

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
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J.S. McCarthy Company
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1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

previously by the commission. As a consequence of that review, the commission may attach conditions to the transfer of the hospital to the total revenue system that it determines consistent with the interest of the people of the State. These conditions may include a condition requiring divestiture of affiliated interests created in accordance with this paragraph; or reinclusion of services provided by those affiliated interests into the hospital corporation.

Nothing in this paragraph exempts from the requirement of commission approval any merger that results in any transfer, undertaking or pledge described in subparagraphs (1) to (3).

I. No less than ~~40~~ 21 days prior to the effective date of any hospital restructuring that is exempt from approval under paragraph H, each affected hospital shall file with the commission a notice including a description of the contemplated restructuring, the date on which it is expected to occur and other information the commission may reasonably require about the characteristics and expected effects of the restructuring. No more than 30 days after each restructuring described in a notice under this subsection occurs, each affected hospital shall file with the commission a report of the date on which the restructuring took place, any differences between the restructuring that occurred and the description furnished in the notice and any corrections or amendments of the other information in the notice that ~~is~~ are necessary to reflect the results of the restructuring that actually took place.

Sec. 4. 22 MRSA §396-L, sub-§8 is enacted to read:

8. Corporate purposes of holding company. The corporate purposes of parent entities of hospitals are subject to the following provisions.

A. No later than January 1, 1994, the corporate purposes of any parent entity of a hospital, as set forth in its articles of incorporation, must contain a statement that ensures that the primary purposes of the parent entity are to support the provision of health services by the hospital or hospitals controlled by the parent entity. The primary purposes may also include the support of other health care facilities and direct providers of health care serving the same communities as the hospitals controlled by the parent entity.

B. The commission may, upon application, grant a waiver or modification of the requirements of this subsection if the applicant shows that compliance would be impracticable and that a waiver is not inconsistent with the purposes of this section and

the purposes set forth in section 381. A corporation may deviate from the requirements of this subsection, without commission approval, to the extent necessary to remain in compliance with federal law governing exemption from income taxes.

See title page for effective date.

CHAPTER 787

H.P. 1594 - L.D. 2248

An Act to Clarify Maine's Rent-to-own Laws

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

9-A MRSA Art. XI is enacted to read:

Article XI

RENTAL-PURCHASE PRACTICES

§11-101. Short title

This Article may be known and cited as the "Maine Consumer Credit Code - Rental-purchase Agreements."

§11-102. Purpose; rules of construction

1. This Article must be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this Article are to:

A. Simplify, clarify and modernize the law governing rental-purchase agreements;

B. Provide certain disclosures to consumers who enter into rental-purchase agreements and to promote consumer understanding of the terms of rental-purchase agreements;

C. Protect consumers against unfair practices by some rental-purchase dealers, having due regard for the interests of legitimate and scrupulous rental-purchase dealers; and

D. Permit and encourage the development of fair and economically sound rental-purchase practices.

§11-103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this Article, the "Uniform Commercial Code" and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud,

misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause, supplement the provisions of this Article.

§11-104. Application

This Article applies to rental-purchase agreements or acts, practices or conduct related to a rental-purchase agreement if:

1. The rental-purchase agreement is entered into in this State; or

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

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

§11-105. Definitions

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

1. "Administrator" means the administrator designated in Article VI, section 6-103.

2. "Advertisement" means a commercial message in any medium that directly or indirectly aids, promotes or assists a rental-purchase agreement.

3. "Cash price" means the price for which the merchant would sell the property to the consumer for cash on the date of the rental-purchase agreement. The "cash price" must be reasonably related to the fair market value of the property.

4. "Consumer" means an individual who rents personal property under a rental-purchase agreement used primarily for personal, family or household purposes.

5. "Consummation" means the time at which a consumer becomes contractually obligated under a rental-purchase agreement for personal property used primarily for personal, family or household purposes.

6. "Merchant" means a person who regularly provides the use of property through rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement.

7. "Rental-purchase agreement" means an agreement for the use of personal property by an individual primarily for personal, family or household purposes for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the consumer to become the owner of the property, but does not obligate or require the consumer to continue renting or using the property beyond the initial period.

§11-106. Inapplicability of other laws; exempt transactions

1. A rental-purchase agreement that complies with this Article is not considered or governed by the laws related to:

A. A "home solicitation sale" as defined in section 3-501;

B. A "consumer credit sale" as defined in section 1-301, subsection 11; except that the following sections of the Maine Consumer Credit Code apply: section 1-107, waiver, agreement to forego rights, settlement of claims; section 1-111, record retention; section 1-201, territorial application; section 1-202, exclusions; section 1-203, jurisdiction and service of process; section 2-507, attorney's fees and collection costs; section 3-202, notice to consumer; section 3-203, notice of assignment; section 3-305, no assignment of earnings; section 3-306, authorization to confess judgment prohibited; section 3-307, certain negotiable instruments prohibited; section 3-309, referral sales; section 3-403, assignee subject to defenses; section 5-104, no garnishment before judgment; section 5-105, limitation on garnishment; section 5-106, no discharge from employment for garnishment; section 5-112, creditor's right to take possession after default; section 5-113, venue; section 5-114, stay of enforcement of judgment; section 5-115, misrepresentation; section 5-116, illegal, fraudulent or unconscionable conduct in attempted collection of debts; section 5-117, prohibited practices; section 5-201, effect of violations on rights of parties; section 5-202, refunds and penalties as setoff to obligation; section 5-301, violations; Article VI in its entirety, except that the term "original unpaid balances arising from consumer credit transactions" described in section 6-203, subsection 2 means "gross rental receipts from rental-purchase agreements" for purposes of administration of this Article; section 8-104, regulations, model forms; and section 8-402, regulation of credit reports;

C. A "consumer lease" as defined in section 1-301, subsection 13;

D. A "sale of goods" as defined in section 1-301, subsection 33; or

E. A "security interest" as defined in Title 11, section 1-201, subsection (37).

2. This Article does not apply to:

A. A rental-purchase agreement made primarily for business, commercial or agricultural purposes or made with a governmental agency or instrumentality;

B. A lease of a safe-deposit box;

C. A lease or bailment of personal property that is incidental to the lease of real property and does not provide the consumer with an option to purchase the leased property;

D. A lease of an automobile; or

E. A lease of real estate.

§11-107. General requirements of disclosure

1. The merchant shall disclose to the consumer the information required by this Article. In a transaction involving more than one merchant, only one merchant need make the disclosure but all merchants are bound by the disclosure.

2. The disclosure must be made during or before consummation of the rental-purchase agreement.

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

4. If a disclosure becomes inaccurate as a result of any act, occurrence or agreement by the consumer after delivery of the required disclosure, the inaccuracy is not a violation of this Article.

§11-108. Disclosure

1. For each rental-purchase agreement, the merchant shall disclose in the agreement the following items, as applicable:

A. The total number, total amount and timing of all payments necessary to acquire ownership of the property;

B. A statement that the consumer does not acquire ownership rights to the property until the

consumer has made the total payment necessary to acquire ownership;

C. A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is stolen, damaged or destroyed;

D. A brief description of the rented property sufficient to identify the property to the consumer and the merchant, including an identification number if applicable and a statement indicating whether the property is new or used. A statement that indicates new property is used is not a violation of this Article;

E. A statement of the cash price of the property. A statement of the aggregate cash price of all items involving the rental of 2 or more items as a set satisfies this requirement;

F. The total amount of initial payments paid at or required before consummation of the agreement or delivery of the property, whichever is later;

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

H. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early-purchase option, the price at which the property may be purchased and the formula or method for determining that price;

I. A description of any damage to the property;

J. A statement identifying the merchant as the party responsible for maintaining or servicing the property while it is rented, together with a description of that responsibility and a statement that, if any part of a manufacturer's express warranty covers the rental property at the time the consumer acquires ownership of the property, that warranty is transferred to the consumer if allowed by the terms of the warranty;

K. The date of the transaction and the identities of the merchant and the consumer;

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

M. Notice of the right to reinstate an agreement as provided in this Article;

N. A description of what conditions constitute default by the consumer; and

O. A notice to the consumer pursuant to section 3-202.

§11-109. Prohibited practices

A rental-purchase agreement may not contain:

1. A confession of judgment;
2. A negotiable instrument;
3. A security interest or any other claim of a property interest in any goods except those goods delivered by the merchant pursuant to the rental-purchase agreement;
4. A wage assignment;
5. A waiver by the consumer of claims or defenses;
6. A provision authorizing the merchant or a person acting on the merchant's behalf to enter on the consumer's premises or commit any breach of the peace in repossession of goods;
7. A provision requiring the purchase from the merchant of a liability damage waiver or insurance for the merchandise;
8. A provision requiring the payment of a late charge unless a rental payment is more than 3 days late for an agreement that is renewed on a weekly basis or more than 5 days late for an agreement that is renewed less frequently than on a weekly basis;
9. A provision requiring a payment at the end of the rental-purchase agreement period in excess of or in addition to a regular periodic payment in order for the consumer to acquire ownership of the property or payment of rental payments in excess of the total amount necessary to acquire ownership of the property;
10. A penalty for early termination of a rental-purchase agreement or for the return of an item at any time;
11. A provision for payment by a cosigner of the rental-purchase agreement of any fees or charges that could not be assessed to the consumer as part of the rental-purchase agreement; or
12. An offer of insurance from the merchant to the consumer.

§11-110. Calculation of late charges

Any late charge assessed pursuant to section 11-109, subsection 8 may not exceed the greater of 5% of the delinquent payment amount or \$2. Only one late charge may be assessed on any delinquent payment, regardless of how long the payment remains unpaid.

§11-111. Allowable charges

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

1. An initial fee not to exceed \$15 may be assessed only once per consumer regardless of the number of rental-purchase agreements entered into by the consumer and must be refunded to the consumer if the rental agreement is not consummated.
2. An optional delivery charge may not exceed \$20 for 3 or fewer items actually delivered or \$40 for 4 or more items actually delivered.
3. An optional payment pick-up fee may not exceed \$5 and may be assessed only once per payment.
4. A liability damage waiver fee may be contracted for and received pursuant to section 11-115.

§11-112. Default; notice of default and right to cure

1. An agreement of the parties to a rental-purchase agreement with respect to default on the part of the consumer is enforceable only to the extent that the consumer fails to renew an agreement and fails to return the rented property or make arrangements for its return as provided for by the agreement.
2. In consumer rental-purchase agreements, after a consumer is in default for 3 business days and does not voluntarily surrender possession of the rented property, a merchant may give the consumer the notice provided in this section. A merchant gives the notice to the consumer under this section when the merchant delivers notice in the same manner as a notice provided under the Maine Consumer Credit Code, section 5-110.
3. The notice must be in writing and conspicuously state the name, address and telephone number of the merchant to whom payment is made, a brief identification of the transaction, the consumer's right to cure the default, the amount of payment and the date the payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

(Name, address and telephone number of merchant)

(Account number, if any)

(Brief identification of transaction)

(Date) is LAST DATE FOR PAYMENT (Amount) is the AMOUNT NOW DUE
You have failed to renew your rental agreement(s). If you pay the AMOUNT NOW DUE (above) by the LAST DATE FOR PAYMENT (above), you may continue with the contract as though you had renewed on time. If you do not pay by that date, we may exercise our rights under the law. You may be required to pay reasonable costs authorized by law.

PLEASE ALSO NOTE: As of the LAST DATE FOR PAYMENT (above) you will owe the following additional payments:

| | |
|-------------------|-----------------|
| <u>(date due)</u> | <u>(amount)</u> |
|-------------------|-----------------|

In order to cure your account fully, the payment or payments listed above must also be paid in full on or before the LAST DATE FOR PAYMENT.

If you are late again within the next 6 months in making your payments, we may exercise our rights without sending you another notice. If you have questions, promptly write or telephone (name of merchant).

4. With respect to consumer rental-purchase agreements with payments or options to renew more frequently than monthly, after default consisting of failure to renew or return the property, a merchant may not initiate court action to recover rented property until 3 business days after notice of the consumer's right to cure is given. With respect to all other rental-purchase agreements, after default consisting of failure to renew or return the property, a merchant may not initiate court action to recover rented property until 5 business days after notice of the consumer's right to cure is given.

5. After notice is given and until expiration of the minimum applicable period, a consumer may cure all defaults consisting of failure to renew and failure to return the property by tendering the amount of all unpaid sums due at the same time of the tender.

6. This section and the provisions on waiver, agreements to forego rights and settlement of claims do not prohibit a consumer from voluntarily surrendering possession of goods that are rented and a merchant from enforcing the security interest in the goods at any time after default. In any enforcement proceeding, a merchant shall affirmatively plead and prove either that the notice to cure is not required or that the merchant has given the required notice. The failure to plead does not invalidate any action taken by the merchant that is otherwise lawful and if the merchant had rightfully repossessed any collateral the repossession does not constitute conversion.

7. Any repossession of rented property in violation of this section is void and the merchant is liable for conversion.

§11-113. Reinstatement

1. A consumer who fails to make a timely rental payment but has returned the merchandise, made arrangements for its return or surrendered the property upon the merchant's request may reinstate the agreement without losing any rights or options that exist under the agreement by payment of:

A. All past due rental charges; and

B. Other charges expressly provided in this Article.

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

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

4. Whenever a consumer has paid more than 2/3 of the total of payments necessary to acquire ownership and is in default or the property has been returned other than through order of the court, the consumer may reinstate the agreement during a period of not less than 180 days after the date of the default or the return of the property.

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

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

§11-114. Consumer's right to acquire ownership when 50% of payments equals cash price

1. The total number of rental payments necessary to acquire ownership of the property under any rental-purchase agreement may not exceed 2 times the cash price of the property. When 50% of all rental payments made by a consumer equals the cash price of the property disclosed to the consumer pursuant to section 11-108, subsection 1, paragraph E, the consumer acquires ownership of the property and the rental-purchase agreement terminates.

2. At any time after tendering an initial lease payment, a consumer may acquire ownership of the property that is the subject of the rental-purchase agreement by tendering an amount equal to the amount by which the cash price of the rented property exceeds 50% of all rental payments made by the consumer.

3. It is not a violation of this section for the merchant and the consumer to agree in writing to allow the consumer to acquire ownership of the property for a lesser amount than the maximum limits set forth in subsections 1 and 2.

§11-115. Liability damage waivers; fees

In addition to the other charges permitted by this Article, the parties may contract for a liability damage waiver. The fee for the liability damage waiver may not exceed the greater of 5% of any periodic rental payment due or \$2 in the case of any rental-purchase agreement with weekly or biweekly renewal dates or the greater of 5% of any periodic rental payment due or \$5 in the case of any rental-purchase agreement with monthly renewal dates. The selling or offering for sale of a liability damage waiver pursuant to this Article is subject to the following prohibitions and requirements.

1. The restrictions, conditions and exclusions of the liability damage waiver must be disclosed on a separate contract, sheet or handout given to the consumer prior to entering into the rental-purchase agreement. The separate contract, sheet or handout must be signed or otherwise acknowledged as received by the consumer prior to entering into the rental-purchase agreement.

2. A merchant may not sell or offer to sell a liability damage waiver unless all restrictions, conditions and exclusions are printed in the rental-purchase agreement or in a separate agreement in 8-point type or larger, written in ink or typewritten on the face of the rental-purchase agreement in a blank space provided. The liability damage waiver may exclude only loss or damage that is caused intentionally by the consumer or resulting from the consumer's willful or wanton misconduct to the property that is the subject of the rental-purchase agreement.

3. The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver and must display in 8-point boldface type the following notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL

PROPERTY AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

§11-116. Receipts and accounts

A merchant shall furnish the consumer a written receipt for each payment made in cash or by any other method of payment that does not provide evidence of payment when any such payment is made in person during normal working hours. The merchant shall provide the consumer with a written statement of account within 7 days of the consumer's request.

§11-117. Renegotiations and extensions

1. A renegotiation occurs when an existing rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same merchant and consumer. A renegotiation is considered a new agreement requiring new disclosures. The following are not considered renegotiations:

A. The addition or return of property in a multiple-item agreement or the substitution of the rental property, if that addition, return or substitution does not affect the total number, total amount or timing of all payments necessary to acquire ownership;

B. A deferral or extension of one or more periodic payments or portions of a periodic payment;

C. A reduction in charges in the agreement; and

D. An agreement involved in a court proceeding.

2. Disclosures are not required for any extension of a rental-purchase agreement.

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

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

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

B. The total amount of payments, including any initial fee, necessary to acquire ownership; and

C. That the consumer does not acquire ownership rights if the total amount necessary to acquire ownership is not paid.

2. If any item of property is displayed for rent with a point-of-sale placard that refers to or states the

amount of any weekly or monthly payment, the point-of-sale placard must state, in numerals and lettering at least as prominent as the payment price, the following:

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

B. The total amount of payments necessary to acquire ownership of the item.

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

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

§11-119. Collection activity

The Maine Fair Debt Collection Practices Act applies to the debt collection practices of merchants under this Article.

§11-120. Enforcement; penalties

A merchant who violates this Article or any rule issued by the administrator is subject to the following:

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

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

3. A civil action by an aggrieved consumer in which the consumer may recover actual damages or \$250, whichever is greater, plus costs of the action and reasonable attorney's fees.

§11-121. Effective date

This Article takes effect January 1, 1993.

See title page for effective date.

CHAPTER 788

H.P. 1598 - L.D. 2260

**An Act Concerning the Registration of
Truck Campers**

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

Sec. 1. 29 MRSA §1, sub-§18-A is enacted to read:

18-A. Truck camper. “Truck camper” means a slide-in camper designed to be mounted on a truck body to provide temporary living quarters for recreational, camping, travel or other use.

Sec. 2. 29 MRSA §109, as amended by PL 1975, c. 252, §6, is further amended to read:

§109. — excise; personal property and real property

No motor vehicle, mobile home or, camp trailer shall or truck camper may be registered under this Title until the excise tax or personal property tax or real estate tax has been paid in accordance with Title 36, sections 551, 602, 1482 and 1484.

Sec. 3. 29 MRSA §203, first ¶, as enacted by PL 1975, c. 702, §4, is amended to read:

No An application for registration shall may not be granted in respect to any vehicle or truck camper whose sale or use may be subject to tax under Title 36, chapters 211 to 225, except in the case of a renewal of registration by the same owner, unless and until one of the following conditions has been satisfied:

Sec. 4. 29 MRSA §261 is enacted to read:

§261. Truck campers

Upon receiving an application and the payment of a fee of \$10, the Secretary of State may issue an annual registration permit for truck campers.

Any resident person, firm or corporation, or owner as defined in section 1, who fails to register a truck camper is guilty of an infraction with a minimum fine of \$100. Any person stopped for a violation of this section during the initial 12 months after this section takes effect must be issued a warning that a violation of this section has occurred. Failure to register the truck camper within 5 work days following the warning constitutes a violation of this section.

Sec. 5. 36 MRSA §1752, sub-§20-A is enacted to read:

20-A. Truck camper. “Truck camper” means a slide-in camper designed to be mounted on a truck body to provide temporary living quarters for recreational, camping, travel or other use.

Sec. 6. 36 MRSA §1760, sub-§23, as amended by PL 1985, c. 691, §11, is repealed and the following enacted in its place:

23. Certain vehicles purchased by nonresidents. Sales of the following vehicles purchased by a nonresi-