

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**  
AS PASSED BY THE

**ONE HUNDRED AND TENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
December 3, 1980 to June 19, 1981

**AND AT THE**

**FIRST SPECIAL SESSION**  
August 3, 1981

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION

of the  
ONE HUNDRED AND TENTH LEGISLATURE

1981

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Any person, firm, association, partnership, corporation or other legal entity who makes or causes to be made or presents or causes to be presented for payment or approval any claim upon or against the department or upon any funds administered by the department, knowing such claim to be false, fictitious or fraudulent or who, for the purpose of obtaining or aiding another to obtain the payment or approval of such a claim, makes any false written statement or submits any false document which he does not believe to be true, or who enters into any agreement, combination or conspiracy to defraud the department by obtaining the payment or approval of any false, fictitious or fraudulent claim, shall, in addition to any criminal liability which may be provided by law, be subject to civil suit by this State in the Superior Court for recovery of damages to include the following:

1. Restitution. Restitution for all excess benefits or payments made;
2. Payment of interest. Payment of interest on the amount of the excess benefits or payments as set forth in subsection 1 at the maximum legal rate in effect on the date the payment was made and computed for the date payment was made to the date on which repayment is made;
3. Payment of damages. Payment of damages, without regard to the amount in controversy, in an amount which is threefold the amount of such excess benefits or payments as set forth in subsection 1, but in any case not less than \$2,000 for each false claim for assistance, benefits or payments, or for each document submitted in support of such false claim, whichever is the greater amount; and
4. Cost of the suit. Cost of the suit.

Sec. 3. 22 MRSA § 3024, as last amended by PL 1979, c. 538, § 4, is further amended by adding at the end a new paragraph to read:

If the Chief Medical Examiner or employees of his office, at their discretion, provide expert opinion or testimony relating to Maine medical examiner cases on behalf of private litigants, the Chief Medical Examiner may, at his discretion, set a reasonable fee for these services, preparation leading to them and expenses incurred in providing them. All fees, charges or other receipts shall be credited to the General Fund. Medical examiners and consultants who serve the State on a fee per case basis are excluded from this paragraph and may make private arrangements for these services.

Effective September 18, 1981

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## CHAPTER 243

S. P. 94 — L. D. 213

AN ACT to Conform the Maine Consumer Credit Code to the Federal Truth-in-Lending Simplification and Reform Act.

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, notwithstanding an effective date of April 1, 1982, the Federal Truth-in-Lending Simplification and Reform Act permits creditors subject to that Act to begin making the transition from old regulations to new upon final adoption of new regulations by the Federal Reserve Board; and

Whereas, the Federal Reserve Board has finally adopted new regulations; and

Whereas, Maine enjoys an exemption from the Federal Truth-in-Lending Simplification and Reform Act because Maine enacted and enforces its own comparable truth-in-lending law; and

Whereas, unless the following legislation, which conforms Maine's truth-in-lending law to the Federal Truth-in-Lending Simplification and Reform Act, takes effect immediately, Maine creditors will be seriously harmed because they will be unable to make the transition from old to new regulations contemporaneously with other creditors who are subject to the Federal Truth-in-Lending Simplification and Reform Act; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 9-A MRSA § 1-202, sub-§ 8-A, as enacted by PL 1979, c. 660, § 2, is repealed and the following enacted in its place:

**8-A. Credit transactions entered into primarily for an agricultural purpose.**

**Sec. 2.** 9-A MRSA § 1-202, last ¶, as amended by PL 1979, c. 660, § 3, is further amended to read:

The exclusions set forth in subsections 2, 4, 5, 7 and 8 and ~~8-A~~ shall not apply to the Maine Consumer Credit Code, Truth-in-lending, Article ~~VH~~ VIII.

**Sec. 3.** 9-A MRSA § 1-301, sub-§ 5, as enacted by PL 1973, c. 762, § 1, is repealed and the following enacted in its place:

**5. "Amount financed" means the amount of credit of which the consumer has actual use and shall be computed pursuant to section 2-501 and section 8-206, subsection 1, paragraph B.**

**Sec. 4. 9-A MRSA § 1-301, sub-§ 7**, as enacted by PL 1973, c. 762, § 1, is repealed and the following enacted in its place:

**7. “Cash price” means the price at which the creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. The term includes charges imposed by the creditor equally on cash and credit customers. It may include the price of optional accessories, services related to the sale, service contracts and taxes and fees for license, title and registration. The term does not include any finance charge.**

**Sec. 5. 9-A MRSA § 1-301, sub-§ 10**, as enacted by PL 1973, c. 762, § 1, is amended to read:

**10. “Consumer” means the buyer, lessee or debtor to whom credit is granted in a consumer credit transaction and includes a comaker, endorser, guarantor, surety or similar person who may be obligated to repay the credit or lease obligation.**

**Sec. 6. 9-A MRSA § 1-301, sub-§ 11, ¶ A, sub-¶ (iii)**, as enacted by PL 1973, c. 762, § 1, is amended to read:

**(iii) the goods, services or interest in land are purchased primarily for a personal, family or household or ~~agricultural~~ purpose;**

**Sec. 7. 9-A MRSA § 1-301, sub-§ 11, ¶ B, sub-¶ (ii)**, as enacted by PL 1973, c. 762, § 1, is amended to read:

**(ii) except for the purposes of Article VIII, or unless the sale is made subject to this Act by agreement, section 1-109, a sale of an interest in land if the finance charge does not exceed 12 1/4% per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.**

**Sec. 8. 9-A MRSA § 1-301, sub-§ 13, ¶ A, sub-¶ (i)**, as enacted by PL 1973, c. 762, § 1, is amended to read:

**(i) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household or ~~agricultural~~ purpose;**

**Sec. 9. 9-A MRSA § 1-301, sub-§ 14, ¶ A**, as enacted by PL 1973, c. 762, § 1, is amended to read:

**A. Except as provided in paragraph B, a “consumer loan” is a loan made by a person regularly engaged in the business of making loans in which:**

**(i) the debtor is a person other than an organization;**

- (ii) the debt is incurred primarily for a personal, family or household ~~or agricultural~~ purpose;
- (iii) either the debt is payable in instalments or a finance charge is made; and
- (iv) either the amount financed does not exceed \$25,000 or the debt ~~other than one incurred primarily for an agricultural purpose~~ is secured by an interest in land.

Sec. 10. 9-A MRSA § 1-301, sub-§ 14, ¶ B, sub-¶ (ii), as enacted by PL 1973, c. 762, § 1, is amended to read:

- (ii) **except for the purposes of Article VIII, or unless the loan is made subject to this Act by agreement, section 1-109, a loan secured by an interest in land if the security interest is bona fide and not for the purpose of circumvention or evasion of this Act and the finance charge does not exceed 12 1/4% per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and not be paid before the end of the agreed term.**

Sec. 11. 9-A MRSA § 1-301, sub-§ 16, as enacted by PL 1973, c. 762, § 1, is repealed and the following enacted in its place:

16. **“Credit card” means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit.**

Sec. 12. 9-A MRSA § 1-301, sub-§ 17, as enacted by PL 1973, c. 762, § 1, is repealed and the following enacted in its place:

17. **“Creditor” means a person who both:**

**A. Regularly extends credit in consumer credit transactions; and**

**B. Is the person to whom the debt arising from the consumer credit transactions is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the previous sentence, a person who regularly arranges for the extension of consumer credit from persons who are not creditors is a creditor and in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors.**

**For the purposes of the requirements imposed under section 8-205, subsection 1, paragraphs E, F, G, and subsection 2, paragraphs A, B, C, D, I, K, and Article VIII, Parts 3 and 4, the term “creditor” also includes card issuers whether or not the amount due is payable by agreement in more than 4 installments or the payment of a finance charge is or may be required, and the administrator shall,**

by regulation, apply these requirements to those card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

Sec. 13. 9-A MRSA § 1-301, sub-§ 26, as enacted by PL 1973, c. 762, § 1, is repealed and the following enacted in its place:

26. "Open-end credit" means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of those transactions and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open-end credit plan within the meaning of the preceding sentence is an open-end credit plan, even if credit information is verified from time to time.

Sec. 14. 9-A MRSA § 1-301, sub-§ 28, as last amended by PL 1975, c. 350, §§ 1 and 2, is repealed and the following enacted in its place:

28. "Payable in installments" means that payment is required or permitted by agreement to be made in more than 4 periodic payments, excluding the down payment.

Sec. 15. 9-A MRSA § 3-301, sub-§ 1, 3rd sentence, as enacted by PL 1973, c. 762, § 1, is repealed as follows:

~~The seller may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose~~

Sec. 16. 9-A MRSA § 3-301, sub-§ 2, as enacted by PL 1973, c. 762, § 1, is amended to read:

2. With respect to a consumer lease ~~other than a lease primarily for an agricultural purpose~~, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

Sec. 17. 9-A MRSA § 3-303, sub-§ 1, first sentence, as enacted by PL 1973, c. 762, § 1, is amended to read:

If debts arising from ~~two~~ 2 or more consumer credit sales, other than sales ~~primarily for an agricultural purpose or~~ pursuant to open-end credit, are secured by cross-collateral, section 3-302 or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made.

Sec. 18. 9-A MRSA § 3-307, as enacted by PL 1973, c. 762, § 1, is amended to read:



**§ 3-307. Certain negotiable instruments prohibited**

With respect to a consumer credit sale or consumer lease ~~other than a sale or lease primarily for an agricultural purpose~~, the creditor may not take a negotiable instrument, other than a currently dated check or a draft payable within 7 days of such sale or lease.

**Sec. 19. 9-A MRSA § 3-308, first ¶**, as enacted by PL 1973, c. 762, § 1, is amended to read:

With respect to a consumer credit transaction other than ~~one primarily for an agricultural purpose or one pursuant to open end credit~~:

**Sec. 20. 9-A MRSA § 3-401, first sentence**, as enacted by PL 1973, c. 762, § 1, is amended to read:

The obligation of a lessee upon expiration of a consumer lease ~~other than one primarily for an agricultural purpose~~ may not exceed twice the average payment allocable to a monthly period under the lease.

**Sec. 21. 9-A MRSA § 3-403, sub-§ 1, first ¶**, as enacted by PL 1973, c. 762, § 1, is amended to read:

With respect to a consumer credit sale or consumer lease, ~~other than one primarily for an agricultural purpose~~ an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding that:

**Sec. 22. 9-A MRSA § 3-404, sub-§ 1, first ¶**, as enacted by PL 1973, c. 762, § 1 is amended to read:

A lender who makes a consumer loan for the purpose of enabling a consumer to buy from a seller goods or services ~~other than primarily for an agricultural purpose~~ is subject to all claims and defenses of the consumer against the seller arising from the sale of the goods and services if:

**Sec. 23. 9-A MRSA § 6-113, sub-§ 1, first sentence**, as enacted by PL 1973, c. 762, § 1, is amended to read:

After demand, the administrator, through the Attorney General, may bring a civil action against a creditor for any violation listed in section 5-201 ~~or Article VIII~~.

**Sec. 24. 9-A MRSA, Article VII**, as amended, is repealed.

**Sec. 25. 9-A MRSA, Article VIII**, is enacted to read:

**ARTICLE VIII****TRUTH-IN-LENDING**

PART 1

GENERAL PROVISIONS

§ 8-101. Short title

This Article may be cited as the "Maine Consumer Credit Code — Truth-in-Lending."

§ 8-102. Findings and declaration of purpose

The Legislature finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this Article to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

§ 8-103. Definitions and rules of construction

1. As used in this Article, unless the context otherwise indicates, the following words have the following meanings.

A. "Accepted credit card" means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit.

B. "Adequate notice" as used in section 8-302 means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. That notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

C. "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a card to another person.

D. "Card issuer" means any person who issues a credit card, or the agent of that person with respect to that card.

E. "Discount" as used in section 8-303 means a reduction made from the regular price. The term "discount" does not mean a surcharge.

F. "Dwelling" means a residential structure or mobile home which contains one to 4 family housing units, or individual units of condominiums or cooperatives.

G. "Material disclosures" means the disclosure, as required by this Article, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments and the due dates or periods of payments scheduled to repay the indebtedness.

H. "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of that dwelling.

I. "Surcharge" means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check or similar means.

J. "Unauthorized use", as used in section 8-303, means a use of a credit card by a person other than the cardholder who does not have actual, implied or apparent authority for such use and from which the cardholder receives no benefit.

2. The following rules of construction are applicable for the purposes of this Article.

A. Any reference to any requirement imposed under this Article or any provision thereof includes reference to the regulations of the administrator under this Article or the provision thereof in question.

B. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Article does not in itself constitute a violation of this Article.

#### § 8-104. Regulations; model forms

1. The administrator shall prescribe regulations to carry out the purposes of this Article. These regulations may contain such classifications, differentiations or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the administrator are necessary or proper to effectuate the purposes of this Article, to prevent circumvention or evasion thereof or to facilitate compliance therewith. Any regulations prescribed under authority of this Article are subject to the procedures provided by sections 6-404 and 6-405.

2. The administrator shall publish model disclosure forms and clauses for

common transactions to facilitate compliance with the disclosure requirements of this Article and to aid the consumer in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising those forms, the administrator shall consider the use by creditors of data processing or similar automated equipment. Nothing in this Article may be construed to require a creditor to use any such model form or clause prescribed by the administrator under this subsection.

A. A creditor shall be deemed to be in compliance with the disclosure provisions of this Article with respect to other than numerical disclosures if the creditor:

(i) Uses any appropriate model form or clause as published by the administrator; or

(ii) Uses any such model form or clause and changes it by:

(a) Deleting any information which is not required by this Article; or

(b) Rearranging the format, if in making such deletion or rearranging the format, the creditor does not affect the substance, clarity or meaningful sequence of the disclosure;

B. Model disclosure forms and clauses shall be adopted by the administrator after notice and an opportunity for public comment in accordance with sections 6-404 and 6-405.

3. Any regulation of the administrator, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this Article shall have an effective date of October 1st which follows by at least 6 months the date of promulgation, or the effective date of the comparable regulatory action taken by the Federal Reserve Board, whichever is earlier. This requirement shall not prevent the administrator from taking action to lengthen the time period for compliance or to shorten the length of time for compliance when he makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Any creditor may comply with newly promulgated disclosure requirements prior to the effective date of the requirements.

#### § 8-105. Determination of finance charge

1. Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges payable directly or indirectly by the person to whom the credit is extended and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. Examples of charges included in the finance charge include, but are not limited to:

- A. Interest, time price differential and any amount payable under a point, discount or other system of additional charges;
- B. Service or carrying charge;
- C. Loan fees, finder's fee or similar charge;
- D. Fee for an investigation or credit report; or
- E. Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

2. Charges or premiums for credit life, accident or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless:

A. The coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

B. In order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended shall give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof. The cost disclosed shall be the total cost of the insurance over the term of the credit transaction if the term of the transaction is 10 years or less.

3. Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the total cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

4. If any of the following items is itemized and disclosed in accordance with the regulations of the administrator in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

A. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction; or

B. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph A which would otherwise be payable.

5. The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

- A. Fees or premiums for title examination, title insurance or similar purposes;
- B. Fees for preparation of a deed, settlement statement or other documents;
- C. Escrows for future payments of taxes and insurance;
- D. Fees for notarizing deeds and other documents;
- E. Appraisal fees; and
- F. Credit reports.

§ 8-106. Determination of annual percentage rate

1. The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the administrator:

A. In the case of any extension of credit other than under an open-end credit plan, as:

(i) That nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(ii) The rate determined by any method prescribed by the administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (i); and

B. In the case of any extension of credit under an open-end credit plan, as the quotient, expressed as a percentage, of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

2. Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the administrator determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the administrator may by regulation require.

3. The disclosure of an annual percentage rate is accurate for the purposes of this Article if the rate disclosed is within a tolerance not greater than  $1/8$  of one per cent more or less than the actual rate or rounded to the nearest  $1/4$  of one per cent. The administrator may allow a greater tolerance to simplify compliance where irregular payments are involved.

4. The administrator may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection 1, paragraph A, subparagraph (i) by not more than such tolerances as the administrator may allow. The administrator may not allow a tolerance greater than 8% of that rate except to simplify compliance where irregular payments are involved.

5. In the case of creditors determining the annual percentage rate in a manner other than as described in subsection 4, the administrator may authorize other reasonable tolerances.

#### § 8-107. Exemption

1. The administrator may make application to the Federal Reserve Board for a determination that under the laws of this State any class of credit transaction within this State is subject to requirements substantially similar to federal requirements and that there is adequate provision for enforcement.

2. This Article shall not apply to any class of credit transactions within this State which are subject to the requirements of Title 1 of the Federal Consumer Credit Protection Act enacted by Congress, unless any such class of transactions has first been exempted by a regulation of the Board of Governors of the Federal Reserve Board and that exemption remains in effect.

#### § 8-108. Enforcement

1. This Article shall be enforced by the administrator under the provisions of Article VI.

2. To keep the administrator's regulations in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System and with the regulations of administrators in other jurisdictions, the administrator, so far as is consistent with the purposes, policies and provisions of this Article, shall:

A. Before adopting, amending and repealing regulations, advise and consult with administrators in other jurisdictions which enact truth-in-lending laws; and

B. In adopting, amending and repealing regulations, take into consideration:

(i) The regulations so prescribed by the Board of Governors of the Federal Reserve System; and

(ii) The regulations of administrators in other jurisdictions which enact truth-in-lending laws.

3. Reimbursement. The administrator shall have the authority to adopt, by rule, a reimbursement program such that creditors subject to an administrative order under section 6-108 may be ordered to make whatever adjustments are necessary to insure that any person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. In determining any readjustment, the administrator shall apply, with respect to the annual percentage rate, a tolerance allowed under section 8-106 and, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance allowed by section 8-106 for the annual percentage rate.

§ 8-109. Criminal liability for willful and knowing violation

Whoever willfully and knowingly gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this Article or any regulation issued thereunder, uses any chart or table authorized by the administrator under section 8-106 in such a manner as to consistently understate the annual percentage rate determined under section 8-106, subsection 1, paragraph A, subparagraph (i) or otherwise fails to comply with any requirement imposed under this Article, is guilty of a Class D crime.

§ 8-110. Penalties inapplicable to governmental agencies

No civil or criminal penalty provided under this Article for any violation thereof may be imposed upon the United States or any agency thereof, or upon any state or political subdivision thereof, or any agency of any state or political subdivision.

PART 2

DISCLOSURE REQUIREMENTS

§ 8-201. General requirement of disclosure

1. Subject to subsection 2, a creditor shall disclose to the person who is obligated on a consumer credit transaction the information required under this Article. In a transaction involving more than one obligor, a creditor, except in a transaction under section 8-204, need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.

2. If a transaction involves one creditor as defined in section 1-301, subsection 17, that creditor shall make the disclosures. If a transaction involves more than one creditor, only one creditor shall be required to make the disclosures. The



administrator shall by regulation specify which creditor shall make the disclosures.

3. The administrator may provide by regulation that any portion of the information required to be disclosed by this Article may be given in the form of estimates where the provider of that information is not in a position to know exact information.

4. The administrator shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with this Article, and if he determines that those tolerances are necessary to facilitate compliance, he shall by regulation permit disclosures within those tolerances. The administrator shall exercise his authority to permit tolerances for numerical disclosures other than the annual percentage rate so that tolerances are narrow enough to prevent tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of this Article.

#### § 8-202. Form of disclosure; additional information

1. Information required by this Article shall be disclosed clearly and conspicuously, in accordance with regulations of the administrator. The terms "annual percentage rate" and "finance charge" shall be disclosed more conspicuously than other terms, data or information provided in connection with a transaction, except information relating to the identity of the creditor. Regulations of the administrator need not require that disclosures pursuant to this Article be made in the order set forth in this Article and, except as otherwise provided, may permit the use of terminology different from that employed in this Article if it conveys substantially the same meaning.

2. Any creditor may supply additional information or explanation with any disclosures required under this Article, except as provided in section 8-206, subsection 2.

#### § 8-203. Effect of subsequent occurrence

If information disclosed in accordance with this Article is subsequently rendered inaccurate as the result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this Article.

#### § 8-204. Right of rescission as to certain transactions

1. Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired on any property which is used as the principal dwelling of the person to whom credit is extended, the obligor may rescind the transaction until midnight of the 3rd business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with the material

disclosures required under this Article, whichever is later, by notifying the creditor, in accordance with regulations of the administrator, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the administrator, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the administrator, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

2. When an obligor exercises his right to rescind under subsection 1, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures of this section shall apply except when otherwise ordered by a court.

3. Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this Article by a person to whom information, forms and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery.

4. The administrator may, if he finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

5. This section does not apply to:

A. A residential mortgage transaction as defined in section 8-103, subsection 1, paragraph H;

B. A transaction which constitutes a refinancing or consolidation, with no new advances, of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

C. A transaction in which an agency of a state is the creditor; or

D. Advances under a preexisting open-end credit plan if a security interest has already been retained or acquired in conformance with this section and such advances are in accordance with a previously established credit limit for such plan adopted in conformance with this section. This paragraph shall cease to be effective on April 1, 1985.

6. An obligor's right of rescission expires 3 years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this Article have not been delivered to the obligor, except that if:

A. The administrator institutes a proceeding to enforce the provisions of this section within 3 years after the date of consummation of the transaction;

B. The administrator finds a violation of this section; and

C. The obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission expires 3 years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

7. In any action in which it is determined that a creditor has violated this section, in addition to rescission, the court may award relief under section 8-208 for violations of this Article not relating to the right to rescind.

#### § 8-205. Open-end consumer credit plans

1. Before opening any account under an open-end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

A. The conditions under which a finance charge may be imposed, including the time period within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of that time period, and if no time period is provided, the creditor shall disclose that fact;

B. The method of determining the balance upon which the finance charge will be imposed;

C. The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge;

D. Where one or more periodic rates may be used to compute the finance charge, each rate, the range of balances to which it is applicable and the

corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;

E. Identification of other charges which may be imposed as part of the plan, and their method of computation, in accordance with regulations of the administrator;

F. In cases where the credit is or will be secured, a statement that a security interest has been or will be taken in:

(i) The property purchased as part of the credit transaction; or

(ii) Property not purchased as part of the credit transaction identified by item or type; and

G. A statement in a form prescribed by regulations of the administrator of the protection provided by section 8-303, subsection 6, and section 8-401 to an obligor and the creditor's responsibilities under section 8-303, subsection 6 and section 8-402. With respect to one billing cycle per calendar year, at intervals of not less than 6 months or more than 18 months, the creditor shall transmit the statement to each obligor to whom the creditor is required to transmit a statement pursuant to subsection 2 for the billing cycle.

2. The creditor of any account under an open-end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

A. The outstanding balance in the account at the beginning of the statement period;

B. The amount and date of each extension of credit during the period and a brief identification, on or accompanying the statement of each extension of credit in a form prescribed by the administrator, sufficient to enable the obligor either to identify the transaction or to relate it to copies of sales vouchers or similar instruments previously furnished, except that a creditor's failure to disclose such information in accordance with this paragraph shall not be deemed a failure to comply with this Article if:

(i) The creditor maintains procedures reasonably adapted to procure and provide such information; and

(ii) The creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under Part 4;

C. In lieu of complying with the requirements of paragraph B, in the case of

any transaction in which the creditor and seller are the same person, and such person's open-end credit plan has fewer than 15,000 accounts, the creditor may elect to provide only the amount and date of each extension of credit during the period and the seller's name and location where the transaction took place if:

(i) A brief identification of the transaction has been previously furnished; and

(ii) The creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under Part 4.

D. The total amount credited to the account during the period;

E. The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge;

F. Where one or more periodic rates may be used to compute the finance charge, each rate, the range of balances to which it is applicable and, unless the annual percentage rate determined under section 8-106, subsection 1, paragraph B, is required to be disclosed pursuant to paragraph G, the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;

G. Where the total finance charge exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate determined under section 8-106, subsection 1, paragraph B, except that if the finance charge is the sum of 2 or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable;

H. The balance on which the finance charge was computed and a statement of how the balance was determined;

I. The outstanding balance in the account at the end of the period;

J. The date by which or the period within which payment shall be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after the date or the termination of that period; and

K. The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.

§ 8-206. Consumer credit not under open-end credit plans

1. For each consumer credit transaction other than under an open-end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

A. The identity of the creditor required to make disclosure;

B. The "amount financed," using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection 2:

(i) Take the principal amount of the loan or the case price less down payment and trade-in;

(ii) Add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 8-105; and

(iii) Subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit;

C. In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a "yes" and "no" indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this paragraph, "itemization of the amount financed" means a disclosure of the following items, to the extent applicable:

(i) The amount that is or will be paid directly to the consumer;

(ii) The amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;

(iii) Each amount that is or will be paid to 3rd persons by the creditor on the consumer's behalf, together with an identification of or reference to the 3rd person; and

(iv) The total amount of any charges described in paragraph B, subparagraph (iii);

D. The "finance charge," not itemized, using that term;

E. The finance charge expressed as an "annual percentage rate," using that term. This is not required if the amount financed does not exceed \$75 and the finance charge does not exceed \$5, or if the amount financed exceeds \$75 and the finance charge does not exceed \$7.50;

F. The sum of the amount financed and the finance charge, which shall be termed the "total of payments;"

G. The number, amount and due dates or period of payments scheduled to repay the total of payments;

H. In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 8-201, subsection 2, the "total sale price," using that term, which shall be the total of the cash price of the property or services, additional charges and the finance charge;

I. Descriptive explanations of the terms "amount financed," "finance charge," "annual percentage rate," "total of payments" and "total sale price" as specified by the administrator. The descriptive explanation of "total sale price" shall include reference to the amount of the down payment;

J. Where the credit is secured, a statement that a security interest has been taken in:

- (i) The property which is purchased as part of the credit transaction; or
- (ii) Property not purchased as part of the credit transaction identified by item or type;

K. Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge;

L. A statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance;

M. A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt and prepayment rebates and penalties; and

N. In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.

2. Except as otherwise provided in this Article, the disclosures required under subsection 1 shall be made before the credit is extended. Except for the identity of the creditor, all disclosures required under subsection 1 and any disclosure provided for in section 8-105, subsection 2, 3 or 4 shall be conspicuously segregated from all other terms, data or information provided in connection with a transaction, including any computations or itemization.

3. In the case of a residential mortgage transaction, which is also subject to the Real Estate Settlement Procedures Act, United States Code, Title 12, Section 2601, et seq., good faith estimates of the disclosures required under subsection 1 shall be made in accordance with regulations of the administrator under section 8-201, subsection 3, before the credit is extended, or shall be delivered or placed in the mail not later than 3 business days after the creditor receives the consumer's written application, whichever is earlier. If the disclosure statement furnished within 3 days of the written application contains an annual percentage rate which is subsequently rendered inaccurate within the meaning of section 8-106, subsection 3, the creditor shall furnish another statement at the time of settlement or consummation.

4. If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection 1 may be made at any time not later than the date the first payment is due.

5. If a creditor receives a request for a loan by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public or in the contract of loan or other printed material delivered to the obligor then the disclosures required under subsection 1 may be made at any time not later than the date the first payment is due.

6. If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the total sale price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection 1 for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

#### § 8-207. Consumer lease disclosures

Each creditor shall give a consumer prior to the consummation of the lease a



dated written statement on which the creditor and consumer are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

1. A brief description or identification of the leased property;
2. The amount of any payment by the consumer required at the inception of the lease;
3. The amount paid or payable by the consumer for official fees, registration, certificate of title or license fees or taxes;
4. The amount of other charges payable by the consumer not included in the periodic payments, a description of the charges and that the consumer shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the consumer has such liability;
5. A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the consumer at the end of the term and whether or not the consumer has the option to purchase the leased property and at what price and time;
6. A statement identifying all express warranties and guarantees made by the manufacturer or creditor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;
7. A brief description of insurance provided or paid for by the creditor or required of the consumer, including the types and amounts of the coverages and costs;
8. A description of any security interest held or to be retained by the creditor in connection with the lease and a clear identification of the property to which the security interest relates, subject to the restriction of section 3-301;
9. The number, amount and due dates or periods of payments under the lease and the total amount of such periodic payments;
10. Where the lease provides that the consumer shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration and the differential between them; and
11. A statement of the conditions under which the consumer or creditor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments or early termination, subject to the restrictions of Article II.

The disclosures required under this section may be made in the lease contract to be signed by the consumer. The administrator may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the creditor is not in a position to know exact information.

§ 8-208. Civil liability

1. Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this Article, including any requirement under section 8-204, with respect to any person is liable to that person in an amount equal to the sum of:

- A. Any actual damage sustained by such person as a result of the failure; or
- B. Twice the amount of any finance charge in connection with the transaction or, in the case of a consumer lease, 25% of the total amount of monthly payments under the lease, except that the liability under this paragraph shall not be less than \$100 nor greater than \$1,000; and
- C. In the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 8-204, the costs of the action, together with a reasonable attorney's fee as determined by the court.

2. A creditor or assignee has no liability under this section, section 8-108 or section 8-109 for any failure to comply with any requirement imposed under this Article, if within 60 days after discovering an error, whether pursuant to a final written examination report or notice issued under section 8-108, subsection 3, or through the creditor's or assignee's own procedures and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

3. A creditor or assignee may not be held liable in any action brought under this section or section 8-204 for a violation of this Article if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming and printing errors, except that an error of legal judgment with respect to a person's obligations under this Article is not a bona fide error.

4. When there are multiple obligors in a consumer credit transaction, there shall be not more than one recovery of damages under subsection 1, paragraph B, for a violation of this Article.

5. Any action under this section may be brought in any court of competent jurisdiction, within one year from the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this Article in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.

6. The multiple failure to disclose to any person any information required under this Article to be disclosed in connection with a single account under an open-end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease or other extension of consumer credit shall entitle the person to a single recovery under this section, but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 8-204.

7. A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection 1, paragraph B, against any amount owed by that person, unless the amount of the creditor's or assignee's liability under this Article has been determined by judgment of a court of competent jurisdiction in an action of which that person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this Article as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this Article.

8. With respect to disclosure under sections 8-205 and 8-206, a creditor is liable under subsection 1, paragraph B, only for the failure to comply with certain disclosure requirements.

A. In connection with the disclosures of section 8-205, a creditor's only liability under subsection 1, paragraph B, is for failing to comply with the requirements of section 8-204, section 8-205, subsection 1 or subsection 2, paragraphs D, E, F, G, H, I or J.

B. In connection with the disclosures of section 8-206, a creditor's only liability determined under subsection 1, paragraph B, is for failing to comply with the requirements of section 8-204, or section 8-206, subsection 1, paragraphs B, C, D, E, F or I.

C. With respect to any failure to make disclosures required by this Article, liability shall be imposed only upon the creditor required to make disclosures, except as provided in section 8-209.

D. In the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery is applicable, and the total recovery for any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of \$500,000 or 1% of the net worth of the creditor. In determining the amount of award in any class action, the court shall consider, among other relevant

factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected and the extent to which the creditor's failure of compliance was intentional.

§ 8-209. Liability of assignees

1. Except as otherwise specifically provided in this Article, any civil action for a violation of this Article or proceeding under section 8-108 which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to:

- A. A disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned; or
- B. A disclosure which does not use the terms required to be used by this Article.

2. Except as provided in section 8-204, subsection 3, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this Article is conclusive proof of the delivery thereof and, except as provided in subsection 1, of compliance with this Article. This section does not affect the rights of the obligor in any action against the original creditor.

3. Any consumer who has the right to rescind a transaction under section 8-204 may rescind the transaction as against any assignee of the obligation.

PART 3

CREDIT CARD RESTRICTIONS

§ 8-301. Issuance of credit cards

No credit card may be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

§ 8-302. Liability of holder of credit card

1. Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card. A cardholder shall be liable for the unauthorized use of a credit card only if:

- A. The card is an accepted credit card;

B. The liability is not in excess of \$50;

C. The card issuer gives adequate notice to the cardholder of the potential liability;

D. The card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 8-205, subsection 2, or on a separate notice accompanying the statement;

E. The unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft or otherwise; and

F. The card issuer has provided a method whereby the user of the card can be identified as the person authorized to use it.

2. For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee or agent of the card issuer does in fact receive such information.

3. In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection 1, have been met.

4. Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

#### § 8-303. Credit card restrictions

1. With respect to a credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check or similar means rather than use a credit card.

2. No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check or similar means.

3. With respect to any sales transaction, any discount offered by the seller for the purpose of inducing payment by cash, check or other means not involving the use of a credit card does not constitute a finance charge as determined under

section 8-105, if that discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously.

4. Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

5. A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless:

A. This action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open-end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account; and

B. This action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

6. Rights of credit card customers are as follows.

A. Subject to the limitation contained in paragraph B, a card issuer who has issued a credit card to a cardholder pursuant to an open-end consumer credit plan is subject to all claims, other than tort claims, and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if:

(i) The obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card;

(ii) The amount of the initial transaction exceeds \$50; and

(iii) The place where the initial transaction occurred was in the same state as the mailing address previously provided by the cardholder or was within 100 miles from such address.

B. The limitations set forth in paragraph A, subparagraphs (ii) and (iii), with respect to an obligor's right to assert claims and defenses against a card issuer are not applicable to any transaction in which the person honoring the credit card:

(i) Is the same person as the card issuer;

(ii) Is controlled by the card issuer;

- (iii) Is under direct or indirect common control with the card issuer;
- (iv) Is a franchised dealer in the card issuer's products or services; or
- (v) Has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into the transaction by using the credit card issued by the card issuer.

C. The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to the transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of that claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of:

- (i) Late charges in the order of their entry to the account;
- (ii) Finance charges in order of their entry to the account; and
- (iii) Debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

#### PART 4 FAIR CREDIT BILLING

##### § 8-401. Correction of billing errors

1. If a creditor, within 60 days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 8-205, subsection 2, paragraph K, a written notice, other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 8-205, subsection 1, paragraph G, from the obligor in which the obligor complies with paragraphs A, B, and C, the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct, comply with subsection 2.

A. The obligor sets forth or otherwise enables the creditor to identify the name and account number, if any, of the obligor.

B. The obligor indicates the obligor's belief that the statement contains a billing error and the amount of that billing error.

C. The obligor sets forth the reasons for the obligor's belief, to the extent applicable, that the statement contains a billing error.

2. Not later than 30 days after the receipt of the notice described in subsection 1, the creditor shall:

A. Send a written acknowledgment thereof to the obligor, unless the action required in paragraph B is taken within that 30-day period; and

B. Not later than 2 complete billing cycles of the creditor, in no event later than 90 days, after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under subsection 1, paragraph B, either:

(i) Make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under subsection 1, paragraph B, and if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) Send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes that account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe that amount to be correctly shown unless he determines that the goods were actually delivered, mailed or otherwise sent to the obligor and provides the obligor with a statement of that determination.

After complying with the provisions of subsections 1 and 2 with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to that error.

3. For the purposes of this section, a "billing error" consists of any of the following:

A. A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on that statement;

B. A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof;

C. A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction;



D. The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor;

E. A computation error or similar error of an accounting nature of the creditor on a statement;

F. Failure to transmit the statement required under section 8-205, subsection 2, to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than 20 days before the end of the billing cycle for which the statement is required; and

G. Any other error described in regulations of the administrator.

4. For the purpose of this section, "action to collect the amount, or any part thereof, indicated by an obligor under subsection 1, paragraph B" does not include the sending of statements of account, which may include finance charges or amounts in dispute, to the obligor following written notice from the obligor as specified under subsection 1, if:

A. The obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under subsection 1, paragraph B; and

B. The creditor indicates the payment of that amount is not required pending the creditor's compliance with this section. Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

5. Pursuant to regulations of the administrator, a creditor operating an open-end consumer credit plan may not, prior to the sending of the written explanation or clarification required under subsection 2, paragraph B, subparagraph (ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection 1 that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection prohibits a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

6. Any creditor who fails to comply with the requirements of this section or section 8-402 forfeits any right to collect from the obligor the amount indicated by the obligor under subsection 1, paragraph B, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed \$50.

#### § 8-402. Regulation of credit reports

1. After receiving a notice from an obligor as provided in section 8-401, subsection 1, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 8-401, subsection 1, paragraph B, and that amount may not be reported as

delinquent to any 3rd party until the creditor has met the requirements of section 8-401 and has allowed the obligor the same number of days, not less than 10, thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

2. If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection 1, a creditor may not report to any 3rd party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 8-401, subsection 1, paragraph B, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

3. A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection 2 to the parties to whom such delinquencies were initially reported.

§ 8-403. Treatment of credit balances; returns

1. Whenever a credit balance in excess of \$1 is created in connection with a consumer credit transaction through transmittal of funds to a creditor in excess of the total balance due on an account, rebates of unearned finance charges or insurance premiums or amounts otherwise owed to or held for the benefit of an obligor, the creditor shall:

- A. Credit the amount of the credit balance to the consumer's account;
- B. Refund any part of the amount of the remaining credit balance, upon request of the consumer; and
- C. Make a good faith effort to refund to the consumer by cash, check or money order any part of the amount of the credit balance remaining in the account for more than 6 months, except that no further action is required in any case in which the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

2. With respect to any sales transactions where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debt for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

§ 8-404. Prompt crediting of payments

Payments received from an obligor under an open-end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the administrator. The regulations shall prevent a finance charge

from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location and time indicated by the creditor to avoid the imposition of a finance charge.

**Sec. 26. Transition provisions.** This Act shall take effect on April 1, 1982, except that until that date any creditor may comply with this Act, in accordance with the regulations of the administrator, prior to the effective date.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective May 11, 1981

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## CHAPTER 244

H. P. 772 — L. D. 917

**AN ACT to Permit Free Licenses to Trap Fur-bearing Animals to Persons 70 Years of Age and Older.**

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

12 MRSA § 7131-A, sub-§ 4-A is enacted to read:

4-A. Licenses for persons 70 years of age and older. Notwithstanding subsection 4, the commissioner shall issue a trapping license, without a fee, to any applicant who furnishes such proof as the commissioner may require that the applicant is 70 years of age or older.

Effective September 18, 1981

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## CHAPTER 245

H. P. 1069 — L. D. 1272

**AN ACT Relating to Child Prostitution.**

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

Sec. 1. 17-A MRSA § 853-A, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is amended to read: