

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

relating to "Fare Collection" and inserting in its place the following:

**Fare Collection**

Personal Services	9,816,323
All Other	3,779,089
<hr/>	
TOTAL	13,595,412

**Sec. 5. P&SL 1995, c. 29, §1, under the caption "MAINE TURNPIKE AUTHORITY,"** is amended by striking out all of the last line and inserting in its place the following:

<b><u>TOTAL</u></b>	<b><u>\$43,236,740</u></b>
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**Sec. 6. Legislative intent.** Those sections of this Act that amend the Maine Revised Statutes, Title 23, section 1961, subsection 6 and Title 23, section 1964, subsection 6-A clarify the intent of Initiated Bill 1991, chapter 1, to have the Legislature approve the Maine Turnpike Authority's operating budget and confirm the authority's practice of submitting an operating budget for approval and a statement on capital expenditures and debt service for informational purposes.

**Sec. 7. Retroactivity.** Those sections of this Act that amend the Maine Revised Statutes, Title 23, section 1961, subsection 6 and section 1964, subsection 6-A apply retroactively to December 20, 1991.

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

Effective April 3, 1996.

**CHAPTER 614**

**H.P. 1239 - L.D. 1699**

**An Act to Amend and Further Deregulate the Maine Consumer Credit Code**

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

**PART A**

**Sec. A-1. 9-A MRSA §2-202, sub-§2, ¶A,** as repealed and replaced by PL 1977, c. 421, §1, is amended to read:

A. The average daily balance in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The

amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all debits, but excluding ~~all~~ purchases or leases of goods and services made on that day if a finance charge on these amounts is prohibited under subsection 5 and deducting all payments and other credits made or received as of that day; or

**Sec. A-2. 9-A MRSA §2-302, sub-§4,** as amended by PL 1983, c. 720, §8, is further amended to read:

4. A separate license ~~shall be~~ is required for each place of business. ~~No~~ A license fee exceeding \$200 may not be imposed for any license issued for a place of business other than that of the first licensed location of the licensee.

**Sec. A-3. 9-A MRSA §2-308, sub-§3,** as enacted by PL 1973, c. 762, §1, is repealed.

**Sec. A-4. 9-A MRSA §2-501, sub-§4,** as enacted by PL 1995, c. 137, §5, is amended by amending the first paragraph to read:

4. In addition to or in lieu of interest at a periodic rate or rates as provided in section 2-402, and in addition to any other charges permitted under this Act, a supervised financial organization or supervised lender may, if the agreement with the consumer governing an open-end credit plan involving the use of a lender credit card so provides, charge and collect as an additional finance charge or interest, in such manner or form as the plan may provide, one or more of the following:

**Sec. A-5. 9-A MRSA §5-105, sub-§2,** as enacted by PL 1973, c. 762, §1, is amended to read:

2. The maximum part of the aggregate disposable earnings of an individual for any workweek ~~which that~~ is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of:

A. ~~25%~~ Twenty-five percent of ~~his the individual's~~ the individual's disposable earnings for that week; ~~or~~

B. The amount by which ~~his the individual's~~ the individual's disposable earnings for that week exceed 40 times the Federal minimum hourly wage prescribed by Section 6(a)(I) of the Fair Labor Standards Act of 1938, U.S.C. tit. 29, § 206(a)(I), in effect at the time the earnings are payable; or

C. In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph B.

**Sec. A-6. 9-A MRSA §8-105, sub-§1-A** is enacted to read:

**1-A.** The finance charge may not include fees and amounts imposed by 3rd-party closing agents, including settlement agents, attorneys and escrow and title companies but not including fees for administering escrow accounts, if the creditor does not require the imposition of the charges or the services provided and does not retain the charges.

**Sec. A-7. 9-A MRSA §8-105, sub-§4, ¶¶A and B,** as enacted by PL 1981, c. 243, §25, are amended to read:

A. Fees and charges prescribed by law ~~which~~ that 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~~ that would otherwise be payable; ~~or~~

**Sec. A-8. 9-A MRSA §8-105, sub-§4, ¶C** is enacted to read:

C. Any tax levied on security instruments or on documents evidencing indebtedness if the payment of those taxes is a precondition for recording the instrument securing the evidence of indebtedness.

**Sec. A-9. 9-A MRSA §8-105, sub-§5, ¶¶B and E,** as enacted by PL 1981, c. 243, §25, are amended to read:

B. Fees for preparation of a ~~deed, settlement statement or other~~ loan-related documents;

E. Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing; and

**Sec. A-10. 9-A MRSA §8-201, sub-§3,** as enacted by PL 1981, c. 243, §25, is amended to read:

**3.** The administrator may provide by regulation that any portion of the information required to be disclosed by this ~~Article~~ article may be given in the form of estimates ~~where~~ when the provider of that information is not in a position to know exact information. When a portion of the interest on any consumer credit transaction is determined on a per diem basis and collected upon the consummation of the transaction, any disclosure with respect to that portion of interest is deemed accurate for purposes of this Title if the disclosure is based on information

actually known to the creditor at the time the disclosure documents are being prepared for the consummation of the transaction.

**Sec. A-11. 9-A MRSA §8-204, sub-§§8 and 9** are enacted to read:

**8.** An obligor has no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section if the creditor provided the obligor the appropriate form of written notice published and adopted by the administrator or provided the obligor a comparable written notice of the rights of the obligor that was properly completed by the creditor and otherwise complied with all other requirements of this section regarding notice.

**9.** Rescission rights in foreclosure are determined in accordance with the following.

A. Notwithstanding section 8-208-A, and subject to the time period provided in subsection 6, in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of any obligor securing an extension of credit, the obligor has a right to rescind the transaction equivalent to other rescission rights provided by this section, if:

(i) A mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(ii) The form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the administrator or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

B. Notwithstanding section 8-105, subsection 6, and subject to the time period provided in subsection 6, for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge are deemed accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this Title.

C. This subsection does not affect a consumer's right of rescission in recoupment under law.

D. This subsection applies to all consumer credit transactions in existence or consummated on or after September 30, 1995.

**Sec. A-12. 9-A MRSA §8-208, sub-§1, ¶B,** as amended by PL 1981, c. 698, §21, is repealed and the following enacted in its place:

B. In an individual action:

(i) Twice the amount of any finance charge in connection with the transaction;

(ii) In the case of a consumer lease, 25% of the total amount of monthly payments under the lease;

Liability under this paragraph may not be less than \$100 nor greater than \$1,000; except that in the case of a credit transaction not under an open-end credit plan that is secured by real property or a dwelling, liability under this paragraph may not be less than \$200 nor greater than \$2,000.

**Sec. A-13. 9-A MRSA §8-208-A** is enacted to read:

**§8-208-A. Certain limitations on liability**

1. For any consumer credit transaction subject to this Title that is consummated before September 30, 1995, a creditor or any assignee of a creditor does not have civil, administrative or criminal liability under this Title for, and a consumer does not have extended rescission rights under section 8-204, subsection 6 with respect to:

A. The creditor's treatment, for disclosure purposes, of:

(i) Taxes described in section 8-105, subsection 4, paragraph C;

(ii) Fees described in section 8-105, subsection 5, paragraphs B and E;

(iii) Fees and amounts described in section 8-105, subsection 1-A; or

(iv) Borrower-paid mortgage broker fees referred to in section 8-105, subsection 1, paragraph F;

B. The form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 8-204 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the administrator or a comparable written notice and otherwise complied with all the requirements of this section regarding notice; or

C. Any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed:

(i) Is deemed accurate for purposes of this Title and if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$200;

(ii) May, under section 8-105, subsection 6, paragraph B, be deemed accurate for purposes of section 8-204; or

(iii) Is greater than the amount or percentage required to be disclosed under this Title.

2. Subsection 1 does not apply to:

A. Any individual action or counterclaim brought under this Title that was filed before June 1, 1995;

B. Any class action brought under this Title for which a final order certifying a class was entered before January 1, 1995;

C. The named individual plaintiffs in any class action brought under this Title that was filed before June 1, 1995; or

D. Any consumer credit transaction for which a timely notice of rescission was sent to the creditor before June 1, 1995.

**Sec. A-14. 9-A MRSA §8-209, sub-§§4, 5 and 6** are enacted to read:

4. The rights upon assignment of certain mortgages are determined in accordance with the following.

A. Any person who purchases or is otherwise assigned a high-rate, high-fee mortgage, as defined in section 8-103, subsection 1, paragraph F-1, is subject to all claims and defenses with respect to that mortgage that the consumer may assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising ordinary due diligence could not determine, based on the documentation required by this Title, the itemization of the amount financed and other disclosure of disbursements, that the mortgage was a high-rate, high-fee mortgage. This paragraph does not affect rights of a consumer under subsection 1, 2 or 3 or any other provision of this Title.

B. Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph A may not exceed:

(i) With respect to actions based upon a violation of this Title, the amount specified in section 8-208; and

(ii) With respect to all other causes of action, the sum of:

(a) The amount of all remaining indebtedness; and

(b) The total amount paid by the consumer in connection with the transaction.

C. The amount of damages that may be awarded under paragraph B, subparagraph (ii) must be reduced by the amount of any damages awarded under paragraph B, subparagraph (i).

D. Any person who sells or otherwise assigns a high-rate, high-fee mortgage, as defined in section 8-103, subsection 1, paragraph F-1, shall include a prominent notice of the potential liability under this subsection as determined by the administrator.

5. The liability of assignees for consumer credit transactions secured by real property is determined in accordance with the following.

A. Except as otherwise provided in this Title, any civil action against a creditor for a violation of this Title and any proceeding under section 8-108 against a creditor, with respect to a consumer credit transaction secured by real property, may be maintained against any assignee of that creditor only if:

(i) The violation for which the action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with the transaction pursuant to this Title; and

(ii) The assignment to the assignee was voluntary.

B. For the purposes of this subsection, a violation is apparent on the face of the disclosure statement if:

(i) The disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note or any other disclosure of disbursement; or

(ii) The disclosure statement does not use the terms or format required under this Title.

6. The treatment of a servicer of a consumer obligation from a consumer credit transaction is determined in accordance with the following.

A. A servicer of a consumer obligation arising from a consumer credit transaction may not be treated as an assignee of such an obligation for purposes of this section unless the servicer is or was the owner of the obligation.

B. A servicer of a consumer obligation arising from a consumer credit transaction may not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address and telephone number of the owner of the obligation or the master servicer of the obligation.

C. For purposes of this subsection, the term "servicer" has the same meaning as in the federal Real Estate Settlement Procedures Act of 1974, Section 6(i)(2).

D. This subsection applies to all consumer credit transactions in existence or consummated on or after September 30, 1995.

**Sec. A-15. 9-A MRSA §8-303, sub-§5, ¶B,** as enacted by PL 1981, c. 243, §25, is amended to read:

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

**Sec. A-16. 9-A MRSA §9-308,** as enacted by PL 1987, c. 396, §12, is amended to read:

### **§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 ~~9-304~~ 9-302, subsection 1, at any time without penalty.

## **PART B**

**Sec. B-1. 9-A MRSA §8-105, sub-§1, ¶¶D and E,** as enacted by PL 1981, c. 243, §25, are amended to read:

D. Fee for an investigation or credit report; ø

E. Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss; or

**Sec. B-2. 9-A MRSA §8-105, sub-§1, ¶F** is enacted to read:

F. Borrower-paid mortgage broker fees, including fees paid directly to the broker or to the lender for delivery to the broker, whether the fees are paid in cash or financed.

**Sec. B-3. 9-A MRSA §8-105, sub-§6** is enacted to read:

6. In connection with credit transactions not under an open-end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge are deemed accurate:

A. For purposes of this Title, if the amount disclosed as the finance charge:

(i) Does not vary from the actual finance charge by more than \$100; or

(ii) Is greater than the amount required to be disclosed under this Title; or

B. For purposes of section 8-204:

(i) If, except as provided in subparagraph (ii), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 1/2 of 1% of the total amount of credit extended; or

(ii) In the case of a transaction, other than a high-rate, high-fee mortgage as defined in section 8-103, subsection 1, paragraph F-1, that:

(a) Is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction, as defined in section 8-103, subsection 1, paragraph H, or is any subsequent refinancing of such a transaction; and

(b) Does not provide any new consolidation or new advance, if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 1% of the total amount of credit extended.

**Sec. B-4. Effective date.** This Part takes effect September 30, 1996.

**PART C**

**Sec. C-1. 9-A MRSA §8-208, sub-§8, ¶B,** as amended by PL 1989, c. 472, §3, is further amended to read:

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

See title page for effective date, unless otherwise indicated.

**CHAPTER 615**

**S.P. 670 - L.D. 1732**

**An Act to Promote the Health of Newborns and Their Mothers**

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

**Whereas,** insurers, nonprofit hospital and medical service organizations and health maintenance organizations across the United States have implemented health care plans generally covering no more than 24 hours of hospital care for mothers and newborns following childbirth; and

**Whereas,** insurers, nonprofit hospital and medical service organizations and health maintenance organizations operating health care plans in Maine could initiate limits on hospital stays at any time; and

**Whereas,** the "Guidelines for Perinatal Care," published by the American Academy of Pediatrics and the American College of Obstetrics and Gynecology, recommend a hospital stay of 48 hours after childbirth; and

**Whereas,** it is the intent of the Legislature to prevent the adverse impact of inappropriate early discharge of maternity patients and newborns; 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. 24 MRSA §2318-A** is enacted to read: