

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

PART C

Sec. 1. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1987-88

EDUCATIONAL AND CULTURAL SERVICES,
DEPARTMENT OF

Division of Alcohol and Drug Education Services

All Other \$35,000

This money will fund a one-year grant for reimbursing local school districts for educational services provided to students in long-term drug treatment centers. This cost will be offset by savings derived from the first year of the Governor Baxter School for the Deaf participation in the federal Medicaid program.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except for Part A, section 212, the Maine Revised Statutes, Title 32, chapter 113, which shall take effect on January 1, 1988; sections 10 to 14, which will take effect on January 1, 1988; sections 36, 50, 53 to 65, 67, 71 to 77, 80, 87, 122 to 142, 144 to 167, 172 and 192 to 211, which shall take effect on September 1, 1987. The following sections of Part B shall take effect on September 1, 1987: Sections 1, 3, 4, 7 to 9 and 14 to 18.

Effective June 24, 1987, unless otherwise indicated.

CHAPTER 396

S.P. 517 — L.D. 1560

AN ACT to Recodify the First-lien Real Estate Secured Lending Provisions Relating to Nonbanks in the Maine Consumer Credit Code.

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

Sec. 1. 9-A MRSA §1-202, sub-§1, as repealed and replaced by PL 1987, c. 129, §8, is amended to read:

1. Extensions of credit primarily for business, commercial, or agricultural purposes or to from governments or governmental agencies, instrumentalities or organizations;

Sec. 2. 9-A MRSA §1-202, sub-§8, as repealed and replaced by PL 1987, c. 129, §11, is amended to read:

8. A loan or credit sale made by a supervised lender creditor to finance or refinance the acquisition of real estate or the initial construction of a dwelling, or a loan made by a supervised lender creditor secured by a first mortgage on real estate, if the security interest in real estate is not made for the purpose of circumventing or

evading this Act, provided that:

A. With respect to advances of additional funds on the loan or credit sale made more than 30 days after the initial advance, this exclusion shall apply only to advances made:

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

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

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

(4) From funds withheld at consummation pending the resolution of matters which otherwise would tend to delay or prevent closing, including, without limitation, remedy of title defects or repairs to meet appraisal standards;

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

C. With respect to a supervised lender creditor other than a supervised financial organization, the exemption provided by this subsection shall apply to the following provisions and no others: ~~Maximum finance charge limitations, sections 2-308 and 2-401; limitations on security interest, section 2-307; delinquency charges, sections 2-502 and 2-402; limitations on attorneys fees, section 2-507; right to prepay, section 2-509; rebate upon prepayment, section 2-510; notice to consumer, section 2-202; and notice of right to cure default, sections 5-110 and 5-111~~ articles II, III, IV and V only.

Sec. 3. 9-A MRSA §1-202, last ¶, as amended by PL 1981, c. 243, §§2 and 26, is further amended to read:

The exclusions set forth in subsection 1 relating to extensions of credit to consumers by governments or governmental agencies, instrumentalities or organizations, and in subsections 2, 4, 5, 7 and 8, shall not apply to the Maine Consumer Credit Code, Truth-in-lending, Article VIII.

Sec. 4. 9-A MRSA §1-301, sub-§11, ¶A, as amended by PL 1981, c. 243, §6, is further amended to read:

A. Except as provided in paragraph B, a "consumer credit sale" is a sale of goods, services or an interest in land in which:

(i) credit is granted either pursuant to a credit card other than a lender credit card or by a seller who regularly engages as a seller in credit transactions of the same kind;

(ii) the buyer is a person other than an organization;

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

(iv) either the debt is payable in instalments or a finance charge is made; and

(v) with respect to a sale of goods or services not including manufactured housing, the amount financed does not exceed \$25,000;

Sec. 5. 9-A MRSA §1-301, sub-§11, ¶B, as repealed and replaced by PL 1987, c. 129, §19, is repealed.

Sec. 6. 9-A MRSA §1-301, sub-§14, ¶A, as amended by PL 1981, c. 243, §9, is further 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 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 is secured by manufactured housing or an interest in land.

Sec. 7. 9-A MRSA §1-301, sub-§14, ¶B, as amended by PL 1981, c. 243, §10, is further amended to read:

B. A "consumer loan" does not include:

(i) a sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a credit card other than a lender credit card; or

(ii) except for the purposes of Article 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 made by a supervised financial organization and 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. 8. 9-A MRSA §1-301, sub-§40, as enacted by PL 1973, c. 762, §1, is further amended to read:

40. "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which

the rate of the finance charge, calculated according to the actuarial method, exceeds 12 1/4% per year, or which is secured by an interest in real estate.

Sec. 9. 9-A MRSA §3-310, sub-§5, as enacted by PL 1983, c. 720, §19, is repealed.

Sec. 10. 9-A MRSA §3-310, sub-§6, as amended by PL 1985, c. 336, §6, is repealed.

Sec. 11. 9-A MRSA §6-203, sub-§2, as amended by PL 1983, c. 204, §1, is further amended to read:

2. Persons required to file notification who are sellers, lessors; or lenders shall pay an additional fee, at the time and in the manner stated in subsection 1, of \$25 for each \$100,000, or part thereof, of the original unpaid balances arising from consumer credit transactions, except those secured by an interest in land in which the rate of finance charge disclosed is 12 1/4% or less, entered into in this State within the preceding calendar year and held either by the seller, lessor, or lender for more than 30 days after the inception of the sale, lease or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease or loan resulting in an increase in the amount of an obligation is considered a new sale, lease or loan to the extent of the amount of the increase.

Sec. 12. 9-A MRSA art. IX is enacted to read:

ARTICLE IX

CONSUMER CREDIT TRANSACTIONS SECURED BY FIRST-LIEN MORTGAGES

PART 1

GENERAL PROVISIONS

§9-101. Scope

This article applies to all consumer credit transactions made by creditors that are not supervised financial organizations, that are secured by a first-lien mortgage on real estate.

PART 2

LICENSING

§9-201. Authority to make supervised loans; licensing

The provisions of article II, part 3, sections 2-301 to 2-304 shall control the authority of supervised lenders that are not supervised financial organizations, to make loans governed by this article.

PART 3

REGULATION OF AGREEMENTS AND PRACTICES

§9-301. Advertising

1. No creditor may engage in this State in false or misleading advertising concerning the terms and conditions of a consumer credit transaction subject to this article.

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

§9-302. Terms and conditions of consumer credit transactions; rulemaking

1. In addition to other rule making authority that the administrator may have, he may adopt reasonable rules in accordance with this section governing agreements which are alternative mortgage transactions as defined in the Alternative Mortgage Transaction Parity Act of 1982, the United States Code, Title 12, Section 3802, subsection 1. In adopting any rule, the administrator shall take into consideration the terms of any similar rules adopted by the Superintendent of Banking for supervised financial organizations chartered under the laws of this State.

2. In any rule governing alternative mortgage transactions, the administrator may specify:

A. The maximum amount by which the annual percentage rate may change during a period of time and over the entire term of the agreement;

B. The minimum notice that may be required to be given to the mortgagor prior to a change in the annual percentage rate;

C. Acceptable indices that may be used by creditors for the purpose of determining when, and the amount by which changes in the annual percentage rate may occur and what effects, if any, the choice of index may have on the rate movement allowances specified in paragraph A;

D. Appropriate hypothetical examples to illustrate the effects of changes in the annual percentage rate;

E. Permissible variations in payment schedules, payment amounts, loan amortization and loan term resulting from rate variations or other contract terms; and

F. Permissible limitations on refunds of prepaid finance charges and notice requirements for prepayment.

§9-303. Consumer's choice of title attorney in consumer credit transactions secured by real estate

1. Every creditor, which accepts an application for consumer credit transaction involving one to 4 residential units and which requires that an attorney search the title of the subject real estate, shall permit the prospec-

tive mortgagor to select a qualified attorney of his own choice to search the title of the subject real estate and certify that title to the creditor or land title insurance company, provided that the creditor may require the prospective mortgagor's attorney to provide it with evidence of adequate liability insurance or land title insurance or such other written policy requirements as the creditor may deem necessary to protect its interests, provided that if all such requirements are met by the attorney chosen by the mortgagor, no additional legal costs may be assessed by the creditor against the mortgagor for review of the title search or any other relevant title documents by the creditor, its title company or attorney.

2. Every creditor subject to this section shall provide written notice to the prospective mortgagor that he has the right to select a qualified attorney of his own choice for the performance of title work. The notice shall inform the prospective mortgagor that if the attorney chosen by the mortgagor meets the creditor's requirements, then no additional fees may be charged to the mortgagor for title work. If the prospective mortgagor indicates on the written notice that he does not wish to exercise his right to select an attorney, then the creditor may recommend an attorney.

3. Nothing in this section may be construed to require certification of title to a creditor if that creditor does not so require, or to a land title insurance company if that company does not so require.

§9-304. Servicing requirements of assigned consumer credit transactions

No consumer credit transaction secured by a mortgage on real estate may be assigned under this article unless:

1. The creditor entering into the agreement retains servicing of the account and either maintains a place of business in this State or maintains a toll-free telephone number or other free means of oral communication that is disclosed to mortgagors and staffed in the manner described in subsection 2; or

2. The assignee or servicing agent retained to collect the account maintains a toll-free telephone number, or other free means of oral communication, that is disclosed to mortgagors in each coupon book or on each periodic billing notice or statement of account and that is staffed during normal business hours for mortgagors to use to communicate with the assignee or servicing agent concerning the consumer credit transaction.

§9-305. Interest to be paid on funds held in escrow

A creditor, including any of its assignees, that enters into consumer credit transactions secured by a mortgage on real estate and which holds funds of a mortgagor in an escrow account for the payment of taxes or insurance premiums, either on its own behalf or on behalf of another mortgagor, shall pay interest on those funds in accordance with Title 9-B, section 429.

§9-306. Notice of assignment

A consumer is not obligated to make payments on a consumer credit transaction to any creditor, other than the original creditor, until he receives notification of assignment of rights to payment and that payment is to be made to the assignee. A notification which does not clearly and conspicuously identify the rights assigned is ineffective. If requested by the consumer, the assignee must reasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor.

§9-307. Receipts; statements of account; evidence of payment

1. The creditor shall give or send to a consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. Sending to the consumer a periodic statement showing a payment received by mail complies with this subsection, if it is sent to the debtor within 45 days after receipt of the payment.

2. Upon written request of a consumer, the person to whom an obligation is owed pursuant to a consumer credit transaction, shall provide a written statement of the dates and amounts of payments made within the past 15 months and the total amount unpaid. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested, the creditor may charge not in excess of \$1 for each additional statement.

3. Within 30 days after the consumer has fulfilled all obligations with respect to a consumer credit transaction, the person to whom the obligation was owed shall give or send to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

§9-308. Right to prepay

A consumer may prepay in full or in part the unpaid balance of a consumer credit transaction that is an alternative mortgage transaction, as defined in section 9-301, subsection 1, at any time without penalty.

§9-309. Real estate appraisals; copies

Any creditor which imposes a fee on any person for the cost of an appraisal of any real estate shall furnish to the person, at no cost, a copy of the appraisal upon request.

PART 4REMEDIES AND PENALTIES§9-401. Misrepresentation

A creditor or a person acting for him may not induce

a consumer to enter into a consumer credit transaction by misrepresentation of a material fact with respect to the terms and conditions of the extension of credit. A consumer so induced may rescind the sale, lease or loan or recover actual damages, or both.

§9-402. Unconscionability; inducement by unconscionable conduct

1. With respect to a consumer credit transaction, if the court as a matter of law finds:

A. The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or

B. Any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose and effect to aid the court in making the determination.

3. For the purpose of this section, a change or practice expressly permitted by this article is not in and of itself unconscionable in the absence of other practices and circumstances.

§9-403. Illegal, fraudulent or unconscionable conduct in attempted collection of debts

1. In attempting to collect an alleged debt arising from a consumer credit transaction, a person shall not:

A. Use or threaten force or violence;

B. Threaten criminal prosecution;

C. Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false;

D. Communicate more than twice or threaten to communicate more than twice to the debtor's employer information concerning the existence of a debt before or after obtaining final judgment against the debtor, except as permitted by law;

E. Disclose or threaten to disclose to a person other than the debtor or his spouse, information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need

for the information, but this subsection does not prohibit the disclosure to another person of information permitted to be disclosed to him by law;

F. Disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact;

G. Claim, attempt or threaten to enforce a right that has been barred by law or a final order of the Supreme Judicial Court or a court of the United States;

H. Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, government agency or attorney-at-law when it is not; or

I. Engage in conduct in violation of a rule adopted and published by the administrator after like conduct has been restrained or enjoined by a final order of a court in a civil action by the administrator against any person pursuant to the provisions or injunctions against fraudulent or unconscionable agreements or conduct, section 6-111.

§9-404. Stay of enforcement of judgment

At any time after the entry of a judgment in favor of a creditor against a consumer in an action arising from a consumer credit transaction, the court, for cause and upon motion of a party or on its own motion, while such court retains jurisdiction, may stay enforcement of the judgment by order upon just and equitable conditions and continue, modify or revoke the order as the interests of justice may require.

§9-405. Effect of violations on rights of parties

1. If a creditor has violated the provisions of this article applying to misrepresentation, section 9-401, or illegal, fraudulent or unconscionable conduct in an attempted collection of debts, section 9-403, any aggrieved consumer has a right to recover actual damages from that person, or in lieu thereof any consumer named as a plaintiff in the complaint as originally filed has a right to recover from a person violating this article an amount determined by the court not less than \$250 nor more than \$1,000. No action pursuant to this subsection may be brought more than 2 years after the due date of the last scheduled payment.

2. A debtor is not obligated to pay a charge in excess of that allowed by this article and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against

debtors arising from the debt.

3. If the creditor has contracted for or received a charge in excess of that allowed by this article, or if a debtor, is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from the creditor or the person liable an amount determined by the court not less than \$250 nor more than \$1,000. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made or the date the agreement was paid in full, whichever was earlier.

4. If a creditor has violated the provisions of this article applying to authority to make supervised loans, section 9-201, the debtor is not obligated to pay the loan finance charge. If he has paid any part of the loan finance charge, he has a right to recover the payment from the person violating this article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

5. Except as otherwise provided, no violation of this article impairs rights on a debt.

6. A creditor has no liability under subsections 1 or 3 if, within 60 days after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the debtor a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

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

8. In an action in which it is found that a creditor has violated this article, the court shall award the debtor the costs of the action together with reasonable attorneys fees. Reasonable attorneys fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the debtor.

9. A creditor has no liability under subsections 1 or 3, or under section 6-113, subsection 2, for any act done or omitted in good faith in conformity with any rule or

interpretation thereof by the administrator, notwithstanding that after such act or omission has occurred, the rule or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

§9-406. Refunds and penalties as set-off to obligation

Refunds or penalties to which the consumer is entitled pursuant to this Part may be set off against the consumer's obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part.

§9-407. Criminal penalties

Any creditor, any officer or employee of a creditor, or any other person who willfully and knowingly violates this article, or directly or indirectly counsels, aids or abets that violation, shall be punished by a fine of not more than \$2,500 for each offense or by imprisonment for not more than 6 months, or by both.

Sec. 13. Transition provision. All licenses issued by the administrator pursuant to the Maine Revised Statutes, Title 9-A, section 2-302, and all rules adopted by the administrator pursuant to Title 9-A, section 3-310, subsection 5, that are in effect on the date this article becomes effective shall remain in full force and effect as if issued or adopted, as the case may be, under this article, for their originally stated duration.

Effective September 29, 1987.

CHAPTER 397

S.P. 386 — L.D. 1163

AN ACT to Provide for Renewal of Auto Registration and Inspection Sticker at the Same Time.

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

Sec. 1. 29 MRSA §106, first ¶, as repealed and replaced by PL 1979, c. 664, is amended to read:

The registration year for all vehicles, except automobiles, newly acquired motor trucks and truck tractors, motorcycles, mopeds and motor-driven cycles, is from March 1st to the last day of February of the next calendar year. On and after February 1st, it is lawful to use and display on such vehicles the number plates or suitable devices in lieu thereof issued for the registration year. This section shall apply to motorcycles, mopeds and motor-driven cycles for reregistration in 1989 only.

Sec. 2. 29 MRSA §106, sub-§1, as repealed and replaced by PL 1979, c. 664, is amended to read:

1. New motor truck, truck tractor, motorcycle, moped and motor-driven cycle registrations. New motor truck and, truck tractor, motorcycle, moped and motor-driven cycle registrations expire at the end of the month one year from the month of issuance.

Sec. 3. 29 MRSA §106, sub-§2, ¶B, as amended by PL 1987, c. 117, is further amended to read:

B. Except as herein provided in this section, when application for registration of an automobile, motor truck, or truck tractor, motorcycle, moped or motor-driven cycle is made after the registration for the previous year has been ~~the~~ expired for more than 30 days, the expiration date of the renewal shall be at the end of the month, one year from the month of issuance of the previous registration.

Sec. 4. 29 MRSA §153, as amended by PL 1979, c. 552, §3, is further amended to read:

§153. Proration after November 1st

On any application for registration applied for by an owner or the owner's surviving spouse of a vehicle, except an automobile, motor truck or truck tractor, motorcycle, moped or motor-driven cycle, not including a log hauler or traction engine, during the period between the first day of November and the last day of February, 1/2 the registration fee shall be charged. On an application for a registration for an automobile, motor truck or, truck tractor, motorcycle, moped or motor-driven cycle made during the last 4 months of a registration year, 1/2 the registration fee shall be charged.

Sec. 5. 29 MRSA §2502, first ¶, as repealed and replaced by PL 1983, c. 370, §3, is amended to read:

All motor vehicles registered in this State, except as provided in this chapter, are subject to an annual inspection as provided in this chapter or section 2017.

Sec. 6. 29 MRSA §2502, sub-§3 is enacted to read:

3. Expiration of certificate. A certificate of inspection issued for a motor vehicle registered, pursuant to section 102, shall expire at the end of the month in which the registration expires, or, if the registration will expire at the end of the month of issuance, then the certificate of inspection shall expire at the end of the month one year from the month of issuance, except as provided in sections 2017 and 2507-A.

A certificate of inspection issued for a motor vehicle exempted from registration, pursuant to sections 242 and 255, shall expire at the end of the month one year from the month of issuance.

Sec. 7. 29 MRSA §2507, as amended by PL 1979, c. 673, §13, is further amended to read: