

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1156

H.P. 877

House of Representatives, February 28, 2001

**An Act to Update the Maine Consumer Credit Code Regarding Rental-purchase Agreements.**

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Reference to the Committee on Business and Economic Development suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative DUDLEY of Portland.

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

2  
4       **Sec. 1. 9-A MRSA §11-104, sub-§2**, as enacted by PL 1991, c. 787, is amended to read:

6           2. The consumer is a resident of this State at the time the  
8 merchant, wherever located, offering the rental-purchase  
10 agreement solicits the rental-purchase agreement or modification  
of the rental-purchase agreement in this State, whether the  
solicitation is made personally, by mail or by telephone.

12 For the purposes of this Article, the residence of the consumer  
14 is the address given by the consumer as the consumer's residence  
in any writing signed by the consumer in connection with the  
16 rental-purchase agreement. Unless the consumer notifies the  
merchant of a new or different residence address, the given  
residence address is presumed to be unchanged.

18       **Sec. 2. 9-A MRSA §11-105, sub-§§2 and 3**, as enacted by PL 1991,  
20 c. 787, are amended to read:

22           2. "Advertisement" means a commercial message in any medium  
24 that directly or indirectly aids, promotes or assists a  
rental-purchase agreement, but does not include in-store  
merchandising aids such as window signs and ceiling banners.

26           3. "Cash price" means the price for which the merchant  
28 would sell the property to the consumer for cash on the date of  
the rental-purchase agreement. The ~~"cash-price"~~ cash price must  
30 be reasonably related to the fair market value of the property.  
Either of the following is conclusive evidence of a reasonable  
32 relationship to fair market value for new property, but a  
reasonable relationship may also be demonstrated by other  
34 evidence:

36           A. Published prices or advertisements by retailers of  
similar products selling in the same trade area in which the  
38 merchant is located, if the prices were published or  
disseminated within the 90-day period preceding consummation  
40 of the rental-purchase agreement; or

42           B. Cash price in an amount not exceeding twice the bona  
fide actual cost, including freight charges, of the rental  
44 property to the merchant from a wholesaler, distributor or  
manufacturer, net of volume rebates, discounts or incentives  
46 received by the merchant for the specific item and known by  
the merchant at the time the merchant purchased the item.

2 The cash price for used property must be reduced to reflect the  
3 age and condition of the property and may not exceed the cash  
4 price of the new property when new.

6 **Sec. 3. 9-A MRSA §11-105, sub-§§5-A, 5-B, 6-A to 6-C, 8 and 9** are  
7 enacted to read:

8 5-A. "Debt" means an obligation or alleged obligation of a  
9 consumer to surrender or return rental property or pay money  
10 arising out of a rental-purchase agreement.

12 5-B. "Location information" means a consumer's place of  
13 residence and the consumer's telephone numbers at that location  
14 and at the consumer's place of employment.

16 6-A. "Periodic payment" means the total payment the  
17 consumer will make for a specific rental period, including the  
18 rental payment, any administrative fees or delivery charges,  
19 taxes and fees or charges for optional products and services.

20 6-B. "Rental payment" means a payment to be made by a  
21 consumer for the right of possession and use of rental property  
22 for a specific rental period, but does not include taxes imposed  
23 on such payment.

26 6-C. "Rental period" means a week, month or other specific  
27 period of time during which the consumer has a right to possess  
28 and use the property after making the rental payment and  
29 applicable tax payment for such period.

30 8. "Rental-purchase cost" means the total of charges  
31 payable by the consumer and imposed by the merchant as a  
32 condition of entering into and acquiring ownership of property  
33 under a rental-purchase agreement. "Rental-purchase cost"  
34 includes rental payments and any initial administrative fees, but  
35 does not include taxes, delivery charges, late charges, payment  
36 pick-up fees or any optional charges or fees that meet the  
37 requirements of section 11-111, subsection 4.

40 9. "Total of payments to acquire ownership" means the total  
41 of all charges payable by the consumer to acquire ownership of  
42 the rental property. "Total of payments to acquire ownership"  
43 includes the rental-purchase cost and taxes, but does not include  
44 taxes, delivery charges, late charges, payment pick-up fees or  
45 any optional charges or fees that meet the requirements of  
46 section 11-111, subsection 4.

48 **Sec. 4. 9-A MRSA §11-107, sub-§3,** as enacted by PL 1991, c.  
49 787, is amended to read:

50

2 3. The disclosure must be made clearly and conspicuously,  
4 in a clear and coherent manner, in writing, in type size not less  
6 than 8-point standard type and appropriately divided and  
8 captioned by various sections. A copy of the rental-purchase  
10 agreement must be provided to the consumer. If more than one  
12 consumer executes a rental-purchase agreement, the merchant shall  
provide a copy of the agreement to each consumer. The disclosure  
required under section 11-108 must be made ~~en-the-face-of-the~~  
~~contract~~ above the line for the consumer's signature. If  
disclosures are made on more than one page, the contract complies  
with this subsection if the consumer signs each page of the  
contract.

14 **Sec. 5. 9-A MRSA §11-107, sub-§5** is enacted to read:

16 5. A merchant may disclose information that is not required  
18 by this Article if the additional information is not stated, used  
or placed in a manner that contradicts, obscures or distracts  
attention from the required information.

20 **Sec. 6. 9-A MRSA §11-108, sub-§1, ¶¶A and B,** as enacted by PL  
22 1991, c. 787, are repealed.

24 **Sec. 7. 9-A MRSA §11-108, sub-§1, ¶C,** as enacted by PL 1991, c.  
26 787, is amended to read:

28 C. A statement that the consumer is responsible for the  
fair market value, remaining rent, early purchase option  
30 amount or cost of repair of the property, whichever is  
least, if, and as of the time, it is lost, stolen, damaged  
or destroyed;

32 **Sec. 8. 9-A MRSA §11-108, sub-§1, ¶F,** as enacted by PL 1991, c.  
34 787, is repealed.

36 **Sec. 9. 9-A MRSA §11-108, sub-§1, ¶¶G and L,** as enacted by PL  
38 1991, c. 787, are amended to read:

40 G. A statement that the total amount of payments does not  
include other charges the consumer may incur, such as  
42 late-payment and payment pick-up fees. Late-payment and  
payment pick-up fees must be separately disclosed in the  
agreement;

44 L. A statement that the consumer may terminate the  
46 agreement without penalty by voluntarily surrendering or  
returning the property to the merchant in good repair upon  
48 on or before the expiration of any rental term period along  
with any past due rental payments;

50

Sec. 10. 9-A MRSA §11-108, sub-§§2 and 3 are enacted to read:

2  
4 2. To the extent applicable, the following information must  
4 be disclosed and grouped together in each rental-purchase  
6 agreement:

6  
8 A. The amount of the payment required at or before  
10 consummation of the agreement or delivery of the property,  
12 whichever is later, using the term "initial periodic  
14 payment." The merchant shall itemize each component of the  
16 initial periodic payment by type and amount, including any  
18 initial administrative fee, delivery charge, rental payment,  
20 taxes and fees or charges for optional products or services;

14  
16 B. The amount of the regular periodic payment. The merchant  
18 shall itemize each component of the regular periodic payment  
20 by type and amount, including any initial administrative  
22 fee, delivery charge, rental payment, taxes and fees or  
24 charges for optional products or services. If the final  
26 periodic payment is less than or equal to the regular  
28 periodic payment, the components of the final periodic  
30 payment need not be itemized;

24  
26 C. The rental purchase cost and a brief description of the  
28 total of the initial administrative fee and all rental  
30 payments necessary to acquire ownership. If a  
32 rental-purchase agreement involves the rental of 2 or more  
34 items, the merchant may disclose the aggregate  
36 rental-purchase cost for all items;

30  
32 D. The total of payments and a brief description of the  
34 total amount the consumer will have paid, including the  
36 rental-purchase cost and taxes, if the consumer acquires  
38 ownership of the property by making all scheduled payments,  
40 but not including late charges or payment pick-up fees the  
42 consumer may incur or charges for optional products or  
44 services the consumer may elect to purchase;

38  
40 E. A statement in substantially the following form in no  
42 less than 8-point boldface type: "YOU WILL BE RENTING THE  
44 PROPERTY. YOU WILL NOT ACQUIRE EQUITY OR OWNERSHIP RIGHTS IN  
46 THE PROPERTY UNLESS YOU MAKE ALL PAYMENTS NECESSARY TO  
48 ACQUIRE OWNERSHIP";

44  
46 F. The following statement: "Other important terms. See  
48 your rental-purchase agreement for additional important  
50 information on termination, purchase option, reinstatement  
rights, warranties, maintenance responsibilities, late  
charges, payment pick-up fees and your liability for loss,  
theft or destruction of the property"; and

2           G. The payment schedule and a brief description of the  
4           number, amount and due dates or periods of payments  
              scheduled under the agreement. A merchant may also disclose  
6           alternative periodic payments and payment schedules.

8           3. A merchant is deemed to comply with the disclosure  
              provisions of subsection 2 with respect to other than the  
10           sufficiency or accuracy of the disclosures provided by the  
              merchant if the merchant uses a model form adopted by the  
12           Department of Professional and Financial Regulation, Office of  
              Consumer Credit Regulation through rulemaking. Rules adopted  
14           pursuant to this subsection are routine technical rules as  
              defined in Title 5, chapter 375, subchapter II-A. Use of such a  
16           model form is optional.

18           **Sec. 11. 9-A MRSA §11-109, sub-§12**, as enacted by PL 1991, c.  
              787, is amended to read:

20           ~~12. An offer of~~ A provision requiring the consumer to  
22           purchase insurance from the merchant to the consumer.

24           **Sec. 12. 9-A MRSA §11-111**, as enacted by PL 1991, c. 787, is  
              amended to read:

26           **§11-111. Allowable charges**

28           In addition to rental payments, a merchant may contract for  
30           and receive the following charges or fees.

32           1. An initial administrative fee not to exceed ~~\$15~~ \$22.50  
              ~~may be assessed only once per consumer regardless of the number~~  
34           ~~of rental purchase agreements entered into by the consumer and~~  
              but the fee must be refunded to the consumer if the rental  
36           agreement is not consummated. If a consumer enters into more  
              than one rental purchase agreement with a merchant on the same  
38           day, only one initial administrative fee may be assessed.

40           2. An optional delivery charge may not exceed ~~\$20~~ \$30 for 3  
              or fewer items actually delivered or ~~\$40~~ \$60 for 4 or more items  
42           actually delivered.

44           3. An optional payment pick-up fee may not exceed ~~\$5~~ \$7.50  
              and may be assessed only once per payment.

46           4. A liability damage waiver fee may be contracted for and  
48           received pursuant to section 11-115.

50           **Sec. 13. 9-A MRSA §11-113**, as enacted by PL 1991, c. 787, is  
              amended to read:

2       **§11-113. Reinstatement**

4           1. A consumer who fails to make a timely rental payment but  
has returned or surrendered the merchandise, ~~made arrangements~~  
6 ~~for its return or surrendered the property upon the rental~~  
~~property to the merchant within 7 days after missing a payment or~~  
8 ~~within 2 days of the merchant's request, whichever comes later,~~  
may reinstate the agreement without losing any rights or options  
10 that exist under the agreement by payment of:

12           A. All past due rental charges; and

14           B. Other charges expressly provided in this Article, except  
any initial administrative fee.

16           ~~2. Whenever a consumer has paid less than 1/3 of the total~~  
18 ~~of payments necessary to acquire ownership and is in default or~~  
~~the property has been returned other than through order of the~~  
20 ~~court, the consumer may reinstate the agreement during a period~~  
~~of not less than 45 days after the date of the default or the~~  
22 ~~return of the property.~~

