~~ applies
19 to all consumer credit transactions and open-end
20 credit plans entered into after October 1, 1982.

21 Sec. 60. 9-A MRSA §3-206, sub-§8, as enacted by
22 PL 1985, c. 134, §2, is amended to read:

23 8. Notice not required where cosigners given no-
24 tice in conformance with certain federal regulations.
25 The notice described in subsection 2 shall is not be
26 required in any consumer credit transaction or open-
27 end credit plan in which the creditor gives a notice
28 to cosigners in the form set forth in regulations
29 promulgated by the Federal Trade Commission, the Fed-
30 eral Reserve Board or the Federal Home Loan Bank
31 Board.

32 Sec. 61. 9-A MRSA §3-302, sub-§2, as enacted by
33 PL 1973, c. 762, §1, is amended to read:

34 2. If the seller contracts for a security inter-
35 est in other property pursuant to this section, the
36 rate of ~~credit service~~ finance charge thereafter on

1 the aggregate unpaid balances so secured may not ex-
2 ceed that permitted if the balances so secured were
3 consolidated pursuant to the provisions on consolida-
4 tion involving a refinancing, ~~subsection 1~~ of section
5 2-505, subsection 1. The seller has a reasonable time
6 after so contracting to make any adjustments required
7 by this section. "Seller" in this section does not
8 include an assignee not related to the original sell-
9 er.

10 Sec. 62. 9-A MRSA §3-310, sub-§1, ¶B, as enacted
11 by PL 1981, c. 138, is amended to read:

12 B. The length of time, if any, between written
13 notification of the consumer of any increase in
14 the annual percentage rate and the effective date
15 of the increase;

16 Sec. 63. 9-A MRSA §3-501, as enacted by PL 1973,
17 c. 762, §1, is amended to read:

18 §3-501. Definition: "Home solicitation sale"

19 "Home solicitation sale" means a consumer credit
20 sale of goods, other than farm equipment, or services
21 in which the seller or a person acting for him en-
22 gages in a personal solicitation of the sale at a
23 residence of the buyer and the buyer's agreement or
24 offer to purchase is there given to the seller or a
25 person acting for him which results from, or occurs
26 in connection with, direct contact by the seller or a
27 person acting on his behalf accomplished by means of
28 and including, but not limited to, a personal visit
29 or a telephone call upon the consumer, other than at
30 the seller's place of business, without the consumer
31 soliciting the initial contact. It includes a sale in
32 which the seller allows the buyer to purchase goods
33 or services pursuant to a lender credit card. It does
34 not include a sale made pursuant to a preexisting
35 open-end credit account, a sale made pursuant to pri-
36 or negotiations between the parties at a business es-
37 tablishment at a fixed location where goods or ser-
38 vices are offered or exhibited for sale, or a sale
39 which is subject to the provisions on the consumer's
40 right to rescind certain transactions of the Federal
41 Truth in Lending Act. A sale which would be a home
42 solicitation sale if credit were extended by the

1 seller is a home solicitation sale although the goods
2 or services are paid for in whole or in part by a
3 consumer loan in which the lender is subject to de-
4 fenses arising from the sale, section 3-404.

5 Sec. 64. 9-A MRSA §3-505, sub-§1, as enacted by
6 PL 1973, c. 762, §1, is amended to read:

7 1. Except as provided by the provisions on re-
8 tention of goods by the buyer, ~~subsection 3 of section~~
9 section 3-504, subsection 3, within a reasonable time
10 after a home solicitation sale has been cancelled or
11 an offer to purchase revoked, the buyer upon demand
12 must tender to the seller any goods delivered by the
13 seller pursuant to the sale but he is not obligated
14 to tender at any place other than his residence. If
15 the seller fails to demand take possession of goods
16 within a reasonable time 20 days after cancellation
17 or revocation, the goods become the property of the
18 buyer without obligation to pay for them. ~~For the~~
19 ~~purpose of this section, 40 days is presumed to be a~~
20 ~~reasonable time.~~

21 Sec. 65. 9-A MRSA §3-506, as amended by PL 1981,
22 c. 698, §19, is further amended to read:

23 §3-506. Limitation

24 This Part shall not apply to any transaction covered
25 by section 8-204, nor shall it apply to any
26 sale, by any dealer or agent or salesman of a regis-
27 tered dealer, registered pursuant to Title 32, chap-
28 ter ~~13~~ 105, of stocks, bonds, debentures or securi-
29 ties representing stocks, bonds or debentures regis-
30 tered pursuant to Title 32, chapter ~~13~~ 105 or ex-
31 pressly exempt from registration thereof.

32 Sec. 66. 9-A MRSA §4-303, as enacted by PL 1973,
33 c. 762, §1, is amended to read:

34 §4-303. Liability insurance

35 A creditor may not contract for or receive a sep-
36 arate charge for insurance against liability unless
37 the insurance covers a substantial risk of liability
38 arising out of the ownership or use of property re-
39 lated to the credit transaction; ~~and the transaction~~

1 does not involve a home repair contract as defined in
2 Title 9, chapter 360.

3 Sec. 67. 9-A MRSA §5-109, sub-§3, as amended by
4 PL 1975, c. 250, is further amended to read:

5 3. The following without limitation shall con-
6 stitute a significant impairment of the prospect of
7 payment, performance or realization of collateral:

8 A. Death, insolvency, assignment for the benefit
9 of creditors, the commencement of any proceeding
10 under any bankruptcy or insolvency laws by or
11 against debtors;

12 B. Loss, theft, substantial damage to or de-
13 struction of the collateral not covered by insur-
14 ance;

15 C. Sale or prior encumbrance of the collateral;
16 and

17 D. Failure to renew insurance on the collateral;
18 or termination of insurance on the collateral
19 when substitute insurance is not obtained before
20 the insurance coverage terminates; and

21 E. Discovery by the creditor of a misstatement
22 of a material fact in any document signed by the
23 consumer which forms part of the basis for ex-
24 tending credit.

25 Sec. 68. 9-A MRSA §5-201, sub-§4, as enacted by
26 PL 1973, c. 762, §1, is amended to read:

27 4. If a creditor has contracted for or received
28 a charge in excess of that allowed by this Act, or if
29 a debtor is entitled to a refund and a person liable
30 to the debtor refuses to make a refund within a rea-
31 sonable time after demand, the debtor may recover
32 from the creditor or the person liable in an action,
33 other than a class action, a penalty in an amount de-
34 termined by the court not less than \$250 or nor more
35 than \$1,000. In the case of a class action, the
36 class of consumers may recover from the creditor or
37 the person liable such amount as the court may allow,
38 except that as to each member of the class no minimum

1 recovery is applicable, and the total recovery for
2 any class action or series of class actions arising
3 out of the same failure to comply by the same credi-
4 tor shall not be more than the lesser of \$500,000 or
5 1% of the net worth of the creditor. In determining
6 the amount of award in any class action, the court
7 shall consider, among other relevant factors, the
8 amount of any actual damages awarded, the frequency
9 and persistence of failure of compliance by the credi-
10 tor, the resources of the creditor, the number of
11 persons adversely affected and the extent to which
12 the creditor's failure of compliance was intentional.
13 With respect to excess charges arising from open-end
14 credit, no action pursuant to this subsection may be
15 brought more than 2 years after the time the excess
16 charge was made. With respect to excess charges aris-
17 ing from other consumer credit transactions, no ac-
18 tion pursuant to this subsection may be brought more
19 than one year after the due date of the last sched-
20 uled payment of the agreement pursuant to which the
21 charge was made, or the date the agreement was paid
22 in full, whichever was earlier.

23 Sec. 69. 9-A MRSA §6-105, sub-§1, as enacted by
24 PL 1973, c. 762, §1, is amended to read:

25 1. With respect to supervised financial organi-
26 zations, all powers of the administrator under this
27 Act may be exercised by him. The powers of examina-
28 tion and investigation, section 2-305 and 6-106, and
29 administrative enforcement, section 6-108, may also
30 be exercised by the official or agency to whose su-
31 pervision the organization is subject.

32 Sec. 70. 9-A MRSA §6-106, as amended by PL 1981,
33 c. 235, §4, is repealed and the following enacted in
34 its place:

35 §6-106. Examinations and investigations

36 1. The administrator may, at any time, but not
37 more frequently than once every 3 months, conduct an
38 examination or make an investigation of any person he
39 believes has engaged in conduct governed by this Act.
40 For these purposes, the administrator shall have free
41 and reasonable access to the offices, places of busi-
42 ness and records of the person and may make and pro-

1 cure copies of those records, books, documents or
2 other tangible things without employing the subpoena
3 powers provided by subsection 2.

4 2. For the purposes of this section, the admin-
5 istrator may administer oaths or affirmations and,
6 upon his own motion or upon request of any party, may
7 subpoena witnesses, compel their attendance, adduce
8 evidence and require the production of any matter
9 which is relevant to an examination or investigation,
10 including the existence, description, nature, custo-
11 dy, condition and location of any books, documents or
12 other tangible things and the identity and location
13 of persons having knowledge of relevant facts, or any
14 other matter reasonably calculated to lead to the
15 discovery of admissible evidence.

16 3. If the person's records are located outside
17 this State, that person, at the administrator's op-
18 tion, either shall make the records available to the
19 administrator at a convenient location within the
20 State or allow the administrator or his representa-
21 tives to examine them at the place where they are
22 maintained. The administrator may designate represen-
23 tatives, including comparable officials of the state
24 in which the records are located, to inspect them on
25 the administrator's behalf.

26 4. If the administrator finds a violation of
27 this Act, he may notify any party to the transaction
28 involved.

29 5. If any individual without lawful excuse fails
30 to obey a subpoena or to give testimony when directed
31 to do so by the administrator or obstructs the pro-
32 ceedings by any means, whether or not in the presence
33 of the administrator, that individual is guilty of
34 contempt. The administrator, through the Attorney
35 General, may file a complaint in the Superior Court
36 setting forth the facts constituting the contempt and
37 requesting an order returnable in not less than 2
38 days nor more than 5 days, directing the alleged
39 contemner to show cause before the court why he
40 should not be punished for contempt. If the court de-
41 termines that the respondent has committed any al-
42 leged contempt, the court shall punish the offender
43 for contempt.

1 6. The expenses of the administrator necessarily
2 incurred in the examination or investigation of any
3 person engaged in conduct governed by this Act shall
4 be chargeable to that person. That person shall be
5 assessed for the actual expenses incurred by the ad-
6 ministrator, including, but not necessarily limited
7 to, travel expenses and the proportionate part of the
8 salaries and expenses of examiners engaged in the ex-
9 amination or investigation. Notice of the assessment
10 of those costs shall be given to the person by the
11 administrator as soon as feasible after the close of
12 the examination or investigation and the person shall
13 have the time specified by the administrator to pay
14 the assessment, which may not be less than 30 days.

15 Sec. 71. 9-A MRSA §6-203, sub-§4, as enacted by
16 PL 1973, c. 762, §1, is repealed.

17 Sec. 72. 9-A MRSA §6-204, sub-§1, as amended by
18 PL 1983, c. 720, §21, is further amended to read:

19 1. The administrator may impose a penalty of \$5
20 per day on any person failing to comply with the re-
21 quirements of sections 6-106, subsection 6; 6-202 and
22 6-203.

23 Sec. 73. 9-A MRSA §6-204, sub-§§2 and 3, as
24 amended by PL 1985, c. 763, Pt. A, §52, are further
25 amended to read:

26 2. No penalty may be imposed if the fees re-
27 quired by section 6-203, subsections 1 to 3, are paid
28 not more than 30 days after the date established in
29 section 6-202, subsection 1, or if the expenses of
30 examination or investigation incurred by the adminis-
31 trator pursuant to section 6-203, subsection 4 6-106,
32 subsection 6, are paid within the time period pre-
33 scribed by the administrator which shall not be less
34 than 30 days of receipt of notice by the examinee of
35 their assessment.

36 3. If a licensee fails to pay the fees required
37 by section 6-203, subsections 1 to 3 on or before
38 February 20th of any year, or if the licensee fails
39 to pay the expenses of examination or investigation
40 of the administrator within the time period pre-
41 scribed by the administrator which shall not be less

1 than 30 days of receipt of the notice of assessment,
2 the failure may be treated by the administrator as
3 grounds for revocation of the license.

4 Sec. 74. 9-A MRSA §8-105, sub-§2, ¶B, as enacted
5 by PL 1981, c. 243, §25, is amended to read:

6 B. In order to obtain the insurance in connec-
7 tion with the extension of credit, the person to
8 whom the credit is extended shall give specific
9 affirmative written indication of his desire to
10 do so after written disclosure to him of the cost
11 thereof. ~~The cost disclosed shall be the total~~
12 ~~cost of the insurance over the term of the credit~~
13 ~~transaction if the term of the transaction is 10~~
14 ~~years or less.~~

15 Sec. 75. 9-A MRSA §8-105, sub-§3, as enacted by
16 PL 1981, c. 243, §25, is amended to read:

17 3. Charges or premiums for insurance, written in
18 connection with any consumer credit transaction,
19 against loss of or damage to property or against lia-
20 bility arising out of the ownership or use of prop-
21 erty, shall be included in the finance charge unless a
22 clear and specific statement in writing is furnished
23 by the creditor to the person to whom the credit is
24 extended, setting forth the ~~total~~ cost of the insur-
25 ance if obtained from or through the creditor, and
26 stating that the person to whom the credit is ex-
27 tended may choose the person through which the insur-
28 ance is to be obtained.

29 Sec. 76. 9-A MRSA §8-204, sub-§5, ¶D, as amended
30 by PL 1983, c. 720, §22, is further amended to read:

31 D. Advances under a preexisting open-end credit
32 plan if a security interest has already been re-
33 tained or acquired in conformance with this sec-
34 tion and such advances are in accordance with a
35 previously established credit limit for such plan
36 adopted in conformance with this section. This
37 paragraph shall cease to be effective on whatever
38 day the United States Code, Title 15, Section
39 1635, subsection e, paragraph 1, subparagraph B,
40 is made ineffective under federal law.

