MAINE STATE LEGISLATURE

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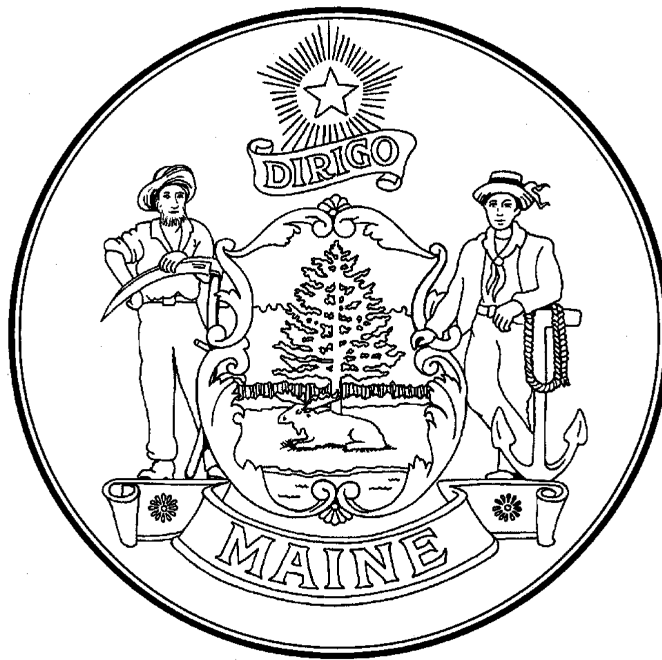

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STATE OF MAINE
112TH LEGISLATURE
SECOND REGULAR SESSION

ENABLING THE AVAILABILITY OF CREDIT THROUGH FINANCE COMPANIES

REPORT OF A STUDY BY THE
JOINT STANDING COMMITTEE ON
BUSINESS AND COMMERCE

DECEMBER, 1986

MEMBERS:
Sen. Beverly Miner Bustin, Chair
Sen. David T. Kerry
Sen. Charlotte Zahn Sewall
Rep. Joseph C. Brannigan, Chair
Rep. Hilda C. Martin
Rep. Robert E. Murray, Jr.
Rep. Patricia M. Stevens
Rep. John A. Aliberti
Rep. Charlene B. Rydell
Rep. John Telow
Rep. Richard W. Armstrong
Rep. Alan L. Baker
Rep. Gerald A. Hillock

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INTRODUCTION

According to current law (9-A MRSA, §2-308, sub-§3), if a loan is made at a rate greater than 18%, that loan must be repaid within 37 months or the rate drops to 8%. Additionally, if any other loans were made with the same lender after the original loan, those loans' rates also drop to 8% at the end of the 37th month from the start of the first loan. The law was written this way in 1973 in order to prevent "flipping", rewriting loans to keep people continuously in debt. This section of Maine law eventually had the result of driving virtually all the finance companies out of the State.

A bill was introduced in the 2nd Regular Session of the 112th Legislature to amend this law to allow negotiation by the parties of a maturity date and to allow refinancing of a loan at a similar rate. Passage of such a law would probably result in the return of finance companies to the State.

The Joint Standing Committee on Business and Commerce decided more information was needed before passing a law which would encourage the return of finance companies to the State since some finance companies had been guilty of some questionable practices before the law was passed. The Bureau of Consumer Credit Protection already had begun an investigation into the topic and agreed to continue to gather information and complete the study.

The Bureau surveyed the other 49 states in the fall of 1986 to gather information concerning regulation of finance companies, complaints against finance companies, violations by finance companies, number of bankruptcies, and comparisons of credit unions and finance companies in meeting the needs of the people. The study also focused on how well credit unions, credit cards, and banks are currently meeting the needs of the people of Maine.

The results of the study and surveys are contained in "On the Questions of the Availability of Credit to Persons of Small Means in the State of Maine and the Propriety of Retaining the So-called 37 Month Rule in the Laws of the State of Maine", November, 1986, prepared by the Bureau of Consumer Credit Protection, Robert Burgess, Superintendent and Richard Howard, Planning and Research Associate. The Joint Standing Committee on Business and Commerce met once on November 12, 1986 at which time the Bureau's report was presented.