24           ~~3. Whenever a consumer has paid more than 1/3 but less~~  
~~than 2/3 of the total of payments necessary to acquire ownership~~  
26 ~~and is in default or the property has been returned other than~~  
~~through order of the court, the consumer may reinstate the~~  
28 ~~agreement during a period of not less than 90 days after the date~~  
~~of the default or the return of the property.~~

30           4. Whenever a consumer has paid more than 2/3 of the total  
32 of payments necessary to acquire ownership and is in default or  
the property has been returned other than through order of the  
34 court, A consumer who has returned or surrendered  
the rental property within the reinstatement period set forth in  
36 subsection 1 may reinstate the agreement during a period of not  
less than 180 days after the date of the default ~~or the return of~~  
38 ~~the property~~ missed payment.

40           5. Nothing in this section prevents a merchant from  
attempting to repossess property during the reinstatement period,  
42 but such a repossession does not affect the consumer's right to  
reinstate.

44           6. Upon reinstatement, the merchant shall provide the  
46 consumer with the same property or substitute property of  
comparable quality and condition.

48           **Sec. 14. 9-A MRSA §11-115, first ¶,** as enacted by PL 1991, c.  
50 787, is amended to read:



2           In addition to the other charges permitted by this Article,  
4 the parties may contract for a liability damage waiver. The fee  
6 for the liability damage waiver may not exceed the greater of 5%  
8 of any periodic rental payment due or \$2 in the case of any  
10 rental-purchase agreement with ~~weekly-or-biweekly~~ renewal dates  
12 periods more frequent than monthly or the greater of 5% of any  
14 periodic rental payment due or \$5 ~~\$7.50~~ in the case of any  
16 rental-purchase agreement with monthly renewal dates. The  
18 selling or offering for sale of a liability damage waiver  
20 pursuant to this Article is subject to the following prohibitions  
22 and requirements.

24           **Sec. 15. 9-A MRSA §11-115, sub-§3**, as enacted by PL 1991, c.  
26 787, is amended to read:

28           **3.** The liability damage waiver agreement must include a  
30 statement of the total charge for the liability damage waiver and  
32 must display in 8-point boldface type the following notice or a  
34 notice in a substantially similar form:

36 NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A  
38 LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE  
40 TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE  
42 LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR  
44 HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE  
46 TO THE RENTAL PROPERTY AND THE AMOUNT OF THE DEDUCTIBLE UNDER  
48 YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY  
50 DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

**Sec. 16. 9-A MRSA §11-115, sub-§4** is enacted to read:

**4.** A liability damage waiver may not be a factor in the  
approval by the merchant of the rental-purchase transaction and  
the contract may take effect only after the consumer has signed  
or initialed an affirmative request to purchase the liability  
damage waiver after written disclosure of the cost of the  
liability damage waiver.

**Sec. 17. 9-A MRSA §11-118**, as enacted by PL 1991, c. 787, is  
amended to read:

**§11-118. Advertising and point-of-sale disclosure**

**1.** An advertisement for a rental-purchase agreement that  
refers to or states the dollar amount of any payment for a  
specific item must state clearly and conspicuously:

**A.** That the transaction advertised is a rental-purchase  
agreement;

2 B. ~~The total amount of payments, including any initial fee,~~  
4 ~~necessary to acquire ownership rental-purchase cost;~~ and

6 C. That the consumer does not acquire ownership rights if  
8 until the total amount of payments necessary to acquire  
ownership is not paid.

10 2. ~~If For~~ any item of property is displayed or offered for  
12 ~~rent with a point-of-sale rental-purchase, the merchant shall~~  
14 ~~display a point-of-rental placard, that refers to or states the~~  
~~amount of any weekly or monthly payment, the point-of-sale~~ The  
point-of-rental placard must state, in numerals and lettering at  
least as prominent as the payment price, the following:

16 A. The number of weekly or monthly rental payments necessary  
18 to acquire ownership of the item; and

20 B. The ~~total amount of payments necessary to acquire~~  
~~ownership rental-purchase cost~~ of the item.

22 3. An owner or the personnel of a medium in which an  
24 advertisement appears or through which an advertisement is  
disseminated is not liable under this section.

26 4. A merchant may make the disclosures required by  
28 subsection 2 in the form of a list or catalog that is readily  
30 available to the consumer if the property is not displayed in the  
merchant's showroom or if displaying a point-of-rental placard  
would be impractical due to the size of the property.

32 This section does not apply to an advertisement that does  
34 not refer to or state the amount of any payment.

36 **Sec. 18. 9-A MRSA §11-119**, as enacted by PL 1991, c. 787, is  
repealed and the following enacted in its place:

38 **§11-119. Collection activity**

40 The following provisions govern the debt collection  
42 practices of merchants under this Article.

44 1. A merchant communicating with any person other than the  
consumer for the purpose of acquiring location information about  
46 the consumer may:

48 A. Identify the merchant; state that the merchant is  
confirming or correcting location information concerning the  
50 consumer; and, only if expressly requested, identify the  
merchant's employer;

2           B. Not state that the consumer owes any debt;

4           C. Not communicate with such a person more than once,  
6           unless requested to do so by that person or unless the  
8           merchant reasonably believes that the earlier response of  
          that person was erroneous or incomplete and that the person  
          now has correct or complete location information;

10          D. Not communicate by postcard;

12          E. Not use language or a symbol on an envelope or in the  
14          contents of a communication effected by the mails or by  
          telegram that indicates that the communication relates to  
          the collection of a debt; and

16          F. After the merchant knows the consumer is represented by  
18          an attorney with regard to the subject debt and has  
20          knowledge of, or can readily ascertain, that attorney's name  
22          and address, not communicate with any person other than that  
          attorney, unless the attorney fails to respond within a  
          reasonable period of time to communication from the merchant.

24          2. Without the prior consent of the consumer given directly  
26          to the merchant or the express permission of a court of competent  
          jurisdiction, a merchant may not communicate with a consumer in  
          connection with the collection of any debt:

28                 A. At an unusual time or place or a time or place known or  
30                 that should be known to be inconvenient to the consumer. In  
32                 the absence of knowledge of circumstances to the contrary, a  
34                 merchant shall assume that the convenient time for  
               communicating with a consumer is after 8 a.m. and before 9  
               p.m. local time at the consumer's location;

36                 B. If the merchant knows that the consumer is represented  
38                 by an attorney with respect to that debt and has knowledge  
40                 of, or can readily ascertain, that attorney's name and  
42                 address, unless the attorney fails to respond within a  
               reasonable period of time to a communication from the  
               merchant or unless the attorney consents to direct  
               communication with the consumer; or

44                 C. At the consumer's place of employment if the merchant  
46                 knows or has reason to know that the consumer's employer  
               prohibits the consumer from receiving a communication.

48          3. Except as provided in subsection 1, without the prior  
50          consent of the consumer given directly to the merchant or the  
          express permission of a court of competent jurisdiction, or

2 except as reasonably necessary to effectuate a post-judgment  
3 judicial remedy, a merchant may not communicate, in connection  
4 with the collection of a debt, with a person other than the  
5 consumer, the consumer's attorney, a consumer reporting agency if  
6 otherwise permitted by law, the creditor, the attorney of the  
7 creditor or the attorney of the merchant.

8 4. A merchant may not engage in conduct the natural  
9 consequence of which is to harass, oppress or abuse a person in  
10 connection with the collection of a debt. Without limiting the  
11 general application of this subsection, the following conduct is  
12 a violation of this section:

14 A. The use or threat of use of violence or other criminal  
15 means to harm the physical person, reputation or property of  
16 a person;

18 B. The use of obscene or profane language or language the  
19 natural consequence of which is to abuse the hearer or  
20 reader;

22 C. The publication of a list of consumers who allegedly  
23 refuse to pay debts, except to a consumer reporting agency  
24 or to persons meeting the requirements of Title 10, chapter  
25 210;

26 D. The advertisement for sale of a debt to coerce payment  
27 of the debt;

30 E. Causing a telephone to ring or engaging a person in  
31 telephone conversation repeatedly or continuously with  
32 intent to annoy, abuse or harass a person at the called  
33 number;

34 F. Except as provided in subsection 1, the placement of  
35 telephone calls without meaningful disclosure of the  
36 caller's identity; and

38 G. The use of "shame cards," "shame automobiles" or similar  
39 devices, except that delivery vehicles used by the merchant  
40 in the ordinary course of business may not be considered  
41 "shame automobiles."

44 5. A merchant may not use a false, deceptive or misleading  
45 representation or means in connection with the collection of a  
46 debt. Without limiting the general application of this  
47 subsection, the following conduct is a violation of this section:

48 A. The false representation or implication that the debt  
49 collector is vouched for, bonded by or affiliated with the  
50 merchant;

2 United States or any state, including the use of any badge,  
uniform, seal, insignia or facsimile;

4 B. The false representation of the character, amount or  
legal status of a debt;

6 C. The false representation or implication that an  
8 individual is an attorney or that a communication is from an  
10 attorney;

12 D. The representation or implication that nonpayment of a  
debt will result in the arrest or imprisonment of a person  
14 or the seizure, garnishment, attachment or sale of property  
or wages of a person, unless that action is lawful and the  
16 debt collector or creditor intends to take that action;

18 E. The threat to take an action that may not legally be  
taken or that is not intended to be taken;

20 F. The false representation or implication that a sale,  
referral or other transfer of any interest in a debt will  
22 cause the consumer to:

24 (1) Lose a claim or defense to payment of the debt; or

26 (2) Become subject to a practice prohibited by this  
28 Article;

30 G. The false representation or implication that the  
consumer committed a crime or other conduct in order to  
32 disgrace the consumer;

34 H. Communicating or threatening to communicate to any  
person credit information that is known or that should be  
36 known to be false, including the failure to communicate that  
a disputed debt is disputed;

38 I. The use or distribution of a written communication that  
simulates or is falsely represented to be a document  
40 authorized, issued or approved by a court, official or  
agency of the United States or any state, or that creates a  
42 false impression as to its source, authorization or approval;

44 J. The use of a false representation or deceptive means to  
collect or attempt to collect a debt or to obtain  
46 information concerning a consumer;

48 K. The false representation or implication that accounts  
have been turned over to innocent purchasers for value;  
50

2           L. The false representation or implication that documents  
3           are legal process;

4           M. The use of a business, company or organization name  
5           other than the true name of the merchant's business, company  
6           or organization;

7           N. The false representation or implication that documents  
8           are not legal process forms or do not require action by the  
9           consumer; or

10           O. The false representation or implication that a merchant  
11           operates or is employed by a consumer reporting agency, as  
12           defined by Title 10, section 1312, subsection 4.

13           6. A merchant may not use unfair or unconscionable means to  
14           collect or attempt to collect a debt. Without limiting the  
15           general application of this subsection, the following conduct is  
16           a violation of this section:

17           A. The collection of an amount, including any interest,  
18           fee, charge or expense incidental to the principal  
19           obligation, unless the amount is expressly authorized by the  
20           agreement creating the debt or permitted by law;

21           B. The solicitation by a merchant of any postdated check or  
22           other postdated payment instrument for the purpose of  
23           threatening or instituting criminal prosecution;

24           C. Depositing or threatening to deposit any postdated check  
25           or other postdated payment instrument prior to the date on  
26           the check or instrument;

27           D. Causing charges to be made to a person for  
28           communications by concealment of the true purpose of the  
29           communication. These charges include, but are not limited  
30           to, collect telephone calls and telegram fees;

31           E. Communicating with a consumer regarding a debt by  
32           postcard;

33           F. Using language or a symbol, other than the merchant's  
34           address and business name, on an envelope when communicating  
35           with a consumer in connection with a debt; or

36           G. Using or employing notaries public, constables, sheriffs  
37           or any other officer authorized to serve legal papers in the  
38           collection of a debt.

