

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1649

S.P. 589

In Senate, January 6, 1994

An Act to Promote Equitable Penalties for Unlicensed Consumer Lending.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.
Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CARPENTER of York.
Cosponsored by Senator: BRANNIGAN of Cumberland, Representatives: CARLETON of Wells, REED of Falmouth.

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

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4 **Sec. 1. 9-A MRSA §5-201, sub-§2,** as amended by PL 1985, c. 763, Pt. A, §46, is further amended to read:

6 2. If a creditor has violated the provisions of this Act
8 applying to authority to make supervised loans, section 2-301,
10 the debtor is not obligated to pay any application fee, prepaid
12 finance charge or closing cost, nor the loan finance charge owed
14 for the first 12 months of the loan. If he the debtor has paid
16 any part of the application fee, prepaid finance charge, closing
18 cost or loan finance charge owed for the first 12 months of the
20 loan, he the debtor has a right to recover the payment from the
22 person violating this Act or from an assignee of that person's
rights who undertakes direct collection of payments or
enforcement of rights arising from the debt. With respect to
violations arising from loans made pursuant to open-end credit,
no action pursuant to this subsection may be brought more than 2
years after the violation occurred. With respect to violations
arising from other loans, no action pursuant to this subsection
may be brought more than one year after the due date of the last
scheduled payment of the agreement pursuant to which the charge
was paid.

24 **Sec. 2. 9-A MRSA §5-201, sub-§8,** as enacted by PL 1973, c.
26 762, §1, is amended to read:

28 8. If the creditor establishes by a preponderance of
30 evidence that a violation is unintentional ~~er~~ and the result of a
32 bona fide error notwithstanding the maintenance of procedures
reasonably adapted to avoid any such violation or error, no
34 liability is imposed under subsections 1,-2 and 3, the validity
of the transaction is not affected, and no liability is imposed
under subsection 4, except for refusal to make a refund.

36 **Sec. 3. 9-A MRSA §9-405, sub-§§4 and 7,** as enacted by PL 1987,
38 c. 396, §12, are amended to read:

40 4. If a creditor has violated the provisions of this
42 article applying to authority to make supervised loans, section
44 9-201, the debtor is not obligated to pay any application fee,
46 prepaid finance charge or closing cost, nor the loan finance
charge owed for the first 12 months of the loan. If he the
debtor has paid any part of the application fee, prepaid finance
charge, closing cost or loan finance charge owed for the first 12
months of the loan, he the debtor has a right to recover the
payment from the person violating this article or from an
assignee of that person's rights who undertakes direct collection
of payments or enforcement of rights arising from the debt. No
action pursuant to this subsection may be brought more than one

2 year after the due date of the last scheduled payment of the
agreement pursuant to which the charge was paid.

4 7. If the creditor establishes by a preponderance of
6 evidence that a violation is unintentional ~~or~~ and the result of a
8 bona fide error notwithstanding the maintenance of procedures
10 reasonably adapted to avoid any such violation or error, no
liability is imposed under subsections 1, and 2 and--4, the
validity of the transaction is not affected, and no liability is
imposed under subsection 3, except for refusal to make a refund.

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14 **STATEMENT OF FACT**

16 Under current law, the penalty for a creditor making loans
18 without first having obtained or renewed a supervised lender
license is forfeiture of all interest for the full term of each
20 loan. The purpose of this bill is to bring the penalty more in
line with the severity of the violation, while retaining
22 sufficient deterrence to nonlicensed lending. Under this bill,
if a creditor makes a loan without first obtaining or renewing
the supervised lending license, the creditor forfeits the
24 application fee, prepaid finance charge, closing cost and the
loan finance charge owed for the first 12 months of the loan.

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32 **This document has not yet been reviewed to determine the
need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.**
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