FINDINGS AND RECOMMENDATIONS:

The bill suggested by the Bureau of Consumer Credit Protection is a balance between consumer protection and softening loan requirements in order to encourage another means of credit for residents of the State. The bill allows the consumer and lender to establish whatever maturity date they want on loans with interest over 18%. But it keeps the interest-after-maturity concept by requiring a rate reduction

to 8% if the loan remains unpaid six months after maturity. It allows refinancing which would have the effect of allowing the time clock to be reset. However, a refinancing undertaken to circumvent the 8% reduction would not be allowed. Other loans with the same consumer would not suffer the penalty rate if the interest after maturity provision is triggered on a particular loan. Nine other states have similar "interest after maturity" provisions in their small loan laws.

The proposed bill also allows the Bureau to suspend a license for a maximum of 60 days. Currently, licenses can only be suspended by action of the administrative court. This change would give the Bureau the ability to respond promptly to situations of abuse. Licensees' rights are still protected, however, because licensees have the right to appeal any decision to court.

Although the results of the Bureau's report suggest that consumers may benefit rather than be harmed by a change in the law, the Committee was concerned about the possible risks and resultant harm to consumers who borrow money from finance companies. A clear need for credit through finance companies was not shown. The Committee introduced the bill only as a vehicle for the public to show a need for expanded credit through finance companies. If a need is shown during the legislative process, then the Legislature would be able to weigh the need against the risk of possible harm.

The vote was unanimous among the eight members present to submit the bill as proposed, not as an endorsement, but as a starting point for legislative discussion and investigation. Those present were Beverly Bustin, Joseph Brannigan, Charlotte Sewall, John Aliberti, Robert Murray, Jr., Charlene Rydell, Patricia Stevens, and John Telow.

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PROPOSED LEGISLATION

Jeri Gautschi
Doc. #7691

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SEVEN

AN ACT to Enable the Availability of Credit through Finance Companies in the State

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

Sec. 1. 9-A MRSA, §2-303-A is enacted to read:

§2-303-A. Administrative license suspension

1. The administrator may suspend a license to make supervised loans, for a period not to exceed 60 days, if he finds after notice and opportunity for hearing, that the licensee has violated this Act or any rule made pursuant to this Act. Such authority to suspend a license shall be in addition to other rights of the administrator, including the right to seek suspension or revocation of a license through the Administrative Court, pursuant to §2-303.

2. No suspension of a license pursuant to this section may impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

Sec. 2. 9-A MRSA, §2-308, sub-§3, as enacted by PL 1973, c. 762, §1, is repealed and the following enacted in its place:

3. No consumer loan on which the annual percentage rate disclosed is greater than 18% may provide for a rate greater than 8% per year on the unpaid balances of the principal remaining unpaid at the expiration of six months after the scheduled maturity date of that loan. No loan may be deferred, renewed, refinanced, or consolidated to circumvent or evade the provisions of this subection. The administrator shall, by rule, identify those practices which constitute prima facie evidence of circumvention or evasion of this subsection.

STATEMENT OF FACT

This bill is a result of a study approved by the Legislative Council conducted by the Joint Standing Committee on Business and Commerce after similar legislation was withdrawn during the 2nd Regular Session of the 112th Legislature. The Committee decided to submit this bill, as proposed by the Bureau of Consumer Credit Protection, because it would be a good starting point for further legislative discussions to see if there is a need for a change.

Current law, referred to as the 37-month rule, provides that a loan with an interest rate greater than 18% must be paid out within 37 months of its original contract date or else the rate on it, and any other loans that the lender had with that consumer, would drop to a rate of 8%. The measure was enacted in the late 1960's in order to prevent the abusive practice by finance companies called "flipping", which kept consumers continuously in debt. The result of this law was that all finance companies eventually left the state.

The approach taken in this bill is a balance between consumer protection and softening loan requirements in order to encourage another means of credit for residents of the State. The bill allows the consumer and lender to establish whatever maturity date they want on loans with interest over 18%. But it keeps the interest-after-maturity concept by requiring a rate reduction to 8% if the loan remains unpaid six months after maturity. It allows refinancings which would have the effect of allowing the time clock to be reset. However, a refinancing undertaken to circumvent the 8% reduction would not be allowed. Other loans with the same consumer would not suffer the penalty rate if the interest after maturity provision is triggered on a particular loan.

The bill allows the Bureau to suspend a license for a maximum of 60 days. Currently, licenses can only be suspended by action of the administrative court. This change would give the Bureau the ability to respond promptly to situations of abuse. Licensees' rights are still protected, however, because licensees have the right to appeal any decision to court.