

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 122

H.P. 87

House of Representatives, February 9, 1989

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

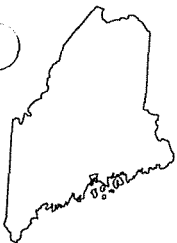
Presented by Representative ALLEN of Washington.

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

STATE OF MAINE

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

An Act Relating to Credit Services Organizations.



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

3 Sec. 1. 9-A MRSA §1-301, sub-§5-A, as repealed and replaced by
PL 1987, c. 129, §14, is repealed.

5 Sec. 2. 9-A MRSA §6-201, as amended by PL 1979, c. 660, §10,
7 is further amended to read:

9 **§6-201. Applicability**

11 This Part applies to a person engaged in this State in
entering into ~~or, for the purposes of section 6-202 only,~~
13 ~~arranging for the extension of~~ consumer credit transactions and
to a person having an office or place of business in this State
15 who takes assignments of and undertakes direct collection of
payments from or enforcement of rights against debtors arising
17 from these transactions.

19 Sec. 3. 9-A MRSA Art. X is enacted to read:

21 ARTICLE X

23 CREDIT SERVICES ORGANIZATIONS

25 PART 1

27 GENERAL PROVISIONS

29 §10-101. Short title

31 This article shall be known and may be cited as the "Maine
33 Consumer Credit Code--Credit Services Organizations."

35 §10-102. Definitions

37 As used in this article, unless the context otherwise
indicates, the following words have the following meanings.

41 1. "Credit services organization":

43 A. "Credit services organization" means any person who,
45 with respect to the extension of consumer credit by others,
47 provides or offers to provide, in return for the payment of
money or other valuable consideration, any of the following
services:

49 (1) Improving a consumer's credit record, history or
51 rating;

(2) Arranging for or obtaining an extension of credit for a consumer; or

(3) Providing advice or assistance to a consumer with respect to subparagraph (1) or (2).

B. "Credit services organization" does not include:

(1) A supervised financial organization;

(2) A supervised lender;

(3) A licensed real estate broker;

(4) An attorney-at-law;

(5) Any nonprofit organization exempt from taxation under the Internal Revenue Code, Section 501(c) (3); or

(6) A consumer reporting agency, as defined in the Fair Credit Reporting Act, Title 10, chapter 210.

2. "Bona fide 3rd-party fee" means a verifiable fee paid to a 3rd party for a credit report, appraisal, investigation, title examination or survey.

PART 2

REGISTRATION AND BONDING

§10-201. Registration and annual reregistration

A person desiring to engage or continue in business as a credit services organization shall apply to the administrator for registration under this article. The application shall be in a form prescribed by the administrator. The administrator may refuse the application if it contains erroneous or incomplete information.

The application shall include an initial fee of \$200. Reregistrations, annually, shall include a fee of \$100.

§10-202. Bond

Each application shall be accompanied by evidence of a bond, in a form approved by the administrator in the amount of \$10,000, to run to the State for the use of the State and of any person or persons who may have a cause of action against a credit services organization.

PART 3

REGULATION OF PRACTICES

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3
§10-301. Escrow of funds

5 All funds other than bona fide 3rd-party fees shall be
7 placed in escrow pending completion of services offered. With
9 respect to credit services organizations offering to arrange for
 or obtain extensions of credit for consumers, or provide advice
 or assistance therefor, "completion of services offered" means
 procurement of credit under the terms agreed to by the parties.

11 §10-302. Advertising

13 1. No credit services organization may engage in this State
15 in false or misleading advertising concerning the terms and
 conditions of any services or assistance offered.

17 2. This section imposes no liability on the owner or
19 personnel of any medium in which an advertisement appears or
 through which it is disseminated.

21 §10-303. Rulemaking

23 The administrator may adopt reasonable rules pursuant to the
25 Maine Administrative Procedure Act, Title 5, chapter 375, and in
27 accordance with this article governing credit services
 organizations.

29 PART 4

31 REMEDIES AND PENALTIES

33 §10-401. Effects of violations on rights of parties

35 Any credit services organization which violates any
37 provision of this article or any rule issued by the administrator
 is subject to the following:

39 1. After notice and hearing, a cease and desist order from
 the administrator;

41 2. After notice and hearing, forfeiture of such portion of
43 the required bond as proportionately may make aggrieved parties
 whole; and

45 3. A civil action, by the administrator through the
47 Attorney General, after which a court, upon a finding of repeated
49 or willful violations, or of violation of an assurance of
 discontinuance, may assess a civil penalty of not more than
 \$5,000.

STATEMENT OF FACT

This bill requires registration and bonding of credit services organizations, which are defined to include persons who charge a fee to assist consumers to obtain credit for 3rd parties (so-called "arrangers of credit" or "loan brokers"), and persons who charge a fee to improve consumers' credit reports or ratings ("credit clinics" or "credit repair services"). Arrangers of credit have historically been required to register with the Bureau of Consumer Credit Protection, but without any bonding to protect consumers; credit clinics are not currently required to register or provide a bond. Both categories of businesses are growing in Maine, and many consumers have contacted the bureau with claims of misrepresentation, nonperformance and fraud. Arrangers of credit have taken large amounts of money from consumers without procuring any loans. "Credit clinics" claim to be able to erase bad credit, then charge fees merely to instruct consumers to flood credit reporting agencies with ineffective, frivolous appeals. Increasingly, credit clinics are also instrumental in setting consumers up with "fully secured" credit cards, in which consumers deposit \$500 with a credit card issuer, and get a credit card good for up to \$500 worth of merchandise in specific catalogs. With this bill, Maine would join approximately 20 other states in regulating the practices of, and requiring protective bonds from, credit services organizations.