MAINE STATE LEGISLATURE

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COMMITTEE ON BUSINESS LEGISLATION

REPORT ON ITS STUDY OF

THE MAINE CONSUMER CREDIT CODE

Senate

John H. Cox, Chairman
Bennett D. Katz
Guy A. Marcotte

House

Claude N. Trask, Chairman
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REPORT AND SUPPLEMENTARY REPORT OF THE COMMITTEE ON BUSINESS LEGISLATION ON THE MAINE CONSUMER CREDIT CODE

Report of the Committee on Business Legislation
on Creation of a Maine Consumer Credit Code

The Legislative Council charged the Committee on Business Legislation with studying L.D. 1803 and L.D. 1877, both introduced at the Regular Session of the 106th Legislature and both of which would establish a consumer credit code to regulate comprehensively the credit industry in Maine.

The study order instructed the committee as follows:

> Whereas, the consumer credit industry of the State of Maine is regulated by several statutes, which have some inconsistent requirements, and which do not regulate all aspects of the industry; and
>
> Whereas, legislation has been proposed that would comprehensively regulate the consumer credit industry which deserves further study; now, therefore, be it
>
> Ordered, the Senate concurring, that the Legislative Research Committee study the subject matter of the Bills: "AN ACT Creating the Maine Consumer Credit Code," House Paper 1229, Legislative Document 1803, and "AN ACT to create a Maine Consumer Code," House Paper 1386, Legislative Document 1877, both introduced at the Regular Session of the 106th Legislature, and further to explore whether the best interests of the People of the State of Maine would be served by enactment of this type of legislation; and be it further
>
> Ordered, that the committee study the regulations which other states have imposed on the consumer credit industry; and be it further
>
> Ordered, that the State Departments of Banks and Banking, the Insurance Department, and the Consumer Fraud Division of the Department of the Attorney General, and such other agencies or departments as may be determined by the Legislative Research Committee, be authorized and respectfully directed to provide the committee with such information, technical advice and assistance as the committee deems necessary or desirable to carry out the purposes of this Order; and be it further
>
> Ordered, that the Legislative Research Committee report its findings with any proposed legislation or proposed amendments to the First Special Session of the 106th Legislature in 1974; and be it further
>
> Ordered, that upon passage of this Order, in concurrence, that copies of this Order be transmitted forthwith to each agency specified herein as notice of the pending study.

Although the order refers to the Legislative Research Committee, that committee was abolished by legislation during the regular session and the study was assigned to the Joint Standing Committee on Business Legislation, which had held hearings on both of the bills during the regular session.

Background of the Bills

L.D. 1803 is based substantially on the Uniform Consumer Credit Code (or U3C) drafted and promulgated by the National Conference of Commissioners on Uniform State Laws. The code has gone through several different drafts over the years. It has been adopted, with some variation, particularly as to means of enforcement, in seven states, Colorado, Idaho, Indiana, Kansas, Oklahoma, Utah and Wyoming.

Versions of the Uniform Consumer Credit Code were introduced in both the 104th and 105th Legislatures and were defeated. After the filing in the 104th it was assigned for study to the Legislative Research Committee, which recommended creation of a special commission to review the code and to do the drafting necessary to adopt it to Maine law. The Legislature rejected this proposal, but, after the defeat of the code in the 105th, a committee of the Maine Bar Association was formed for this same purpose. The committee consisted of attorneys representing both the credit industry and consumer groups. The committee was headed by Professor John A. Spanogle, Jr., of the University of Maine School of Law, author of a study of the code, Advantages and Disadvantages - A Comparison of the Present Maine Law and the U3C, 22 Maine L. Rev. 295 (1970). L.D. 1803, which included substantial changes from previous versions of the code in Maine, was the result of the committee's work.

L.D. 1877 is modelled primarily on the Wisconsin Consumer Act, which in turn was based substantially on the Model Consumer Act. This model act, a rival of sorts of the U3C, was drafted by the National Consumer Law Center, funded by the Legal Services Program of the Office of Economic Opportunity. L.D. 1877 is the same type of comprehensive legislation as L.D. 1803, but provides for generally lower interest rates and for even more stringent consumer protections. Because L.D. 1803 had much broader support, from most branches of the industry and from many consumer groups, and because a great deal of work had been put into preparation of L.D. 1803 by a number of Maine citizens, the Business Legislation Committee concentrated most of its study on that bill.

The committee held six meetings between September and December 1973 that were devoted primarily to review of L.D. 1803 and to consideration of proposed amendments, many of which were suggested by committee members themselves. The legislative staff assistant assigned to the committee prepared several memoranda for the committee, explaining provisions of L.D. 1803, discussing problems of the bill, and setting forth the proposed amendments on which the committee voted. The committee met on different occasions with Roberta Weil, Commissioner of the Department of Business Regulation, with Harry Giddings of the Personal and Consumer Finance Division of the Bureau of Banks and Banking, and with John Quinn, Assistant Attorney General in charge of the Consumer Fraud Division.

The Maine Consumer Credit Code (or M3C), introduced in the Special Session of the 106th Legislature as L.D. 2451, is the result of the committee's efforts as explained further in this report. An appendix to this report lists the changes

made in L.D. 1803 to produce the new M3C.

Although not all members of the committee support the concept of the M3C or individual provisions of it, the committee did vote unanimously to report it to the special session.

The Need for Comprehensive and Consistent Legislation

Consumer credit in Maine is currently regulated by a number of different statutes enacted at different times, at different stages in the development of the industry and in response to different problems.

Under present Maine law, the consumer credit industry is divided into segments such as retail merchants, motor vehicle retailers, home repair salesmen, commercial banks, credit unions, industrial loan companies and small loan companies. Most of those segments now have their own separate regulatory statutes, interest rate ceilings and restrictions on required and allowed contractual provisions. Some parts of the industry are not regulated at all or have not been regulated until very recently. Until the regular session of this legislature, there was no regulation at all of revolving credit accounts or of companies that finance insurance premiums.

The regulations of interest rates are incomplete and are different for different branches of the credit industry. The interest rates are not even stated in a consistent manner; for example, the statute establishing the rate allowed to industrial loan companies (9 M.R.S.A. § 2345) is so confusing that there has had to be litigation over what the limit really is.

Regulations are inconsistent even in the area of consumer protection. Over the last decade, Maine has enacted several significant protections for the consumer in the credit area, but those have been done on a piecemeal basis and most of them apply only to one segment of the industry. For example, "balloon payments", in contracts in which the final payment may be significantly larger than the other scheduled payments, are specifically prohibited only in home repair contracts.

The Maine Consumer Credit Code, if enacted, would resolve those problems by establishing clear and comprehensive interest rate ceilings which would apply consistently to all consumer transactions and which would make distinctions in rate ceilings based on the type of transaction rather than on the branches of the industry. The code would expand the present consumer protections to cover equally all types of consumer credit transactions. The code also enacts a number of new protections which all apply equally. The code establishes consistent regulation of all branches of consumer credit by placing all aspects of the industry under a new self-financing Bureau of Consumer protection with the Department of Business Regulation, which will have the authority to establish consistent rules for the industry.

Interest Rate Ceilings

The M3C would maintain some rate ceilings at their present level, but would raise several others, some significantly, some only slightly. Some of the ceilings in L.D. 1803 were lower than those in the uniform version of the code. The Business Legislation Committee discussed the possibility of changing some of these rates, but did not have the economic data on which to base such changes. It was hoped that competition would keep some rates below the

maximum. Only one change from the rates in L.D. 1803 was eventually made.

Under present law, maximum rates on loans to consumers vary according to the type of lender. Commercial banks now have a ceiling of 16% on loans over $2,000 and none on loans under that amount. Industrial loan companies are limited to a flat rate of either 13% or 26%, depending on how the statute is interpreted. Small loan companies now have graduated rates, 30% for loans under $300 and 18% on loans from $300 to $2,000.

The M3C establishes either a flat rate of 18% on any amount or graduated rates of 30% under $300, 21% from $300 to $1,000 and 15% over $1,000.

Revolving credit accounts offered by merchants and credit card accounts were unregulated under Maine law until the passage of Chapter 615 of the Public Laws of 1973, which established an 18% limit. The M3C maintains that same ceiling.

Installment contracts with merchants are presently unregulated. Motor vehicle credit sellers are limited to flat rates of from 13% to 24%, depending on the age of the car. For both types of contracts, the M3C establishes either a flat rate of 18% on any amount or graduated rates of 30% under $300, 21% between $300 and $1,000 and 15% over $1,000.

Home repair credit sellers are now limited to a maximum rate which works out on the average to 14% per year. L.D. 1803 had raised this rate to the same maximums allowed to merchant installment contracts and motor vehicle credit sellers, but the Business Legislation Committee voted to maintain the current rates, in the one change the committee made from the rates in L.D. 1803. The Home Repair Financing Act had been enacted to regulate an area in which

there had been real abuse, and the committee felt it best to maintain the rates established by that act.

Expanded Consumer Protections

The M3C, as previously noted, expands the present consumer protections to cover all creditors it regulates.

For example, the "36-month rule", which provides that after a loan at high rates has been in effect for 3 years the rate shall drop to 8%, applies only to small loan companies. The M3C applies this rule to all lenders for loans on which the rate is more than 18%.

The limitations on delinquency charges now in the home repair, motor vehicle and small loan statutes are applied to all transactions. (The committee changed L.D. 1803 by extending the time for assessing a delinquency charge from 10 days to 15.)

The M3C would broaden the present statutory prohibition of referral sales frauds in the Home-Solicitation Sales Act to cover all transactions.

The present provisions requiring acknowledgements of final payments of secured transactions, and receipts for individual payments in cash of Small Loans, would be expanded to cover all credit transactions. Statements of account, now available only in secured transactions, would be available in all transactions.

The holder in due course doctrine has traditionally been used to cut off the defenses of a defrauded consumer. The M3C would extend the present partial abolition of holder in due course to the credit card transaction and the interlocking loan. It would also prohibit

use of confessions of judgement and waiver of defense clauses, and prohibit the use of negotiable instruments in credit sales.

The M3C would continue the present Small Loan Act provision prohibiting creditor-sold property insurance on collateral and would expand this provision to apply to all transactions except motor vehicle financing. It would also continue the present Small Loan Act provision prohibiting credit accident and health insurance in the smaller credit transaction, and expand this provision to cover all smaller transactions with an interest rate over 12%.

The M3C would make many of the restrictions on harassing collection techniques, which apply only to collection agencies under present law, apply to all creditors. The M3C provisions include: Threatening violence or criminal prosecution, communicating more than twice with the consumer's employer or others about the debt unless they have a legitimate business need for the information, knowingly disclosing false information or a disputed debt as not disputed, and using simulated legal process.

Wage assignments, which are prohibited only to small loan companies, would be prohibited in all transactions.

New Consumer Protections

The M3C would enact many new, additional protections against abuse, which are not in any present Maine law. A partial list of these added protections include:

1. Sellers of merchandise certificates could charge interest only after the goods were delivered. Many now charge interest as soon as the

certificate is delivered, even though the consumer has not yet received the return value.

The creditor could no longer charge his own attorney's fee to the debtor, except for those who lend money at a rate of 12% or less, who could include only a 15% fee.

Credit sellers could not take a security interest in goods other than those sold, except accessions, or a security interest in realty, except when the transaction is subject to the Home Repair Finance Act. However, lenders would not be restricted in the collateral which they could take, except that no mortgage on realty could be taken if the interest rate were greater than 18%.

2. Payments made after a delinquency charge has been levied would have to be allocated first to current installments. This would prevent "pyramiding" of default charges, which some creditors now do.

3. The doctrine of unconscionability would be expressly recognized as applying to credit insurance transactions, collection conduct, and conduct inducing consumers to enter into contracts.

4. The M3C would prohibit deficiency judgements by credit sellers, and supervised lenders, but only in transactions initially involving $1,000 or less. In such secured transactions of $1,000 or less, the creditor would have the choice of either repossessing the collateral or proceeding on the debt, but he could not do both. In secured transactions initially involving over $1,000, deficiency judgements would still be available. The $1,000 amount would roughly differentiate between household goods, which would be

under this amount, and later-model used cars, which would be over.

The M3C would increase the minimum weekly exemption from wage attachment from 30 to 40 times the federal minimum hourly wage. It would change the present prohibition against employers' discharging a consumer for a single attachment to a prohibition against discharging for repeated attachments.

A creditor would have to give 20 days warning after a default before he could either repossess collateral or accelerate a debt due to a missed payment. During that 20 days, the consumer could cure by paying any installments missed, with a delinquency or deferral charge, but without acceleration of the entire unpaid balance.

Administration and Enforcement

Perhaps the most significant protection for the consumer is the establishment of a state agency whose sole responsibility is to protect the consumer and which is self-financing from fees and charges paid by creditors. It was in this area that the Business Legislation Committee made perhaps its most significant changes in the bill.

The National Conference of Commissioners on Uniform State Laws made no recommendation, leaving that up to the individual states which adopt the U3C. (The U3C refers to the official in charge of administration as "the administrator" and the term is used in the M3C for the sake of uniformity with other versions.)

L.D. 1803 designated an independent "Commissioner of Consumer Protection" as the administrator. It had been considered preferable to establish a new

agency separate from what was then the Department of Banks and Banking. There would be inherent conflicts in the administration of the M3C by the Bank Commissioner. That official's primary duty by statute is to protect bank deposits, which could be adversely affected by strong enforcement of code provisions for the protection of consumers.

The committee briefly considered designating the Attorney General as the administrator, but the Attorney General did not want this responsibility, since many of the duties involved are very different in nature from his current duties.

Chapter 585 of the Public Laws of 1973 enacted a new umbrella agency, the Department of Business Regulation which includes, among other bureaus, what is now the Bureau of Banks and Banking. In line with present state administrative policy and in the interests of administrative efficiency, the committee thought it best to establish a Bureau of Consumer Protection within this department. The bureau would be headed by a superintendent appointed by the Commissioner of the Department of Business Regulations with the advice and consent of the Governor and Council, as are the superintendents of the other bureaus within the department.

L.D. 1803 had provided that examination and investigation of supervised financial organizations, including banks, with respect to their consumer transactions, should be done by the Bank Commissioner rather than the administrator. The committee voted to give these powers to the administrator. It was felt that the commissioner had the power to coordinate examinations by the Bureaus of Consumer Protection and Banking and thereby could avoid the inconvenience to the financial organizations of examinations at different times by different agencies.

L.D. 1803 had empowered the administrator to appoint attorneys to handle all legal action to enforce the code. The committee voted that the administrator should refer legal action to the Attorney General, who shall represent the administrator in court. An additional check on legal action was considered preferable.

Under the M3C, the Superintendent of the Bureau of Consumer Protection would have the power to enjoin or fine violators, to obtain redress for aggrieved consumers, and even to obtain a performance bond against future violations. Creditors who violate the statute would pay the costs of investigating and bringing action against them. He would notify individual borrowers of any violations he discovered, and the public would be able to participate in his hearings. The administrator would have jurisdiction over consumer abuses by any creditor.

The M3C also gives the individual citizen the power to enforce his own rights against violators and recover damages in amounts from $250 to $1000, plus attorney's fees, when he wins. This will compensate him for the time, money and risk to reputation which he must invest to confront the creditor who has broken the law. Most present Maine statutes do not give the aggrieved individual any minimum recovery even if he proves the violation, and this makes it virtually impossible for the average person to take action to enforce his own rights, since he may not recover enough for his own expenses in bringing action.

APPENDIX

Changes In L.D. 1803 Voted by the Committee on Business Legislation

1. § 1.106 -

This section, which provided for changes in certain dollar limits in the act as noted at various sections in the act to be made on the basis of changes in the U.S. Department of Labor's Consumer Price Index, was eliminated entirely, as were the related subsections where they appeared. The committee felt that changes in these dollar limits, which would affect the cost of credit, should be matters for the judgment of future Legislatures rather than automatic occurrences.

The following subsections referring back to § 1.106 were deleted: § 1.301(11)(C), § 1.301(13)(B), §1.301(14)(C), § 2.201(7), § 2.308(2), § 2.401(5), § 2.502(5), § 3.301(4), and § 5.103(6).

2. § 1.202(5) -

In this subsection, the exclusion of the application of the M3C to pawnbroker rate ceilings established by municipal ordinance was deleted, at the suggestion of Professor Spanogle and of Walter D. Malcolm, Esq., of Boston, Vice Chairman of the Committee on the Uniform Consumer Credit Code of the National Conference of Commissioners on Uniform State Laws. They felt that allowing an exclusion from the code to pawnbrokers regulated by municipal ordinances would result in too great disparity and possibly too little regulation.

3. § 2.201(4) -

This subsection originally provided that finance charges cannot be assessed until the date of commencement of delivery of goods or performance of services if these do not occur until 10 days or more after the date credit is granted. This was changed to date of completion of delivery, to cover the situation where delivery is made in installments. This will prevent finance charges from being assessed until delivery is completed.

The other change is to include delivery or performance by a sub-contractor or agent of the seller, to make it clear that the consumer will not have to pay finance charges while there is a delay in delivery or performance by such a sub-contractor or agent.

4. § 2.201(8) -

This is the change in the rate ceiling for home repair financing contracts discussed in the text of the report.

5. § 2.202(1)(B) -

The amendment to this subsection changed the method of determining the unpaid balance on open end credit accounts by requiring that payments, returns and other credits in the first 25 days of the monthly billing cycle be deducted first. This adopts the same method used in Chapter 615 of the Public Laws of 1973.

6. <u>§ 2.303(1)(A)</u> -

This subsection originally required the administrator to revoke or suspend a supervised lender's license if there were any violations of the act or any rule or order pursuant to it. This would require mandatory revocations or suspensions for even relatively insignificant violations, and was considered too severe. Now, revocation or suspension is mandatory only when the lender has violated provisions or rules of which he has previously been found in violation.

7. <u>§ 2.304(1)</u> -

The recordkeeping requirements for consumer loans are extended from 2 years to 6 years to conform with the statute of limitations for civil actions. Other time limitations in the bill have been similarly extended.

8. <u>§ 2.401(5)</u> -

The original § 2.401(5) referred to changes in dollar amounts pursuant to § 1.106 and has been deleted. The new subsection provides that the term of a loan for financing insurance premiums commences on the inception date of the insurance policy, and was added at the suggestion of Professor Spanogle and Mr. Malcolm.

9. <u>§ 2.501(1)(C)</u> -

As originally proposed, this section would have allowed annual charges to be imposed for the privilege of using a lender credit card,

meaning primarily a bank credit card. Professor Spanogle and Mr. Malcolm proposed an amendment that would allow such changes for any credit cards, so as not to drive out of the state such national credit card organizations as American Express and Diner's Club which do require such annual charges. Banks in this state do not now have such charges for their cards in addition to the monthly finance charges, but the committee did not wish to make it possible for them to make such annual charges. The subsection now allows such charges for the national credit card organizations, but not for banks and other lenders.

10. <u>§ 2.501(1)(D)</u> -

This was deleted as repetitive, at the suggestion of Professor Spanogle.

11. <u>§ 2.502</u> -

The time period before a delinquency charge for late payment can be imposed has been extended from 10 days to 15 days, since most consumers receive their wages on a weekly or a bi-monthly basis, and should have two weeks in which to catch up on a payment before having to pay a delinquency charge.

12. <u>§ 2.506(3)</u>, <u>§ 2.508</u>, and <u>§ 2.510(10)</u> -

These new subsections or amendments to sections were added to exclude application of these sections to consumer leases. These three

sections cover situations which do not and can not apply to leases. The amendments were the suggestion of Professor Spanogle and Mr. Malcolm.

13. § 2.601 -

This section from the U3C was added at the suggestion of Mr. Malcolm and allows finance charges to be determined by agreement of the parties for credit transactions that are not consumer transactions or are not otherwise regulated. It prevents application of blanket using provisions to business transactions.

14. § 3.203 -

This section required a notice of assignment to "reasonably" identify for the consumer the rights assigned. This was changed to "clearly and conspicuously", to provide for more adequate notice.

15. § 3.205(1) -

At Professor Spanogle's suggestion, "loan" was changed to "credit code" to correct a misprint in L.D. 1803.

16. § 3.501 -

This section was amended, at the suggestion of Assistant Attorney General John Quinn, to cover a possible loophole in the definition of "home solicitation sale". The term "consumer credit sale" which is part of that definition is defined in § 1.301(11) specifically to exclude

lender credit card sales. As the section was originally presented, the protections of this part of the M3C would not apply if the consumer used a lender credit card to pay for his purchase. The committee therefore voted to amend this section to include lender credit card transactions in the definition of home solicitation sales.

17. <u>§ 3.502(5)</u> -

This subsection was deleted. It had provided that the buyer could not cancel a home solicitation sale if he had requested the seller to provide goods or services without delay because of an emergency and if the seller made a substantial beginning of performance or the goods could not be returned in as good condition as when received. The committee felt that this provided a large loophole in the home solicitation sales section and that there would be few true emergency situations in which a sale would be made on a home solicitation basis.

18. <u>§ 3.504(1)</u> -

The period within which the payment must be restored to the buyer after cancellation of a home solicitation sale has been extended from 10 days in L.D. 1803 to 20 days, to bring the M3C in this section in line with the present law on home solicitation sales, at 32 M.R.S.A. 4665.

19. § 3.506 and § 3.507 -

These two sections were added to the part on home solicitation sales to correspond to similar provisions in the present law on such sales.

20. Article IV -

All references in this article to the Insurance Commissioner were changed to Superintendant of Insurance.

21. § 4.110 -

The wording of this section was changed for purposes of style and clarity. The phrase "pro rata" was added to make it clear how refunds of insurance are to be paid according to this section.

22. § 4.201(3) -

The phrase at the end of this section was added to to make it clear that the term "consumer credit insurance" can be extended when the transaction is deferred, refinanced or consolidated.

23. § 4.301 -

This section was restructured to read more clearly.

24. <u>§ 5.103(4)</u> -

The term "wrongfully" was considered imprecise and the phrase "willfully or intentionally" was substituted for the sake of clarity.

25. <u>§ 5.105(1)(B)</u> -

The definition of garnishment was changed to conform to the present meaning of the term in Maine law.

26. <u>§ 5.113</u> -

This section on venue was changed to reflect the fact that legal action under the M3C can be brought in the District Court as well as the Superior Court. A similar change was made to § 6.115.

27. <u>§ 5.116(1)(D)</u> -

This section was amended to allow creditors limited communications with debtors' employers. The committee felt that the absolute prohibition on contact, other than as allowed by statute, would hinder those employers who wish to help or advise employees whose financial problems might affect their jobs.

28. <u>§ 5.116(2)</u> -

This subsection was deleted in connection with the changes in § 5.201(1).

29. <u>§ 5.201(1)</u> -

This section was amended to provide that, while individual consumers who bring legal action against violators may recover damages in the specified range of from $250 to $1,000, consumers in class actions could recover actual damages. The specified amounts of damages are to insure that aggrieved consumers who win their cases will recover at least a minimum to make bringing the action worthwhile. If consumers in a class action were each awarded recoveries of those amounts, the damages could be extremely high. The purpose of the specified amounts does not exist in class actions, since consumers in these actions do not have to bear the inconvenience and expense that a consumer in an individual action does.

The time limitations on bringing actions were extended to 6 years in conformity with the existing statute of limitations and with similar changes to other time limitations in the bill.

30. <u>§ 5.203</u> -

This section was deleted because the same section is already in Maine law, at 9 M.R.S.A. § 3917.

31. <u>§ 6.103</u> -

This section was rewritten, as noted in the text of this report.

32. § 6.104(1)(A) and (G), § 6.106(3), § 6.108(1) and (5), § 6.110, § 6.111(1), § 6.112, § 6.113 and § 6.115 -

All of these sections were amended to provide for legal action on behalf of the administrator to be brought through the Attorney General, as noted in this report.

33. § 6.105 -

Subsection 1 of this section was redrafted to provide the administrator with full powers with respect to supervised financial organizations, as noted in this report.

In subsection 2, the administrator is given the power to "obtain" information from the Bureau of Banks, rather than merely to "request" it, as L.D. 1803 provided. This change is in accordance with his increased power.

Subsection 4 was deleted entirely because of the changes to the rest of the section.

34. § 6.106(4) -

This subsection, added by the committee at the suggestion of Assistant Attorney General John Quinn, provides immunity from criminal prosecution based on evidence produced through the investigatory powers of the administrator. It corresponds to a similar provision in the Unfair Trade Practices Act, in part of 5 M.R.S.A. § 211.

36. <u>§ 6.301(1)</u> -

The Council of Advisors on Consumer Credit created in the M3C was reduced from 16 members to 12, because it was felt that the council could still adequately represent the public and the various segments of the industry with the reduced membership.

37. <u>Sec. 2. Repealing clause.</u>

The repealing clause was amended to repeal two laws enacted in 1973 that are no longer necessary if the M3C is enacted, the revolving credit accounts law, 9 M.R.S.A. § 3981 to 3993, and the insurance premium finance company law, 9 M.R.S.A. § 4001 to 4021.

Supplementary Report of the Committee on Business Legislation on Creation of a Maine Consumer Credit Code

L.D. 2451, introduced at the First Special Session of the 106th Legislature, was the result of the efforts of the Committee on Business Legislation in working with and amending L.D. 1803, the version of the Maine Consumer Credit Code that had been introduced at the Regular Session .

The public hearing that the committee held on the bill turned out to be a very lengthy one, with presentations by all branches of the credit industry, by consumer groups and representatives, by the Department of Business Regulation and by the Department of the Attorney General. Most witnesses supported the bill in general, but suggested substantial amendments in parts. Some of these suggestions concerned the changes that had been made to L.D. 1803. The proposed major amendments were all reviewed in detail by the committee at executive sessions and were all acted upon favorably or unfavorably.

Commissioner Roberta Weil of the Department of Business Regulation, with the support of Assistant Attorney General John Quinn, proposed a change of the entire interest rate structure. The proposals were to establish step rates for credit cards and revolving credit accounts, to change the step rates and to lower rates for loans, to differentiate between banks and loan companies in interest rates, allowing a higher rate to loan companies, and to reduce the rates for motor vehicle financing to the level of the present law. Because there was little economic data to support the changes, because the proposals were presented late (after the public hearing) and because changes would have jeopardized

industry support for the bill, the committee voted to keep the rates in L.D. 2451. Some of the proposals were later incorporated into floor amendments.

Commissioner Weil also suggested basic changes in Part IV of the bill, on credit insurance, on the grounds that many of these sections duplicated sections of the present Insurance Code (Title 24-A) and would cause confusion in application and enforcement. Professor Spanogle argued that the Insurance Code applied only to insurers and not to creditors and that it was necessary to have separate provisions for this reason. The committee eventually resolved this matter by amending seven of these sections to state that an appropriate section of the Insurance Code applied to creditors.

The commissioner and the industry representatives recommended the restoration to the bill of the provisions keying changes in certain specified dollar limits to changes in the consumer price index. These provisions had been in L.D. 1803, but had been deleted by the committee, as previously noted. It was argued that the rate of inflation had been so high recently that the changes in dollar limits should not have to wait for legislative action. The committee agreed, and voted to restore § 1.106 and the related sections.

The credit industry urged that the committee restore the original provisions on the time that records must be kept by creditors and on the statute of limitations. The committee had, as previously noted, extended the record-keeping requirement from two years after the completion of the transaction to six years and had increased the bill's

statute of limitations on actions by consumers from two years to six years, both to conform to the current statute of limitations on civil actions which would still apply to actions by creditors against consumers. The committee agreed to this change, because of the burden of record-keeping and because, as a practical matter, most suits by consumers would be brought within the two-year period.

Bank representatives asked for the restoration of the original version of the section which would have allowed them to assess an annual charge,in addition to the monthly finance charges, on bank credit cards. The committee had amended the section to allow only national associations, such as American Express, which already have annual charges, to use them. No banks in Maine currently assess such charges, and the committee declined to change this part of the bill to allow them to do so.

Both the Commissioner of Business Regulation and industry representatives urged that the term of the administrator of the code, the Superintendent of the Bureau of Consumer Protection within the Department of Business Regulation, be changed to fixed term of years, so that his term would not expire with the commissioner's. The committee agreed that such continuity in the office was desirable, and made the change. The committee did not, however, adopt the further suggestion that the two-year residency requirement for the post be removed.

The committee made several changes in the administrative aspects of the bill. It agreed, at the urging of the industry, to add a new section to provide that a creditor has no liability for conduct in accordance with a rule of the administrator which is later determined by a court to

be invalid. It deleted the "immunity" provision that had been proposed by Assistant Attorney General John Quinn, because it was argued that this section involved problems of criminal and constitutional law which should be considered separately and in detail. The committee made a second change to the section on suspension or revocation of a supervised lender's license for code violations, to provide that the administrator may suspend or revoke for a single violation, thus allowing greater flexibility.

In the area of consumers' remedies, the industry urged that only actual damages and not the fixed penalties of from $250 to $1000 be allowed for violations of the section on collection practices. Since actual damages for such violations would be very slight in most cases, the change would have the effect of reducing penalties and removing the incentive to consumers to take action against this type of abuse. The committee rejected the change.

In addition to these substantive proposed changes, there were a number of editorial or technical amendments offered, many of which were incorporated into the final bill. A list of all the sections of L.D. 2451 to which some change was made is attached as an appendix to this report.

The bill as changed was supported by ten members of the committee and reported out as L.D. 2582.

Two members of the committee voted that the bill ought not to pass, on the grounds that it was unnecessary and that it added another bureaucratic agency to state government.

One member of the committee, Representative O'Brien of Portland, voted for a separate new draft of the bill, which incorporated many of changes that the majority had agreed to, but which had several major differences from the majority view. This new draft was reported out as L.D. 2586.

This version changed the entire interest rate structure by imposing a flat rate of 15% for all finance charges substantially reducing all of them. It kept the same larger recordkeeping and statute-of-limitations provisions that were in L.D. 2451. Instead of disallowing annual charges for bank credit cards, it mandated an annual charge of $10, to discourage use of these cards. L.D. 2586 struck out the provision, added by the majority, which insulated creditors from liability for conduct allowed by a rule of the administrator which is later determined to be invalid, and it kept in the "immunity" clause which had been deleted from the majority version.

When the bills reached the floor of the House and Senate, the majority report was accepted. A number of amendments were proposed on the floor, several of which were adopted. All but one of these were relatively insignificant. That one major amendment was a reduction of the interest rates for motor vehicle financing to the rates set by present law.

List of Amendments to L.D. 2451 Incorporated

in New Draft, L.D. 2582

1.106
1.202
1.202(6)

1.301(11)(B)(ii)
1.301(11)(C)
1.301(13)(A)(ii)
1.301(13)(B)
1.301(14)(B)(ii)
1.301(14)(C)
1.301(41)

2.201(7)
2.202
2.303(1)
2.304(1)
2.305
2.308(1)
2.308(2)
2.309
2.401
2.401(1)
2.401(3)(c)
2.401(5)
2.402
2.501(1)(c)
2.502
2.502(5)
2.505
2.509
2.510(9)
3.202
3.205(1)
3.301(4)
3.303(1)
3.403(3)
3.503(4)
4.301
4.301(1)(c)

5,103(6)
5.114
5.201(1)
5.201(10)
6.103
6.104(2)
6.106(4)
6.113(2)