

**Maine Revised Statutes**  
**Title 9-A: MAINE CONSUMER CREDIT CODE**

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**Title 9-A: MAINE CONSUMER CREDIT CODE**  
**Article 1: GENERAL PROVISIONS AND DEFINITIONS**

**Part 1: GENERAL PROVISIONS**

**§1-101. SHORT TITLE**

This Act shall be known and may be cited as the "Maine Consumer Credit Code." [1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

**§1-102. PURPOSES; RULES OF CONSTRUCTION**

1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

[ 1973, c. 762, §1 (NEW) .]

2. The underlying purposes and policies of this Act are:

A. To simplify, clarify and modernize the law governing retail installment sales, consumer credit, small loans and usury; [1973, c. 762, §1 (NEW).]

B. To provide rate ceilings to assure an adequate supply of credit to consumers; [1973, c. 762, §1 (NEW).]

C. To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost; [1973, c. 762, §1 (NEW).]

D. To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors; [1973, c. 762, §1 (NEW).]

E. To permit and encourage the development of fair and economically sound consumer credit practices; and [1973, c. 762, §1 (NEW).]

F. To conform the regulation of consumer credit transactions to the policies of the Federal Truth in Lending Act. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

3. A reference to a requirement imposed by this Act includes reference to a related rule of the administrator adopted pursuant to this Act.

[ 1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW).

### §1-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

Unless displaced by the particular provisions of this Act, 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 its provisions. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §1-104. CONSTRUCTION AGAINST IMPLICIT REPEAL

This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §1-105. SEVERABILITY

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §1-106. ADJUSTMENT OF DOLLAR AMOUNTS

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 623, §6 (AMD). 1985, c. 121, (AMD). 1985, c. 763, §§A15-17 (AMD). 1985, c. 819, §A9 (AMD). 1997, c. 727, §B1 (RP).

### §1-107. WAIVER; AGREEMENT TO FOREGO RIGHTS; SETTLEMENT OF CLAIMS

1. Except as otherwise provided in this Act, a consumer may not waive or agree to forego rights or benefits under this Act. Any such waiver or agreement is unenforceable; and no creditor may take any such waiver or agreement to forego rights or benefits under this Act.

[ 1973, c. 762, §1 (NEW) .]

2. A claim by a consumer against a creditor for an excess charge, other violation of this Act, or civil penalty, or a claim against a consumer for default or breach of a duty imposed by this Act, if disputed in good faith, may be settled by agreement.

[ 1973, c. 762, §1 (NEW) .]

3. A claim, whether or not disputed, against a consumer may be settled for less value than the amount claimed.

[ 1973, c. 762, §1 (NEW) . ]

4. A settlement in which the consumer waives or agrees to forego rights or benefits under this Act is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him and the value of the consideration are relevant to the issue of unconscionability. Any claim of unconscionability must be raised in a judicial action within the earlier of:

A. Six years after the date of settlement; or [1987, c. 129, §1 (NEW) . ]

B. The limitation period applicable to the original claim which was the subject of the settlement.  
[1987, c. 129, §1 (NEW) . ]

[ 1987, c. 129, §1 (AMD) . ]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1987, c. 129, §1 (AMD).

## §1-108. EFFECT OF ACT ON POWERS OF ORGANIZATIONS

1. This Act prescribes maximum charges for all creditors, except lessors and those excluded, section 1-202, extending consumer credit including consumer credit sales, subsection 11 of section 1-301 and consumer loans subsection 14 of section 1-301, and displaces existing limitations on the powers of those creditors based on maximum charges.

[ 1973, c. 762, §1 (NEW) . ]

2. With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, this Act displaces existing limitations on their powers based solely on amount or duration of credit.

[ 1973, c. 762, §1 (NEW) . ]

3. Except as provided in subsection 1, this Act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

[ 1973, c. 762, §1 (NEW) . ]

4. Except as provided in subsections 1 and 2, this Act does not displace:

A. Limitations on powers of supervised financial organizations, subsection 38-A of section 1-301, with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or [1997, c. 66, §1 (AMD) . ]

B. Limitations on powers an organization is authorized to exercise under the laws of this State or the United States. [1973, c. 762, §1 (NEW) . ]

[ 1997, c. 66, §1 (AMD) . ]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1997, c. 66, §1 (AMD).

**§1-109. TRANSACTIONS SUBJECT TO ACT BY AGREEMENT**

The parties to a sale, lease or loan, or modification thereof, which is not a consumer credit transaction, may agree in a writing signed by the parties that the transaction is subject to the provisions of this Act applying to consumer credit transactions. If the parties so agree, the transaction is a consumer credit transaction for the purposes of this Act. [1973, c. 762, §1 (NEW).]

## SECTION HISTORY

1973, c. 762, §1 (NEW).

**§1-110. RELATIONSHIP TO FEDERAL LAW**

Notwithstanding the provisions of Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, the Legislature declares that the maximum finance charges established in article II apply to: [1995, c. 137, §1 (AMD).]

1. Consumer credit transactions involving manufactured housing as defined in section 1-301, subsection 23-A; and

[ 1995, c. 137, §2 (AMD) .]

2.

[ 1995, c. 137, §3 (RP) .]

3. First lien mortgages on real estate granted by a creditor subject to licensing by the administrator as set out in section 2-301.

[ 1981, c. 218, (NEW) .]

The Legislature declares that the preemption provided by the United States Garn-St. Germain Depository Institutions Act of 1982, Public Law 97-320, Section 804, shall not apply. The Legislature further declares that the applicable provisions of the Maine Consumer Credit Code relating to alternative mortgage instruments shall apply, including, but not limited to, sections 3-308 and 3-310. [1983, c. 307, §1 (NEW) .]

## SECTION HISTORY

1981, c. 218, (NEW). 1983, c. 307, §1 (AMD). 1983, c. 720, §1 (AMD). 1987, c. 129, §2 (AMD). 1993, c. 134, §1 (AMD). 1995, c. 137, §§1-3 (AMD).

**§1-111. RECORD RETENTION**

Every person subject to this Act shall maintain records of all consumer credit transactions in conformity with generally accepted accounting principles and practices or in a manner that will enable the administrator to determine whether that person or his assignee is complying with the provisions of this Act. The records need not be kept in the place of business where the transaction was entered into, if the administrator is given free access to the records, wherever located. All records pertaining to consumer credit transactions shall be retained for at least 2 years after making the final entry on the account involved, except that in the case of open-end credit, the 2 years shall be measured from the date of each account entry. [1987, c. 129, §3 (AMD) .]

## SECTION HISTORY

1985, c. 336, §1 (NEW). 1987, c. 129, §3 (AMD).

## Part 2: SCOPE AND JURISDICTION

### §1-201. TERRITORIAL APPLICATION

1. Except as otherwise provided in this section, this Act applies to consumer credit transactions and open-end credit plans made or entered into in this State. For purposes of this Act, a consumer credit transaction or open-end credit plan is made or entered into in this State if:

A. A signed writing evidencing the obligation or offer of the consumer is received by the creditor in this State; [2005, c. 604, §1 (AMD).]

B. The creditor, wherever located, induces the consumer who is a resident of this State to enter into the transaction or open-end credit plan by face-to-face, mail, telephone or electronic mail solicitation in this State; or [2005, c. 604, §1 (AMD).]

C. With respect to a payday loan, the lender, wherever located, enters into a payday loan transaction with a consumer who is located in this State. [2005, c. 604, §1 (NEW).]

[ 2005, c. 604, §1 (AMD) .]

2.

[ 1987, c. 129, §5 (RP) .]

3. The Part on Limitations on Creditors' Remedies, Part 1, of the Article on Remedies and Penalties, Article 5, applies to actions, other proceedings and nonjudicial collection activity conducted in this State to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

[ 1987, c. 129, §6 (AMD) .]

4. A consumer credit transaction made in another state to a person who is a resident of this State at the time of the transaction is valid and enforceable in this State to the extent that it is valid and enforceable under the laws of the state applicable to the transaction, but the following provisions apply as though the transaction occurred in this State:

A. A creditor may not collect charges through actions or other proceedings in excess of those permitted by the Article on Finance Charges and Related Provisions (Article 2) and by the Article on Insurance (Article 4); and [1973, c. 762, §1 (NEW).]

B. A creditor may not enforce rights against the consumer with respect to the provisions of agreements which violate the provisions on Limitations on Agreements and Practices (Part 3) and Limitations on Consumer's Liability (Part 4) of the Article on Regulation of Agreements and Practices (Article 3). [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

5. Except as provided in subsection 3, a consumer credit transaction made in another state to a person who was not a resident of this State when the sale, lease, loan, or modification was made is valid and enforceable in this State according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

[ 1973, c. 762, §1 (NEW) .]

**6.** For the purposes of this Act, the residence of a consumer is the address given by him as his residence in any writing signed by him in connection with a credit transaction or open-end credit plan. Until he notifies the creditor of a new or different address in a writing for that purpose, the given address is presumed to be unchanged.

[ 1987, c. 129, §7 (AMD) .]

**7.** Notwithstanding other provisions of this section:

A. Except as provided in subsection 3, this Act does not apply if the consumer is not a resident of this State at the time of a credit transaction and the parties have agreed that the law of his residence applies; and [1973, c. 762, §1 (NEW).]

B. This Act applies if the consumer is a resident of this State at the time of a credit transaction and the parties have agreed that the law of his residence applies. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

**8.** Except as provided in subsection 7, the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit transactions to which this Act applies:

A. That the law of another state shall apply; [1973, c. 762, §1 (NEW).]

B. That the consumer consents to the jurisdiction of another state; and [1973, c. 762, §1 (NEW).]

C. That fixes venue. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

**9.** The following provisions of this Act specify the applicable law governing certain cases:

A. Applicability, section 6-102, of the Part on Powers and Functions of Administrator, Part 1, of the Article on Administration, Article 6; and [1973, c. 762, §1 (NEW).]

B. Applicability, section 6-201, of the Part on Notification and Fees, Part 2, of the Article on Administration, Article 6. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

**10.** Notwithstanding any other provision of law, this Act applies to any person offering, arranging or purporting to offer or arrange a consumer credit transaction if that person, in advertising or soliciting or otherwise communicating with a consumer, asserts to be located in this State or to possess a license or registration issued pursuant to this Act.

[ 2005, c. 206, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 658, (AMD). 1987, c. 129, §§4-7 (AMD). 2001, c. 371, §1 (AMD). 2005, c. 206, §1 (AMD). 2005, c. 604, §1 (AMD).

## §1-202. EXCLUSIONS

This Act does not apply to: [1973, c. 762, §1 (NEW).]

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

[ 1987, c. 396, §1 (AMD) .]

**1-A.** Transactions for which the administrator, by rule, determines that coverage under this Title is not necessary to carry out the purposes of this Title;

[ 1997, c. 155, Pt. C, §1 (NEW) . ]

**2.** Except as otherwise provided in the Article on Insurance (Article 4), the sale of insurance by an insurer if the insured is not obliged to pay instalments of the premium and the insurance may terminate or be cancelled after nonpayment of an instalment of the premiums;

[ 1973, c. 762, §1 (NEW) . ]

**3.** An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, radio or similar transmission, including extensions of these facilities, if the charges for service, delayed payments or any discounts for prompt payment are filed with or regulated by any subdivision or agency of this State or of the United States. This exemption does not apply to financing of goods or home improvements by a public utility;

[ 1987, c. 129, §9 (RPR) . ]

**4.** Ceilings on rates and charges or limits on loan maturities of a credit union organized under the laws of this State or of the United States if these ceilings or limits are established by these laws;

[ 1979, c. 127, §51 (AMD) . ]

**5.** Ceilings on rates and charges of a licensed pawnbroker if these ceilings are established by statute;

[ 1973, c. 762, §1 (NEW) . ]

**6.** Transactions in securities or commodities accounts with a broker-dealer registered with either the Securities and Exchange Commission or the Commodities Futures Trading Commission;

[ 1979, c. 127, §52 (AMD) . ]

**7.** A loan or consumer credit sale made exclusively for the purpose of deferring or financing educational expenses and on which the finance charge does not exceed that rate per year on the unpaid balances of the amount financed, as established by federal law, or, for loans or consumer credit sales for which federal law does not establish a rate, the highest rate established for educational loans under any federal program and which is insured, guaranteed, subsidized or made directly by the Federal Government, a state, a nonprofit private loan guaranty or organization, by the educational institution itself or through an endowment or trust fund affiliated with such an institution;

[ 2005, c. 55, §1 (AMD) . ]

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

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

- (1) Pursuant to the terms of a construction financing agreement;
- (2) To protect the security or to perform the covenants of the consumer;
- (3) As negative amortization of principal under the terms of the financing agreement;

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

(5) Pursuant to the terms of a reverse mortgage transaction, as defined in the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq., if the transaction is made pursuant to a commitment to purchase issued by, or is in a form approved for purchase by, any state or federal agency, instrumentality or government-sponsored enterprise, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; [2011, c. 427, Pt. D, §1 (AMD).]

B. The exemption provided by this subsection does not apply to the requirements on servicing of assigned supervised loans, section 2-310; and [1987, c. 129, §11 (NEW).]

C. With respect to a creditor other than a supervised financial organization, the exemption provided by this subsection applies to Articles 2, 3, 4 and 5 only; or [2005, c. 55, §2 (AMD).]

[2007, c. 273, Pt. C, §1 (AMD); 2007, c. 471, §1 (AMD); 2007, c. 471, §18 (AFF); 2011, c. 427, Pt. D, §1 (AMD).]

### 8-A.

[1987, c. 129, §12 (RP).]

### 9.

[1979, c. 541, §87 (RP).]

**10.** A no-interest loan or credit sale by a nonprofit organization that assists in building or renovating housing for those in need. The exclusion in this subsection does not apply to Article 6, Part 1; section 6-201; section 6-202; section 6-203, subsection 1; section 6-204; or Article 8-A.

[2011, c. 427, Pt. D, §2 (AMD).]

The exclusions set forth in subsection 1 relating to extensions of credit to consumers by governments or governmental agencies, instrumentalities or organizations, and in subsections 2, 4, 5, 7 and 8, do not apply to the Maine Consumer Credit Code, Truth-in-lending, Article 8-A. [2011, c. 427, Pt. D, §3 (AMD).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 318, (AMD). 1975, c. 413, (AMD).  
 1975, c. 446, §3 (AMD). 1977, c. 696, §112 (AMD). 1979, c. 127, §§51-56 (AMD). 1979, c. 541, §§A85-A88 (AMD). 1979, c. 660, §§1-3 (AMD). 1981, c. 243, §§1,2,26 (AMD). 1981, c. 551, §3 (AMD). 1981, c. 618, §1 (AMD). 1981, c. 638, §1 (AMD). 1983, c. 212, §§1,2 (AMD). 1983, c. 641, §1 (AMD). 1983, c. 720, §2 (AMD). 1985, c. 336, §2 (AMD). 1987, c. 129, §§8-12 (AMD). 1987, c. 396, §§1-3 (AMD). 1997, c. 64, §1 (AMD). 1997, c. 155, §C1 (AMD). 2005, c. 55, §§1-3 (AMD). 2007, c. 273, Pt. C, §1 (AMD). 2007, c. 471, §1 (AMD). 2007, c. 471, §18 (AFF). 2011, c. 427, Pt. D, §§1-3 (AMD).

## §1-203. JURISDICTION AND SERVICE OF PROCESS

1. The Superior and District Courts of this State may exercise jurisdiction over any creditor with respect to any conduct in this State governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the Superior and District Courts by the service of process in the manner provided by this section.

[ 1973, c. 762, §1 (NEW) . ]

2. If a creditor is not a resident of this State or is a corporation not authorized to do business in this State and engages in any conduct in this State governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this State. The agent shall be a resident of this State or a corporation authorized to do business in this State. The designation shall be in writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

[ 1973, c. 762, §1 (NEW) . ]

### SECTION HISTORY

1973, c. 762, §1 (NEW).

## Part 3: DEFINITIONS

### §1-301. GENERAL DEFINITIONS

In addition to definitions appearing in subsequent Articles, in this Act: [1973, c. 762, §1 (NEW) . ]

1. "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

[ 1973, c. 762, §1 (NEW) . ]

2. "Administrator" means, except in cases in which a supervised financial organization is the creditor, the administrator designated in Article VI, section 6-103. In cases in which a supervised financial organization is the creditor, "administrator" means the Superintendent of Financial Institutions.

[ 2001, c. 44, §1 (AMD); 2001, c. 44, §14 (AFF) . ]

2-A. "Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a consumer credit transaction.

[ 1987, c. 129, §13 (NEW) . ]

3. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

[ 1973, c. 762, §1 (NEW) . ]

4. "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

[ 1973, c. 762, §1 (NEW) .]

5. "Amount financed" means the amount of credit of which the consumer has actual use and is computed pursuant to section 2-501 and the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

[ 2011, c. 427, Pt. D, §4 (AMD) .]

**5-A.**

[ 1989, c. 70, §1 (RP) .]

6. "Billing cycle" or "cycle" means the interval between days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval shall be considered equal if the number of days in the cycle does not vary more than 4 days from the regular day or date of the periodic statement.

[ 1987, c. 129, §15 (RPR) .]

6-A. "Business day" means a day on which a creditor's offices are open to the public for carrying on substantially all of its business functions. For purposes of rescission, the term means all calendar days, except Sundays and the holidays established by Title 9-B, section 145, subsection 1.

[ 1997, c. 398, Pt. L, §4 (AMD) .]

6-B. "Cardholder" means the same as defined in the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

[ 2011, c. 427, Pt. D, §5 (AMD) .]

6-C. "Card issuer" means the same as defined in the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

[ 2011, c. 427, Pt. D, §5 (AMD) .]

7. "Cash price" means the price at which the creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. The term includes charges imposed by the creditor equally on cash and credit customers. It may include the price of optional accessories, services related to the sale, service contracts and taxes and fees for license, title and registration. The term does not include any finance charge.

[ 1981, c. 243, §4 (RPR) .]

8. "Closing costs," provided they are bona fide, reasonable in amount and not for the purpose of circumvention or evasion of this Act, with respect to a debt or open-end credit plan secured by an interest in land or a consumer credit transaction involving manufactured housing, include:

A. Fees or premiums for title examination, abstract of title, title insurance or similar purposes and for required related property surveys; [1975, c. 324, §1 (RPR) .]

B. Fees for preparation of deeds, settlement statements or other documents; [1975, c. 324, §1 (RPR).]

C. Amounts required to be placed or paid into an escrow or trustee account for future payments if the amounts would not otherwise be included in the finance charge; [1987, c. 129, §17 (AMD).]

D. Fees for notarizing deeds and other documents; [1975, c. 324, §1 (RPR).]

E. Appraisal fees; and [1975, c. 324, §1 (RPR).]

F. Credit reports. [1975, c. 324, §1 (RPR).]

[ 1987, c. 129, §17 (AMD) .]

**9.** "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

[ 1973, c. 762, §1 (NEW) .]

**10.** "Consumer" means a cardholder or a natural person to whom consumer credit is offered or extended and includes a cosigner. The term includes a natural person who enters into a consumer lease. For purposes of rescission, the term includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

[ 1987, c. 129, §18 (RPR) .]

**11.** "Consumer credit sale":

A. A "consumer credit sale" is a sale of goods, services or an interest in land in which:

- (1) Credit is granted either pursuant to a credit card other than a lender credit card or by a seller who regularly engages as a seller in credit transactions of the same kind;
- (2) The buyer is a person other than an organization;
- (3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose;
- (4) Either the debt is payable in installments or a finance charge is made;
- (5) With respect to a sale of goods or services, not including manufactured housing or a motor vehicle, the amount financed does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203; and
- (6) With respect to a sale of a motor vehicle as defined in Title 29-A, section 101, subsection 42, the amount financed does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203.

The amounts set out in subparagraphs (5) and (6) are automatically adjusted to correspond with any inflation adjustment made to the exempt transaction amount referenced in the Federal Truth in Lending Act, Section 104, subsection (3) and any rules adopted pursuant to that Act. [2011, c. 427, Pt. A, §1 (AMD).]

B. [1987, c. 396, §5 (RP).]

C. [1985, c. 763, §18 (RP).]

[ 2011, c. 427, Pt. A, §1 (AMD) .]

**12.** "Consumer credit transaction" means a consumer credit sale, consumer lease or consumer loan or a modification thereof including a refinancing, consolidation or deferral.

[ 1973, c. 762, §1 (NEW) . ]

**13.** A "consumer lease" is a lease of goods:

A. That a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose; [ 2011, c. 427, Pt. A, §2 (AMD) . ]

B. In which the amount payable under the lease does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203. The exempt transaction amount in this paragraph is automatically adjusted to correspond with any inflation adjustment made to the exempt transaction amount referenced in the Federal Truth in Lending Act, Section 181, subsection (1) and any rules adopted pursuant to that Act; [ 2011, c. 427, Pt. A, §2 (AMD) . ]

C. That is for a term exceeding 4 months; and [ 2011, c. 427, Pt. A, §2 (AMD) . ]

D. That is not made pursuant to a lender credit card.

A person is regularly engaged in the business of leasing if the person enters into consumer leases more than 25 times in the preceding calendar year. If a person did not meet this numerical test in the preceding calendar year, the numerical standard must be applied to the current calendar year. [ 2011, c. 427, Pt. A, §2 (AMD) . ]

[ 2011, c. 427, Pt. A, §2 (AMD) . ]

**14.** "Consumer loan":

A. Except as provided in paragraph B, a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

(1) The debtor is a person other than an organization;

(2) The debt is incurred primarily for a personal, family or household purpose;

(3) Either the debt is payable in installments or a finance charge is made; and

(4) For loans made by:

(a) A supervised financial organization, either the amount financed does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, or the debt is secured by manufactured housing or an interest in land; or

(b) A supervised lender other than a supervised financial organization, either the amount financed does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, or the debt is secured by manufactured housing or an interest in land.

The exempt transaction amount in divisions (a) and (b) are automatically adjusted to correspond with any inflation adjustment made to the exempt transaction amount referenced in the Federal Truth in Lending Act, Section 104, subsection (3) and any rules adopted pursuant to that Act. [ 2011, c. 427, Pt. A, §3 (AMD) . ]

B. "Consumer loan" does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a credit card other than a lender credit card. [ 2001, c. 371, §14 (AFF) ; 2001, c. 371, §2 (RPR) . ]

C. [1985, c. 763, §19 (RP).]

[ 2011, c. 427, Pt. A, §3 (AMD) .]

**14-A.** "Cosigner" means a natural person who assumes personal liability for the obligation of a consumer without receiving goods, services or money in return for the obligation or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account. The term includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition of forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person who meets the definition of this subsection is a cosigner whether or not the person is designated as such on the credit obligation. The term does not include a person who becomes liable in a transaction to finance or refinance the acquisition or initial construction of real property.

[ 1987, c. 129, §21 (NEW) .]

**15.** "Credit" means the right granted by a creditor to a consumer to defer payment of an obligation, to incur an obligation and defer its payment or to obtain possession of property or the benefit of services and defer payment therefor pursuant to an agreement which includes, but is not limited to, a sale of goods, a sale of an interest in land, a sale of services or a loan.

[ 1983, c. 720, §3 (RPR) .]

**16.** "Credit card" means any card, plate, coupon book or other single credit device that may be used from time to time to obtain credit.

[ 1987, c. 129, §22 (RPR) .]

**17.** "Creditor" means a person who both:

A. Regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit that is payable by agreement in more than 4 installments or for which the payment of a finance charge is or may be required; and [2011, c. 427, Pt. A, §4 (RPR).]

B. Is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement; except that, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount that is a finance charge are creditors. [2011, c. 427, Pt. A, §4 (RPR).]

For the purpose of the requirements imposed under Article 8-A for credit billing pursuant to 15 United States Code, Section 1666 et seq. and for open-end consumer credit pursuant to 15 United States Code, Section 1637(a)(5), (a)(6), (a)(7), (b)(1), (b)(2), (b)(3), (b)(8) and (b)(10), "creditor" also includes card issuers whether or not the amount due is payable by agreement in more than 4 installments or the payment of a finance charge is or may be required and the administrator shall by regulation apply these requirements to those card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

For the purposes of this Title, "creditor" also includes any person who originates 2 or more mortgages referred to as high-cost mortgage loans under Article 8-A, section 8-506 in any 12-month period or any person who originates one or more such mortgage loans through a mortgage broker as defined in Article 8-A, section 8-506, subsection 1, paragraph J, or a loan broker as defined in Article 10.

For purposes of this Title, "creditor" also includes a private educational lender as that term is defined in 15 United States Code, Section 1650.

A person regularly extends consumer credit only if the person extended credit other than credit subject to high-cost mortgage loan requirements more than 25 times or more than 5 times for transactions secured by a dwelling in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards must be applied to the current calendar year.

"Creditor" includes a mortgage loan servicer.

[ 2017, c. 106, §1 (AMD) .]

**17-A. Debit card.** "Debit card" has the same meaning as in Title 10, section 1271, subsection 3.

[ 2009, c. 618, §1 (NEW) .]

**18.** "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

[ 1973, c. 762, §1 (NEW) .]

**19.** "Finance charge" means the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

A. Except for charges specifically excluded by paragraph B, the term includes:

- (1) Interest, time price differential and any amount payable under an add-on or discount system of additional charges;
- (2) Service, transaction, activity and carrying charges and early withdrawal penalties on time deposit accounts, including any charge imposed on a checking or other deposit account to the extent that the charge exceeds the charge for a similar account without a credit feature;
- (3) Points, loan fees, assumption fees, finder's fees and similar charges;
- (4) Appraisal, investigation and credit report fees;
- (5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss;
- (6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation or as a deduction from the proceeds of the obligation;
- (7) Premiums or other charges for credit life, accident, health or loss-of-income insurance or insurance against loss of or damage to property or against liability arising out of the ownership or use of property, written in connection with a credit transaction, unless the applicable requirements of section 2-501 and Article 8-A are met; and
- (8) Discounts for the purpose of inducing payment by a means other than the use of credit.

[ 2011, c. 427, Pt. D, §6 (AMD) .]

B. The term does not include:

- (1) Application fees charged to all applicants for credit, whether or not credit is actually extended;
- (2) Charges as a result of default, additional charges, delinquency charges or deferral charges to the extent permitted by section 2-501, 2-502 or 2-503;
- (3) Charges for actual unanticipated late payment in a transaction that is not otherwise subject to a finance charge or payable in installments;

- (4) Charges imposed by a financial institution for paying or returning an item that overdraws an account, except where the charge is imposed pursuant to a written agreement to extend credit to fund overdrafts;
- (5) Fees permitted by section 2-501 to be charged for participation in a credit plan, whether assessed on an annual or other periodic basis;
- (6) Seller's points;
- (7) Closing costs as defined in subsection 8;
- (8) The discount, when a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation;
- (9) Any discount offered by a creditor or seller for the purpose of inducing payment by cash, check or other means to be made at the time of sale not involving the use of a credit card, if that discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously; and
- (10) Official fees as defined in subsection 25, if they are itemized and disclosed. [1987, c. 129, §24 (RPR).]

[ 2011, c. 427, Pt. D, §6 (AMD) .]

**20.** "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title and instruments. For purposes of sections 5-110 and 5-111, goods that are collateral shall include any right of set-off that the creditor may have.

[ 1977, c. 159, §1 (AMD) .]

**20-A. Institution of higher education.**

[ 1983, c. 641, §2 (RP) .]

**20-B.** "Insurance premium loan" means a consumer loan that:

A. Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer; [1985, c. 763, Pt. A, §20 (NEW).]

B. Is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract; and [1985, c. 763, Pt. A, §20 (NEW).]

C. Contains an authorization to cancel the policy or contract financed. [1985, c. 763, Pt. A, §20 (NEW).]

[ 1985, c. 763, Pt. A, §20 (NEW) .]

**21.**

[ 1987, c. 129, §25 (RP) .]

**22.** "Lender credit card" means a credit card issued by a supervised lender. The term does not include any device to the extent that it accesses a bona fide asset account, notwithstanding any overdraft or other line of credit agreement which may be accessed as a result of a debit to that asset account.

[ 1987, c. 129, §26 (RPR) .]

**22-A.**

[ 2011, c. 427, Pt. B, §1 (RP) . ]

**23. "Loan":**

A. Except as provided in paragraph B, a "loan" includes:

- (i) the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;
- (ii) the creation of debt either pursuant to a lender credit card or by a cash advance to a debtor pursuant to a credit card other than a lender credit card;
- (iii) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately; and
- (iv) the forbearance of debt arising from a loan. [1973, c. 762, §1 (NEW) . ]

B. A "loan" does not include the payment or agreement to pay money to a third party for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of a credit card issued by a person primarily in the business of selling or leasing goods or services. [1987, c. 129, §27 (AMD) . ]

[ 1987, c. 129, §27 (AMD) . ]

**23-A.** "Manufactured housing" means manufactured housing as defined in Title 10, section 9002, subsection 7.

[ 1987, c. 129, §28 (NEW) . ]

**24.** "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

[ 1973, c. 762, §1 (NEW) . ]

**24-A.**

[ 1987, c. 129, §29 (RP) . ]

**24-B.** "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

- A. An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 13-103, subsection 3, paragraph A; [2011, c. 427, Pt. B, §2 (NEW) . ]
- B. A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with the laws of this State, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator; or [2011, c. 427, Pt. B, §2 (NEW) . ]
- C. A person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in 11 United States Code, Section 101(53D). [2011, c. 427, Pt. B, §2 (NEW) . ]

For the purposes of Articles 2, 3, 6, 9 and 10, mortgage loan originator does not include a registered mortgage loan originator as defined in section 13-102, subsection 12.

[ 2011, c. 427, Pt. B, §2 (NEW) . ]

**24-C.** "Mortgage loan servicer" means a person or organization that undertakes direct collection of payments from or enforcement of rights against debtors arising from a supervised loan secured by a dwelling.

[ 2017, c. 106, §2 (NEW) . ]

**25.** "Official fees" means:

A. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit transaction; or [1973, c. 762, §1 (NEW).]

B. Premiums payable for insurance in lieu of perfecting a 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 would otherwise be payable. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) . ]

**26.** "Open-end credit" means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of those transactions and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open-end credit plan within the meaning of the preceding sentence is an open-end credit plan, even if credit information is verified from time to time.

[ 1981, c. 243, §13 (RPR) . ]

**27.** "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

[ 1973, c. 762, §1 (NEW) . ]

**28.** "Payable in installments" means that payment is required or permitted by agreement to be made in more than 4 periodic payments, excluding the down payment.

[ 1981, c. 243, §14 (RPR) . ]

**28-A.** "Payday loan" means a supervised loan or other credit transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check or in exchange for the consumer's authorization to debit the consumer's deposit account and when the parties agree either that the check will not be cashed or deposited or that the consumer's deposit account will not be debited until a designated future date.

[ 2005, c. 604, §2 (NEW) . ]

**29.** "Person" includes a natural person or an individual, and an organization.

[ 1973, c. 762, §1 (NEW) . ]

**30.** "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister, sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the

organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

[ 1973, c. 762, §1 (NEW) . ]

**31.** "Precomputed": A finance charge or consumer credit transaction other than a consumer lease is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance.

[ 1973, c. 762, §1 (NEW) . ]

**31-A.** "Retail credit card" means a credit card issued by a seller who is not a supervised lender and who regularly engages as a seller in credit transactions of the same kind.

[ 1995, c. 84, §1 (NEW) . ]

**32.**

[ 1987, c. 129, §30 (RP) . ]

**33.** "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee pays, will pay or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement, including any optional renewals thereof.

[ 1983, c. 720, §5 (AMD) . ]

**34.** "Sale of an interest in land" includes, but is not limited to, a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

[ 1973, c. 762, §1 (NEW) . ]

**35.** "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

[ 1973, c. 762, §1 (NEW) . ]

**36.**

[ 1987, c. 129, §30 (RP) . ]

**37.** "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, rental of vehicles other than a consumer lease, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations and the like, and (c) insurance.

[ 1973, c. 762, §1 (NEW) . ]

**38.**

[ 1997, c. 66, §2 (RP) . ]

**38-A.** "Supervised financial organization" means:

A. A financial institution as defined in Title 9-B, section 131; or [1997, c. 66, §3 (NEW).]

B. A person, other than an insurance company or other organization primarily engaged in an insurance business, that is subject to the supervision by an official or agency of a state or of the United States and is:

(1) Organized, chartered or holding an authorization certificate under the laws of a state or of the United States that authorizes the person both to make loans and to receive deposits, including a savings, share, certificate or deposit account; or

(2) A nondepository trust company, uninsured bank or merchant bank organized, chartered or holding an authorization certificate under the laws of a state or of the United States that authorizes the limited-purpose financial institution to make loans. [2001, c. 371, §3 (AMD).]

[ 2001, c. 371, §3 (AMD) .]

**39.** "Supervised lender" means a person authorized to make or take assignments of or to service supervised loans, either under a license issued by the administrator under section 2-301 or as a supervised financial organization.

[ 2017, c. 106, §3 (AMD) .]

**40.** "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds 12 1/4% per year, or which is secured by an interest in real estate.

[ 1987, c. 396, §8 (AMD) .]

**41.** "Provisions on disclosure" includes Article 8-A, rules adopted pursuant to that Article and the Federal Truth in Lending Act, as applicable.

[ 2011, c. 427, Pt. D, §7 (AMD) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 63, (AMD). 1975, c. 251, (AMD). 1975, c. 324, §§1,2 (AMD). 1975, c. 350, §§1,2 (AMD). 1975, c. 770, §§47-49 (AMD). 1977, c. 159, §1 (AMD). 1977, c. 696, §113 (AMD). 1979, c. 660, §§4,5 (AMD). 1981, c. 235, §1 (AMD). 1981, c. 243, §§3-14,26 (AMD). 1981, c. 551, §3 (AMD). 1981, c. 618, §2 (AMD). 1981, c. 698, §18 (AMD). 1983, c. 641, §2 (AMD). 1983, c. 720, §§3-5 (AMD). 1985, c. 763, §§A18-20 (AMD). 1987, c. 129, §§13-30 (AMD). 1987, c. 396, §§4-8 (AMD). 1989, c. 70, §1 (AMD). 1995, c. 84, §1 (AMD). 1995, c. 309, §5 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 326, §1 (AMD). 1997, c. 66, §§2-4 (AMD). 1997, c. 122, §1 (AMD). 1997, c. 398, §L4 (AMD). 1997, c. 727, §B2 (AMD). 2001, c. 44, §1 (AMD). 2001, c. 44, §14 (AFF). 2001, c. 371, §§2,3 (AMD). 2001, c. 371, §14 (AFF). 2005, c. 164, §1 (AMD). 2005, c. 274, §1 (AMD). 2005, c. 604, §2 (AMD). 2005, c. 683, §B2 (AMD). 2009, c. 618, §1 (AMD). 2011, c. 427, Pt. A, §§1-4 (AMD). 2011, c. 427, Pt. B, §§1, 2 (AMD). 2011, c. 427, Pt. D, §§4-7 (AMD). 2017, c. 106, §§1-3 (AMD).

**§1-302. DEFINITION: FEDERAL TRUTH IN LENDING ACT**

In this Act, "Federal Truth in Lending Act" means Title I of the Consumer Credit Protection Act, (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that Act. [1973, c. 762, §1 (NEW).]

## SECTION HISTORY

1973, c. 762, §1 (NEW).

**§1-303. OTHER DEFINED TERMS**

Other definitions appearing in this Act and the sections in which they appear are:

"Computational period" Section 2-510

"Interval" Section 2-510

"Location" Section 2-309

"Periodic balance" Section 2-510 [1973, c. 762, §1 (NEW).]

## SECTION HISTORY

1973, c. 762, §1 (NEW).

## Article 2: FINANCE CHARGES AND RELATED PROVISIONS

### Part 1: GENERAL PROVISIONS

#### §2-101. SHORT TITLE

This Article shall be known and may be cited as the "Maine Consumer Credit Code -- Finance Charges and Related Provisions." [1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

#### §2-102. SCOPE

Part 2 of this Article applies to consumer credit sales. Parts 3 and 4 apply to consumer loans, including loans made by supervised lenders. Part 5 applies to other charges and modifications with respect to consumer credit transactions. Part 6 applies to other credit transactions. [1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

### Part 2: CONSUMER CREDIT SALES: MAXIMUM FINANCE CHARGES

#### §2-201. FINANCE CHARGE FOR CONSUMER CREDIT SALES OTHER THAN OPEN-END CREDIT

1. With respect to a consumer credit sale, other than a sale pursuant to open-end credit, a seller may contract for and receive a finance charge not exceeding that permitted by this section.

[ 1973, c. 762, §1 (NEW) . ]

2. The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

A. The total of:

(i) 30% per year on that part of the unpaid balances of the amount financed that is \$1,000 or less;

(ii) 21% per year on that part of the unpaid balances of the amount financed that is more than \$1,000 but does not exceed \$2,800; and

(iii) 15% per year on that part of the unpaid balances of the amount financed that is more than \$2,800; or [1997, c. 727, Pt. B, §3 (AMD).]

B. 18% per year on the unpaid balances of the amount financed. [1973, c. 762, §1 (NEW).]

[ 1997, c. 727, Pt. B, §3 (AMD) . ]

3. This section does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. If the sale is precomputed,

A. The finance charge may be calculated on the assumption that all scheduled payments will be made when due; and [1973, c. 762, §1 (NEW).]

B. The effect of prepayment is governed by the provisions on rebate upon prepayment, section 2-510. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

4. For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed 10 days or more after that date, with the date of commencement of performance or with the date of completion of delivery. For purposes of this section, a sale agreement does not commence upon the transfer of merchandise certificates, but commences only upon the date goods are delivered or services performed. For purposes of this section, delivery and performance include delivery or performance by a subcontractor or agent of the seller. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

[ 1973, c. 762, §1 (NEW) .]

5. Subject to classifications and differentiations the seller may reasonably establish, he may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection 2 if:

A. When applied to the median amount within each range, it does not exceed the maximum permitted by subsection 2; and [1973, c. 762, §1 (NEW).]

B. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph A by more than 8% of the rate calculated according to paragraph A. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

6. Notwithstanding subsection 2, the seller may contract for and receive a minimum charge of not more than:

A. Five dollars when the amount financed does not exceed \$75; [1975, c. 298, §1 (RPR).]

B. Seven dollars and fifty cents when the amount financed exceeds \$75, but is less than \$250; or [1975, c. 298, §1 (RPR).]

C. Twenty-five dollars when the amount financed is \$250 or more and when, within 30 days from the date of the transaction, the agreement is assigned by the seller, other than a seller of motor vehicles, to an assignee having no corporate relationship to the seller-assignor. [1975, c. 298, §1 (RPR).]

[ 1975, c. 298, §1 (RPR) .]

7. The finance charge on any transaction involving the credit sale of goods or services used in the modernization, rehabilitation, repair, alteration or improvement of real property, in which the seller or his agent installs the goods or provides the services related to the modernization, rehabilitation, repair, alteration or improvement of the real property, may not exceed 18% per year on the unpaid balances of the amount financed.

[ 1985, c. 819, Pt. B, §§3-4 (AMD) .]

8.

[ 1997, c. 727, Pt. B, §4 (RP) .]

**9.**

[ 1993, c. 188, §1 (RP) . ]

**9-A.** Notwithstanding any other provision of law, the finance charge on a consumer credit sale of a motor vehicle, as defined in this section, that is sold on or after January 1, 1994 may not exceed 18% per year on the unpaid balance of the amount financed. For the purposes of this section, "motor vehicle" means any self-propelled vehicle not operated exclusively on tracks, except agricultural machinery and any other devices that do not constitute consumer goods, as defined in Title 11, section 9-1102, subsection (23).

[ 1999, c. 699, Pt. D, §2 (AMD); 1999, c. 699, Pt. D, §30 (AFF) . ]

**10.** Notwithstanding any other subsection, the finance charge on a transaction to finance or refinance the acquisition of, or secured by, manufactured housing, not involving a security interest in real estate, may not exceed the greater of the following:

A. A rate 2% greater than the maximum rate established by federal regulations pursuant to the United States Code, Title 38, Section 1819(f), Veterans Housing Act of 1970, as amended, and published from time to time in the Federal Register, 38 Code of Federal Regulations, Part 36; or [1987, c. 129, §32 (AMD) . ]

B. 18% per year. [1983, c. 87, §1 (RPR) . ]

In the event no specific maximum rate is established by federal regulation in accordance with this subsection, this subsection shall not apply.

[ 1987, c. 129, §32 (AMD) . ]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 1, (AMD). 1975, c. 298, §1 (AMD). 1977, c. 161, §§1,2 (AMD). 1979, c. 661, §1 (AMD). 1981, c. 229, (AMD). 1981, c. 293, §1 (AMD). 1981, c. 470, §A17 (AMD). 1981, c. 618, §3 (AMD). 1983, c. 87, §1 (AMD). 1983, c. 598, (AMD). 1985, c. 763, §§A21-23 (AMD). 1985, c. 819, §§B3,4 (AMD). 1987, c. 129, §§31,32 (AMD). 1993, c. 188, §§1,2 (AMD). 1997, c. 727, §§B3,4 (AMD). 1999, c. 699, §D2 (AMD). 1999, c. 699, §D30 (AFF).

## §2-202. FINANCE CHARGE FOR CONSUMER CREDIT SALES PURSUANT TO OPEN-END CREDIT

**1.** With respect to a consumer credit sale made pursuant to open-end credit, a creditor may contract for and receive a finance charge not exceeding that permitted in this section.

[ 1973, c. 762, §1 (NEW) . ]

**2.** A charge may be made in each billing cycle which is a percentage of an amount not exceeding the greater of:

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 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 [1995, c. 614, Pt. A, §1 (AMD) . ]

B. The unpaid balance at the beginning of the first day of the billing cycle after all payments on account, returns and other credits made or given during the first 25 days of the billing cycle, if the billing cycle is monthly, shall have been first deducted; provided that returns and other credits may be deducted only to the extent that the purchase to which the credit or return relates has been reflected in the previous balance. If the billing cycle is not monthly, such deduction shall be made for payments on account, returns and other credits made or given during that part of the billing cycle that bears the same relation to the billing cycle that 25 does to 30. [1973, c. 762, §1 (RPR).]

[ 1995, c. 614, Pt. A, §1 (AMD) .]

3. Except with respect to sales made pursuant to a credit card:

A. If the billing cycle is monthly, the charge may not exceed 1 1/2% of the amount pursuant to subsection 2; or [1995, c. 84, §2 (NEW).]

B. If the billing cycle is not monthly, the maximum charge is that percentage that bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. [1995, c. 84, §2 (NEW).]

A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than 4 days from that date.

[ 1995, c. 84, §2 (RPR) .]

4. Notwithstanding subsection 3, if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding 50¢ if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly.

[ 1973, c. 762, §1 (NEW) .]

5. Except when there is an outstanding balance from the prior billing cycle, a finance charge may not be imposed on purchases or leases of goods or services purchased during the billing cycle, provided that they are paid for not later than 25 days after the closing date of the billing cycle in which the purchase or lease occurred.

[ 1995, c. 84, §3 (AMD) .]

6. For purposes of this section, the term of a sale made pursuant to an open-end agreement commences with the date credit is granted or, if goods are delivered or services performed 10 days or more after that date, with the date of commencement of performance or with the date of completion of delivery. Delivery and performance include delivery or performance by a subcontractor or agent of the seller.

[ 1981, c. 323, (NEW) .]

7. Unless otherwise provided for in Article 8-A, with respect to consumer credit sales made pursuant to a credit card, other than a lender credit card, a creditor may not impose a finance charge if it is in excess of that set forth in the agreement between the consumer and the creditor.

[ 2011, c. 427, Pt. A, §5 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 421, §§1,2 (AMD). 1981, c. 323, (AMD). 1995, c. 84, §§2-4 (AMD). 1995, c. 614, §A1 (AMD). 1999, c. 184, §1 (AMD). 2011, c. 427, Pt. A, §5 (AMD).

## Part 3: CONSUMER LOANS: SUPERVISED LENDERS

### §2-301. AUTHORITY TO MAKE OR SERVICE SUPERVISED LOANS

Unless a person is a supervised financial organization, a financial institution holding company as defined in Title 9-B, section 1011, subsection 1 or a mutual holding company as defined in Title 9-B, section 1052, subsection 2 or has first obtained a license pursuant to this Act from the administrator authorizing the person to make or service supervised loans, the person may not engage in the business of: [ 2017, c. 106, §4 (AMD) . ]

1. Making supervised loans;

[ 2017, c. 106, §4 (AMD) . ]

2. Taking assignments of and undertaking direct collection of payments from or enforcement of rights from an office in this State against debtors arising from supervised loans; or

[ 2017, c. 106, §4 (AMD) . ]

3. Servicing mortgage loans.

[ 2017, c. 106, §4 (NEW) . ]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 179, §1 (AMD). 1983, c. 212, §§3,4 (AMD). 1985, c. 763, §A24 (AMD). 1987, c. 129, §33 (AMD). 2017, c. 106, §4 (AMD).

### §2-302. LICENSE TO MAKE OR SERVICE SUPERVISED LOANS

1. The administrator shall receive and act on all applications for licenses to make or service supervised loans under this Act. Applications must be filed in the manner prescribed by the administrator and must contain the information required by the administrator to make an evaluation of the financial responsibility, character and fitness of the applicant.

A. For a lender subject to this subsection whose activities include making or arranging residential mortgage loans, an application for a license to make or service supervised loans must be made electronically, through the nationwide mortgage licensing system and registry. Licenses expire December 31st of each year and must be renewed through the nationwide mortgage licensing system and registry. An application for an initial license must be accompanied by a fee of \$250, and an annual renewal application must be accompanied by a fee of \$100. An application for an initial license or renewal for a place of business other than that of the applicant's first licensed location must be accompanied by a fee of \$100. An applicant must also pay a nationwide mortgage licensing system and registry processing fee in an amount to be determined by the administrators of the nationwide mortgage licensing system and registry. A nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) and engaged in the financing of housing for low-income people under a program designed specifically for that purpose must pay an initial licensing fee, and a fee for each branch location, of \$20 and a renewal licensing fee and renewal fee for each branch location of \$10, plus the applicable nationwide mortgage licensing system and registry processing fee. [ 2017, c. 106, §5 (AMD) . ]

B. For a lender subject to this subsection whose activities do not include making or arranging residential mortgage loans, an initial application for a license must be accompanied by a \$500 fee and a renewal application must include a \$200 fee. A license is granted for a 2-year period and expires on September

30th of the 2nd year. An application for an initial license or renewal for a place of business other than that of the applicant's first licensed location must be accompanied by a fee of \$200. [ 2013 , c . 466 , §1 (NEW) . ]

[ 2017 , c . 106 , §5 (AMD) . ]

**1-A.**

[ 2011 , c . 427 , Pt. B , §4 (RP) . ]

2. A license to make or service supervised loans or as a mortgage loan originator may not be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof, if the applicant is a copartnership or association, and of the officers and directors thereof, if the applicant is a corporation, and, when applicable, the character and fitness of the mortgage loan originators thereof, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this Act. In determining the financial responsibility of an applicant proposing to engage in making insurance premium loans, the administrator shall consider the liabilities the lender may incur for erroneous cancellation of insurance.

A. Every applicant shall also, at the time of filing such application, file with the administrator, if the administrator so requires, a surety bond satisfactory to the administrator in an amount not to exceed \$50,000. The terms of the bond must run concurrent with the period of time during which the license will be in effect. The bond must run to the State for the use of the State and of any person or persons who may have a cause of action against the licensee under this Act. The bond must be conditional that the licensee will faithfully conform to and abide by the provisions of this Act and to all rules lawfully made by the administrator under this Act and will pay to the State and to any such person or persons any and all amounts of money that may become due or owing to the State or to such person or persons from the licensee under and by virtue of this Act during the period for which the bond is given. [ 2013 , c . 466 , §2 (AMD) . ]

B. As used in this section, the term "financial responsibility" means that the applicant has available for the operation of the licensed business net assets of at least \$25,000 and upon issuance of a license, each licensee shall maintain net assets of at least \$25,000 that are either used or readily available for use in the conduct of the business of each office of the licensee in which supervised loans are made or serviced. [ 2017 , c . 106 , §5 (AMD) . ]

C. [ 1983 , c . 720 , §7 (RP) . ]

D. In determining the financial responsibility of a nonprofit organization engaged in the financing of housing for low-income people under a program specifically designed for that purpose, the administrator may waive the requirement of a bond and availability of \$25,000 of net assets, if the applicant submits appropriate additional evidence of financial responsibility. [ 1989 , c . 581 , §5 (NEW) . ]

[ 2017 , c . 106 , §5 (AMD) . ]

3. Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for a license or registration if (a) the administrator has notified the applicant in writing that the application has been denied, or (b) the administrator has not issued a license or registration within 60 days after the application for the license or registration was filed. A request for a hearing may not be made more than 15 days after the administrator has mailed a writing to the applicant notifying the applicant that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

[ 2005 , c . 164 , §4 (AMD) . ]

4. A separate license is required for each place of business. Each branch location license application must be accompanied by a surety bond, in a form acceptable to the administrator, in the amount of \$50,000.

[ 2013, c. 466, §3 (AMD) .]

5. A licensee may conduct the business of making or servicing supervised loans only at or from any place of business for which the licensee holds a license and not under any other name than that in the license. For purposes of this subsection, the closing of a supervised loan, secured by an interest in real estate, made by the licensee, at the office of an attorney or land title company, may not be considered the making or servicing of a supervised loan at the place of business other than the licensee's licensed location. Loans made pursuant to a lender credit card do not violate this subsection.

[ 2017, c. 106, §5 (AMD) .]

5-A. A licensee subject to subsection 1, paragraph A may conduct the business of making supervised loans only through a mortgage loan originator who possesses a current, valid license.

[ 2013, c. 466, §4 (AMD) .]

6. Any supervised loan, otherwise valid under the provisions of this Act, made by any corporation or by any subsidiary or affiliate of any corporation to which a license is granted by the administrator on or before June 30, 1975, and to which said supervised loan is assigned, is deemed to have been made by a duly licensed licensee, provided the administrator finds that said corporation has made a good faith effort to comply with the licensing provisions of this Act.

[ 2017, c. 106, §5 (AMD) .]

7.

[ 2013, c. 466, §5 (RP) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 179, §§2,2-A (AMD). 1983, c. 212, §5 (AMD). 1983, c. 720, §§6-8 (AMD). 1985, c. 763, §A25 (AMD). 1987, c. 129, §§34,35 (AMD). 1989, c. 581, §§4,5 (AMD). 1995, c. 614, §A2 (AMD). 1997, c. 727, §B5 (AMD). 1999, c. 184, §2 (AMD). 2005, c. 164, §§2-5 (AMD). 2005, c. 274, §2 (AMD). 2009, c. 243, §§1, 2 (AMD). 2011, c. 427, Pt. B, §§3-6 (AMD). 2013, c. 466, §§1-5 (AMD). 2017, c. 106, §5 (AMD).

## §2-303. REVOCATION OR SUSPENSION OF LICENSE

1. The administrator may file a complaint with the District Court to suspend or revoke a license to make, originate or service supervised loans if the administrator finds reason to believe, after investigation or hearing, or both, that:

A. The licensee has violated this Act or any rule or order made pursuant to this Act; or [2011, c. 427, Pt. B, §7 (AMD).]

B. Facts or conditions exist that would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made. [2011, c. 427, Pt. B, §7 (AMD).]

An affirmative finding by the District Court of either cause is sufficient to suspend or revoke the license.

[ 2017, c. 106, §6 (AMD) .]

**1-A.** The administrator may refuse to renew a license, after notice and opportunity for a hearing has been provided to the licensee, for any of the reasons set forth in subsection 1.

[ 2011, c. 427, Pt. B, §7 (AMD) .]

**2.** No revocation or suspension of a license impairs or affects the obligation of any preexisting lawful contract between the licensee and any debtor.

[ 2011, c. 427, Pt. B, §7 (AMD) .]

**3.** The administrator may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked if no fact or condition then exists that clearly would have justified the administrator in refusing to grant a license.

[ 2011, c. 427, Pt. B, §7 (AMD) .]

**4.** No revocation, suspension, annulment or withdrawal of a license is lawful unless, prior to the institution of proceedings by the administrator, the administrator gave notice by mail to the licensee of facts or conduct that warrant the intended action and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.

[ 2011, c. 427, Pt. B, §7 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 135, §§1,2 (AMD). 1977, c. 694, §§155-D (RPR). 1983, c. 720, §9 (AMD). 1985, c. 763, §A26 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2005, c. 164, §6 (AMD). 2011, c. 427, Pt. B, §7 (AMD). 2017, c. 106, §6 (AMD).

## §2-303-A. TEMPORARY SUSPENSION OF LICENSE

Notwithstanding Title 5, sections 10003 and 10004 and Title 10, section 8003, if the public interest or the protection of borrowers so requires, the administrator may, by order, suspend a license to make or service supervised loans or a license as a mortgage loan originator or postpone the effective date of such a license. Upon entry of the order, the administrator shall promptly notify the applicant or licensee that an order has been entered, of the reasons for the order and that, within 15 days after the receipt of a written request by the applicant or licensee, the matter must be scheduled for hearing. Section 2-303 applies to all subsequent proceedings. [2017, c. 106, §7 (AMD).]

#### SECTION HISTORY

2001, c. 371, §4 (NEW). 2005, c. 164, §7 (AMD). 2011, c. 427, Pt. B, §8 (AMD). 2017, c. 106, §7 (AMD).

## §2-304. RECORDS; ANNUAL AND QUARTERLY REPORTS

**1.**

[ 1985, c. 336, §3 (RP) .]

2. The administrator may direct each licensee to file composite annual and quarterly reports relating to all supervised loans made, arranged or serviced by that licensee. Information contained in annual and quarterly reports is confidential and may be published only in composite form. The administrator may at any time require additional reports if the administrator determines such action necessary to the proper supervision of licensees.

[ 2017, c. 106, §8 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 336, §3 (AMD). 1985, c. 336, §4 (AMD).  
2013, c. 466, §6 (AMD). 2017, c. 106, §8 (AMD).

## **§2-305. EXAMINATIONS AND INVESTIGATIONS**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 235, §2 (AMD). 1987, c. 129, §36 (RP).

## **§2-306. APPLICATION OF ADMINISTRATIVE PROCEDURE**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 819, §A10 (RP).

## **§2-307. RESTRICTIONS ON INTEREST IN LAND AS SECURITY**

1. With respect to a supervised loan in which the annual percentage rate disclosed is greater than 18%, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

[ 1973, c. 762, §1 (NEW) .]

2. With respect to a supervised loan in which the amount financed is \$2,800 or less, a lender may not take a security interest in the principal residence of the consumer. This subsection does not apply when the lender holds a first mortgage on the residence at the time the loan is made or when the loan is made pursuant to an open-end credit plan involving a commitment to advance amounts in excess of \$2,800. Notwithstanding Title 14, a judgment of foreclosure of a mortgage upon the principal residence of a consumer may not be entered on account of the consumer's failure to repay supervised loans under an open-end credit plan, unless the consumer's outstanding balance in the account at the end of the statement period has at some time exceeded \$2,800 and the consumer has not paid the account in full subsequent to the date of the last periodic statement showing an outstanding balance in excess of \$2,800.

[ 2011, c. 427, Pt. D, §8 (AMD) .]

3.

[ 1997, c. 727, Pt. B, §7 (RP) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1979, c. 660, §6 (AMD). 1981, c. 470, §A18 (AMD). 1985, c. 137, §§1,2 (AMD). 1985, c. 763, §§A27,28 (AMD). 1997, c. 727, §§B6,7 (AMD). 2011, c. 427, Pt. D, §8 (AMD).

**§2-308. REGULAR SCHEDULE OF PAYMENTS; MAXIMUM LOAN TERM**

1. Except as provided in section 3-308, supervised loans, not made pursuant to open-end credit and in which the amount financed is \$1,000 or less and the principal of which is payable in more than a single payment, must be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and over a period of not more than 25 months.

A. [1985, c. 763, Pt. A, §29 (RP).]

B. [1985, c. 763, Pt. A, §29 (RP).]

[ 1997, c. 727, Pt. B, §8 (AMD) .]

2.

[ 1997, c. 727, Pt. B, §9 (RP) .]

3.

[ 1995, c. 614, Pt. A, §3 (RP) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 173, §1 (AMD). 1985, c. 113, §1 (AMD). 1985, c. 763, §§A29,30 (AMD). 1985, c. 819, §A11 (AMD). 1995, c. 614, §A3 (AMD). 1997, c. 727, §§B8,9 (AMD).

**§2-309. NO OTHER BUSINESS FOR PURPOSE OF EVASION**

A supervised lender may not carry on other business for the purpose of evasion or violation of this Act at a location where the supervised lender makes or services supervised loans. [2017, c. 106, §9 (AMD) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 2017, c. 106, §9 (AMD).

**§2-310. SERVICING REQUIREMENTS OF ASSIGNED SUPERVISED LOANS**

No supervised loan secured by a mortgage on real estate may be assigned under this Article unless:

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

[ 1987, c. 129, §37 (AMD) .]

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

[ 1987, c. 129, §37 (AMD) .]

## SECTION HISTORY

1983, c. 720, §10 (NEW). 1987, c. 129, §37 (AMD).

## Part 4: CONSUMER LOANS: MAXIMUM FINANCE CHARGES

### §2-401. FINANCE CHARGE FOR CONSUMER LOANS

#### 1.

[ 1987, c. 129, §38 (RP) .]

2. With respect to a consumer loan, other than a loan pursuant to open-end credit, a lender may contract for and receive a finance charge calculated according to the actuarial method, not exceeding the equivalent of the following:

##### A. The total of:

(i) 30% per year on that part of the unpaid balances of the amount financed that is \$2,000 or less;

(ii) 24% per year on that part of the unpaid balances of the amount financed that is more than \$2,000 but does not exceed \$4,000; and

(iii) 18% per year on that part of the unpaid balances of the amount financed that is more than \$4,000. [1997, c. 727, Pt. B, §10 (AMD).]

##### B. [1997, c. 727, Pt. B, §10 (RP).]

Notwithstanding paragraph A, with respect to a consumer loan in which the amount financed exceeds \$8,000, a lender may not contract for and receive a finance charge calculated according to the actuarial method in excess of 18% per year on the entire amount of the loan.

[ 1997, c. 727, Pt. B, §10 (AMD) .]

3. This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. If the loan is precomputed,

A. The finance charge may be calculated on the assumption that all scheduled payments will be made when due; and [1973, c. 762, §1 (NEW).]

B. The effect of prepayment is governed by the provisions on rebate upon prepayment, section 2-510. [1973, c. 762, §1 (NEW).]

C. [1987, c. 129, §40 (RP).]

C. [1989, c. 457, §§1, 8, 9 (RP); 1989, c. 600, Pt. B, §§7, 8 (AFF).]

[ 1989, c. 457, §§1, 8, 9 (AMD); 1989, c. 600, Pt. B, §§7, 8 (AFF) .]

4. The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

[ 1973, c. 762, §1 (NEW) .]

5. If the primary purpose of the loan is the financing of premiums on a policy or contract of insurance issued by an insurer authorized in this State to do business of the kind involved and the debt under the loan agreement is owed to a supervised lender, the term of the loan for purposes of this section commences on the inception date of the policy or contract of insurance.

[ 1973, c. 762, §1 (NEW) .]

**6.**

[ 1997, c. 727, Pt. B, §11 (RP) .]

7. Notwithstanding subsection 2, the lender may contract for and receive a minimum charge of not more than:

- A. Five dollars when the amount financed does not exceed \$75; [1975, c. 298, §2 (NEW).]
- B. Fifteen dollars when the amount financed exceeds \$75, but is less than \$250; or [1999, c. 184, §3 (AMD).]
- C. Twenty-five dollars when the amount financed is \$250 or more. [1975, c. 298, §2 (NEW).]

[ 1999, c. 184, §3 (AMD) .]

8. Notwithstanding any other subsection, the finance charge on a transaction to finance or refinance the acquisition of, or secured by, manufactured housing, not involving a security interest in real estate, may not exceed the greater of the following:

- A. A rate 2% greater than the maximum rate established by federal regulations pursuant to the United States Code, Title 38, Section 1819(f), Veterans Housing Act of 1970, as amended, and published from time to time in the Federal Register, 38 Code of Federal Regulations, Part 36; or [1987, c. 129, §43 (AMD).]
- B. 18% per year. [1983, c. 87, §2 (NEW).]

In the event that no specific maximum rate is established by federal regulation in accordance with this subsection, this subsection shall not apply.

[ 1987, c. 129, §43 (AMD) .]

9. Notwithstanding any other subsection, the finance charge on an insurance premium loan may not exceed 18% per year on the unpaid balances of the amount financed, except for any minimum charge that may be allowed pursuant to subsection 7.

[ 1985, c. 763, Pt. A, §33 (NEW) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 298, §2 (AMD). 1981, c. 618, §4 (AMD). 1983, c. 87, §2 (AMD). 1985, c. 763, §§A31-33 (AMD). 1987, c. 129, §§38-40,43 (AMD). 1987, c. 129, §§41,42 (AMD). 1989, c. 457, §§1,8,9 (AMD). 1989, c. 600, §§B7,8 (AMD). 1997, c. 727, §§B10,11 (AMD). 1999, c. 184, §3 (AMD).

**§2-402. FINANCE CHARGE FOR LOANS ON OPEN-END CREDIT**

1. With respect to loans made on open-end credit, a creditor may contract for and receive a finance charge not in excess of that permitted in this section.

[ 1987, c. 129, §44 (AMD) .]

2. A charge may be earned in each billing cycle which is a percentage of an amount not exceeding the greatest of:

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 advances and other debits and deducting all payments and other credits made or received as of that day, provided that loans made pursuant to a lender credit card to finance the purchase or lease of goods and services shall not be included in the amount unpaid if a finance charge on these amounts is prohibited under subsection 4; or [1987, c. 129, §44 (AMD).]

B. The unpaid balance at the beginning of the first day of the billing cycle after all payments on account, returns and other credits made or given during the first 25 days of the billing cycle, if the billing cycle is monthly, shall have been first deducted; provided that returns and other credits may be deducted only to the extent that the purchase to which the credit or return relates has been reflected in the previous balance. If the billing cycle is not monthly, such deduction shall be made for payments on account, returns and other credits made or given during that part of the billing cycle that bears the same relation to the billing cycle that 25 does to 30. [1973, c. 762, §1 (NEW).]

[ 1987, c. 129, §44 (AMD) .]

3. Except with respect to loans made pursuant to a lender credit card, the charge earned in each billing cycle may not exceed the greater of the product of the average daily balance times the number of days in the billing cycle times .049315% or, if the billing cycle is monthly, 1 1/2% of the amount pursuant to subsection 2. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than 4 days from the regular date.

[ 1993, c. 618, §1 (AMD) .]

4. With respect to loans made pursuant to a lender credit card, except for cash advances, and except when there is an outstanding balance from the prior billing cycle at the beginning of a billing cycle, no finance charge may be imposed on purchases or leases of goods or services purchased during the billing cycle if they are paid for not later than 25 days after the closing date of the billing cycle in which the purchase or lease occurred. This subsection does not apply to open-end credit plans secured by a consumer's principal dwelling or by any 2nd or vacation home of the consumer.

[ 2005, c. 484, §1 (AMD) .]

5. Unless otherwise provided for in Article 8-A, with respect to loans made pursuant to a lender credit card, a creditor may not impose a finance charge if it is in excess of that set forth in the agreement between the consumer and the creditor. This subsection does not apply to open-end credit plans secured by a consumer's principal dwelling or by a 2nd or vacation home of the consumer.

[ 2011, c. 427, Pt. A, §6 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 132, (AMD). 1975, c. 291, (AMD).  
1977, c. 421, §§3,4 (AMD). 1987, c. 129, §44 (AMD). 1993, c. 618, §§1,2  
(AMD). 1995, c. 137, §4 (AMD). 2005, c. 484, §§1,2 (AMD). 2011, c.  
427, Pt. A, §6 (AMD).

## Part 5: CONSUMER CREDIT TRANSACTIONS: OTHER CHARGES AND MODIFICATIONS

**§2-501. ADDITIONAL CHARGES**

1. In addition to the finance charge permitted by the Parts of this Article on maximum finance charges for consumer credit sales and consumer loans, Parts 2 and 4, a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction or an open-end credit plan:

- A. Official fees and taxes; [1973, c. 762, §1 (NEW).]
- B. Charges for insurance as described in subsection 2; [1973, c. 762, §1 (NEW).]
- C. Annual charges, payable in advance, for the privilege of using a credit card, other than a lender credit card, which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the credit card, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer; [1987, c. 129, §45 (AMD).]
- D. "Closing costs" as defined in section 1-301, subsection 8; [1987, c. 129, §45 (AMD).]
- E. An annual charge for the privilege of using a retail credit card or lender credit card; [1995, c. 84, §5 (AMD).]
- F. Charges authorized as permissible additional charges by rule adopted by the administrator, for other benefits conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits or of a type that is not for credit; and [1993, c. 618, §4 (AMD).]
- G. Delinquency charges under section 2-502 and deferral charges under section 2-503. [2003, c. 100, §1 (RPR).]

[ 2003, c. 100, §1 (AMD) .]

2. An additional charge may be made for insurance written in connection with the transaction, including vendor's single interest insurance with respect to which the insurer has no right of subrogation against the consumer but excluding other insurance protecting the creditor against the consumer's default or other credit loss,

- A. With respect to insurance against loss of or damage to property, or against liability, if the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained; and [1973, c. 762, §1 (NEW).]
- B. With respect to consumer credit insurance providing life, accident or health coverage or involuntary unemployment coverage, if the insurance coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific affirmative written indication of the desire to do so after written disclosure to the consumer of the cost of the insurance. [1995, c. 329, §1 (AMD).]

[ 1995, c. 329, §1 (AMD) .]

3. Unless otherwise provided for in Article 8-A, charges permitted under this section and any other charges specifically excluded from the definition of "finance charge" in section 1-301, subsection 19, are permissible charges in addition to, and excluded from the calculation of, maximum finance charges set forth in Parts 2 and 4. Unless otherwise expressly prohibited by this Act, including prohibitions found in Article 8-A, and except on retail credit card accounts, a creditor may contract for and receive additional charges not authorized by this section or by section 1-301, subsection 19, if such additional charges, together with all other finance charges applicable to a consumer credit transaction, do not exceed the applicable maximum finance charge under this Act.

[ 2011, c. 427, Pt. A, §7 (AMD) .]

4. Unless otherwise provided for in Article 8-A, 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:

- A. A daily, weekly, monthly, annual or other periodic charge in such amount as the agreement may provide for the privileges made available to the consumer under the plan; [1995, c. 137, §5 (NEW).]
- B. A transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan; [1995, c. 137, §5 (NEW).]
- C. A minimum charge for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding, unpaid indebtedness under the plan; [1995, c. 137, §5 (NEW).]
- D. Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the creditor or its agents in connection with the plan, or other reasonable fees incident to the application for and the opening, administration and termination of the plan, including, without limitation, commitment, application and processing fees, official fees and taxes, and filing fees, but excluding costs of collections after default, other than reasonable attorney's fees not in excess of 15% of the unpaid debt incurred in connection with a legal action brought by an attorney who is not a salaried employee of the creditor; [1995, c. 137, §5 (NEW).]
- E. A late or delinquency charge upon any outstanding, unpaid installment payments or portions of those payments under the plan that are not paid in full within 15 days after the scheduled or deferred due date; [1995, c. 137, §5 (NEW).]
- F. Return-payment charges; [1995, c. 137, §5 (NEW).]
- G. Documentary evidence charges; [1995, c. 137, §5 (NEW).]
- H. Stop-payment fees; [1995, c. 137, §5 (NEW).]
- I. Over-the-limit charges; and [1995, c. 137, §5 (NEW).]
- J. Automated teller machine charges or similar electronic or interchange fees or charges. [1995, c. 137, §5 (NEW).]

This subsection does not apply to open-end credit plans secured by a consumer's principal dwelling or by any 2nd or vacation home of the consumer.

[ 2011, c. 427, Pt. A, §8 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 324, §3 (AMD). 1983, c. 384, §§1,2 (AMD). 1987, c. 129, §§45,46 (AMD). 1993, c. 618, §§3-5 (AMD). 1995, c. 84, §§5,6 (AMD). 1995, c. 137, §5 (AMD). 1995, c. 329, §1 (AMD). 1995, c. 614, §A4 (AMD). 1997, c. 94, §1 (AMD). 2003, c. 100, §1 (AMD). 2011, c. 427, Pt. A, §§7, 8 (AMD).

## §2-502. DELINQUENCY CHARGES

1. A creditor may contract for and receive a delinquency charge on any outstanding, unpaid installment payment or portion of such payment due under a consumer credit transaction or open-end credit plan not paid in full within 15 days after its scheduled or deferred due date in an amount not exceeding the greater of:

- A. An amount, not exceeding \$10, that is 5% of the unpaid amount of the installment; or [2003, c. 100, §2 (AMD).]

B. The deferral charge, section 2-503, that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent. [1999, c. 184, §4 (AMD).]

[ 2003, c. 100, §2 (AMD) .]

2. A delinquency charge under paragraph A of subsection 1 may be collected only once on an instalment however long it remains in default. No delinquency charge may be collected with respect to a deferred instalment unless the instalment is not paid in full within 15 days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

[ 1973, c. 762, §1 (NEW) .]

3.

[ 2003, c. 135, §1 (RP) .]

3-A. In connection with collecting a debt, a delinquency charge under subsection 1, paragraph A may not be collected on a payment if the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date, or within the applicable grace period. For the purposes of this subsection, "collecting a debt" means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of the money due or alleged to be due from a consumer.

[ 2003, c. 135, §2 (NEW) .]

4. If two instalments or parts thereof of a precomputed consumer loan are in default for 15 days or more, the lender may elect to convert the loan from a precomputed loan to one in which the finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment, section 2-510, as of the maturity date of the first delinquent instalment, and thereafter may make a finance charge as authorized by the provisions on loan finance charge for consumer loans, section 2-401. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge, section 2-510. If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to instalments due at or after the maturity date of the first delinquent instalment shall be rebated, and no further delinquency or deferral charges shall be made.

[ 1987, c. 129, §47 (AMD) .]

5.

[ 1997, c. 727, Pt. B, §12 (RP) .]

6.

[ 1981, c. 618, §5 (RP) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 268, (AMD). 1977, c. 564, §44 (AMD).  
1981, c. 281, §1 (AMD). 1981, c. 293, §2 (AMD). 1981, c. 618, §5 (AMD).  
1985, c. 763, §§A34,35 (AMD). 1987, c. 129, §47 (AMD). 1997, c. 727,  
§B12 (AMD). 1999, c. 184, §4 (AMD). 2003, c. 100, §2 (AMD). 2003, c.  
135, §§1,2 (AMD).

## §2-503. DEFERRAL CHARGES

As used in this section and in section 2-510, unless the context otherwise indicates, the following terms applying with respect to a precomputed consumer credit transaction shall have the following meanings: [1975, c. 464, (RPR).]

**1. Computational period.** "Computational period" means the interval between scheduled due dates of instalments under the transaction if the intervals are substantially equal, or if the intervals are not substantially equal, one month if the smallest interval between the scheduled due dates of instalments under the transaction is one month or more, and otherwise one week.

[ 1975, c. 464, (RPR) .]

**2. Deferral.** "Deferral" means a postponement of the scheduled due date of an instalment as originally scheduled or as previously deferred.

[ 1975, c. 464, (RPR) .]

**3. Deferral period.** "Deferral period" means a period in which no instalment is scheduled to be paid by reason of a deferral.

[ 1975, c. 464, (RPR) .]

**4. Interval.** The "interval" between specified dates means the interval between them including one or the other but not both of them; if the interval between the date of a transaction and the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or does not exceed 11 days when the computational period is one week, the interval may be considered by the creditor as one computational period.

[ 1975, c. 464, (RPR) .]

**5. Periodic balance.** "Periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the instalment, if any, scheduled to be paid on that day.

[ 1975, c. 464, (RPR) .]

**6. Standard deferral.** "Standard deferral" means a deferral with respect to a transaction made as of the due date of an instalment as scheduled before the deferral by which the due dates of that instalment and all subsequent instalments as scheduled before the deferral are deferred for a period equal to the deferral period. A standard deferral may be for one or more full computational periods or a portion of one computational period or a combination of any of these.

[ 1975, c. 464, (RPR) .]

**7. Sum of the balances method.** "Sum of the balances method," also known as the "Rule of 78," means a method employed with respect to a transaction to determine the portion of the finance charge attributable to a period of time before the scheduled due date of the final instalment of the transaction. The amount so attributable is determined by multiplying the finance charge by a fraction, the numerator of which is the sum of the periodic balances included within the period and the denominator of which is the sum of all periodic balances under the transaction. According to the sum of the balances method, the portion of the finance charge attributable to a specified computational period is the difference between the portions of the finance charge attributable to the period of time including and excluding, respectively, the computational period, both determined according to the sum of the balances method.

[ 1975, c. 464, (RPR) . ]

**8. Transaction.** "Transaction" means a precomputed consumer credit transaction, unless the context otherwise requires.

[ 1975, c. 464, (RPR) . ]

**9. Agreement to a deferral.** Before or after default in payment of a scheduled instalment of a transaction, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid instalments and the creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge not exceeding that provided in this section.

[ 1975, c. 464, (RPR) . ]

**10. Standard deferral.** A standard deferral may be made with respect to a transaction as of the due date, as originally scheduled or as deferred pursuant to a standard deferral, of an instalment with respect to which no delinquency charge, section 2-502, has been made or, if made, is deducted from the deferral charge computed according to this subsection. The deferral charge for a standard deferral may equal but not exceed the portion of the finance charge attributable to the computational period immediately preceding the due date of the earliest maturing instalment deferred as determined according to the sum of the balances method multiplied by the whole or fractional number of computational periods in the deferral period, counting each day as 1/30th of a month without regard to differences in lengths of months when the computational period is one month or as 1/7th of a week when the computational period is one week. A deferral charge computed according to this subsection is earned pro rata during the deferral period and is fully earned on the last day of the deferral period.

[ 1975, c. 464, (RPR) . ]

**11. Deferral charge other than a standard deferral charge.** With respect to a transaction as to which a creditor elects not to make and does not make a standard deferral or a deferral charge for a standard deferral, a deferral charge computed according to this subsection may be made as of the due date, as scheduled originally or as deferred pursuant to either subsection 10 or this subsection, of an instalment with respect to which no delinquency charge, section 2-502, has been made or, if made, is deducted from the deferral charge computed according to this subsection. A deferral charge pursuant to this subsection may equal but not exceed the rate of finance charge required to be disclosed to the consumer pursuant to law applied to each amount deferred for the period for which it is deferred computed without regard to differences in lengths of months, but proportionately for a part of a month, counting each day as 1/30th of a month or as 1/7 of a week. A deferral charge computed according to this subsection is earned pro rata with respect to each amount deferred during the period for which it is deferred.

[ 1975, c. 464, (RPR) . ]

**12. Additional charges.** In addition to the deferral charge permitted by this section, a creditor may make and receive appropriate additional charges, section 2-501, and any amount of these charges which is not paid may be added to the deferral charge computed according to subsection 10 or to the amount deferred for the purpose of computing the deferral charge computed according to subsection 11.

[ 1975, c. 464, (RPR) . ]

**13. Unilateral grant of deferral by creditor.** The parties may agree in writing at the time of a transaction that, if an instalment is not paid within 10 days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. A deferral charge may not be made for a period after the date that the creditor elects to accelerate the maturity of the transaction.

[ 1975, c. 464, (RPR) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 464, (RPR).

## §2-504. FINANCE CHARGE ON REFINANCING

With respect to a consumer credit transaction, except a consumer lease, the creditor by agreement with the consumer may refinance the unpaid balance and contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on finance charge for consumer credit sales other than open-end credit, section 2-201, if a consumer credit sale is refinanced, or for consumer loans, section 2-401, if a consumer loan is refinanced. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing is composed of the following: [1989, c. 457, §2 (RPR); 1989, c. 600, Pt. B, §§7, 8 (AFF).]

**1.** An amount equal to:

A. If the transaction was not precomputed, the total of the unpaid balance and the accrued charges, with the exception of any minimum charge, on the date of the refinancing; or [1987, c. 129, §48 (NEW) .]

B. If the transaction was precomputed, the amount which the consumer would have been required to pay upon prepayment pursuant to the provision on rebate upon prepayment, section 2-510, on the date of refinancing, but for the purpose of computing this amount no minimum charge is permitted; and [1987, c. 129, §48 (NEW) .]

[ 1987, c. 129, §48 (RPR) .]

**2.** Appropriate additional charges, section 2-501, payment of which is deferred.

[ 1987, c. 129, §48 (RPR) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 173, §2 (AMD). 1979, c. 660, §§7,8 (AMD). 1981, c. 235, §3 (AMD). 1983, c. 77, (AMD). 1985, c. 316, §1 (AMD). 1985, c. 819, §A12 (AMD). 1987, c. 129, §48 (RPR). 1987, c. 129, §§49,50 (RPR). 1989, c. 457, §§2,8,9 (AMD). 1989, c. 600, §§B7,8 (AFF) .

## §2-505. FINANCE CHARGE ON CONSOLIDATION

**1.** If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing, section 2-504, and to consolidate the amount financed

resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case the creditor may contract for and receive a finance charge as provided in subsection 2 based on the aggregate amount financed resulting from the consolidation.

[ 1973, c. 762, §1 (NEW) .]

2. If the debts consolidated arise exclusively from consumer credit sales, the transaction is a consolidation with respect to a consumer credit sale and the amount of the finance charge is governed by the provisions on finance charge for consumer credit sales other than open-end credit, section 2-201. If the debts consolidated include a debt arising from a consumer loan, the transaction is a consolidation with respect to a consumer loan and the amount of the finance charge is governed by the provisions on finance charge for consumer loans, section 2-401.

[ 1987, c. 129, §51 (AMD) .]

3. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction arising out of a consumer credit sale, and becomes obligated on another consumer credit transaction arising out of another consumer credit sale by the same seller, the parties may agree to a consolidation resulting in a single schedule of payments either pursuant to subsection 1 or by adding together the unpaid balances with respect to the two sales, except where adding the unpaid balances together results in a decrease of the maturity of an earlier transaction.

[ 1975, c. 181, (AMD) .]

4. Any consolidation under this section involving a supervised loan is subject to section 2-308.

[ 1973, c. 762, §1 (NEW) .]

5. This section does not apply to consumer leases or to successive transactions pursuant to an open-end credit arrangement.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 181, (AMD). 1987, c. 129, §51 (AMD).

## §2-506. ADVANCES TO PERFORM COVENANTS OF CONSUMER

1. If the agreement with respect to a consumer credit transaction contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, he may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

[ 1987, c. 129, §52 (AMD) .]

2. A finance charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate stated to the consumer pursuant to law in a disclosure statement, except that with respect to open-end credit the amount of the advance may be added to the unpaid balance of the debt and the creditor may make

a finance charge not exceeding that permitted by the appropriate provisions on finance charge for consumer credit sales pursuant to open-end credit, section 2-202, or for consumer loans, section 2-402, whichever is appropriate.

[ 1987, c. 129, §53 (AMD) .]

3. This section does not apply to consumer leases.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1987, c. 129, §§52,53 (AMD).

## §2-507. ATTORNEY'S FEES AND COLLECTION COSTS

1. With respect to a consumer credit sale or lease, or a supervised loan, the agreement may not provide for the payment by the consumer of attorney's fees or any other collection cost. A provision in violation of this section is unenforceable.

[ 1973, c. 762, §1 (NEW) .]

2. With respect to any other consumer credit transaction, the agreement may provide for the payment by the debtor of reasonable attorney's fees not in excess of 15% of the unpaid debt after default and referral to an attorney not a salaried employee of the creditor, but the agreement may not provide for the payment by the consumer of any other collection costs. A provision in violation of this subsection is unenforceable.

[ 1973, c. 762, §1 (NEW) .]

3.

[ 1981, c. 618, §6 (RP) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 281, §2 (AMD). 1981, c. 618, §6 (AMD).

## §2-508. CONVERSION TO OPEN END CREDIT

The parties may agree to add the unpaid balance of a consumer credit transaction not made pursuant to open-end credit to the consumer's open-end credit account with the creditor. The unpaid balance so added is an amount equal to the amount financed determined according to the provisions on finance charge on refinancing, section 2-504. This section does not apply to consumer leases. [1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

## §2-509. RIGHT TO PREPAY

Subject to the provisions on rebate upon prepayment, section 2-510, the consumer may prepay, in full or in part, the unpaid balance of a consumer credit transaction at any time without penalty, except for minimum charges as permitted by law. Notwithstanding any other provision of this Title, a reasonable charge may be assessed upon a consumer related to prepayment of a consumer loan made by a supervised financial organization and secured by an interest in land, other than a high-cost mortgage loan, as defined in the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq. if the charge is reasonably calculated to

offset the cost of origination of the loan. The administrator shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 427, Pt. D, §9 (AMD).]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 2003, c. 263, §1 (AMD). 2007, c. 99, §1 (AMD). 2007, c. 273, Pt. C, §2 (AMD). 2009, c. 362, Pt. C, §1 (AMD). 2011, c. 427, Pt. D, §9 (AMD).

**§2-510. REBATE UPON PREPAYMENT**

1. Except as provided in subsection 2, upon prepayment in full of the unpaid balance of a precomputed consumer credit transaction, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the consumer. If the rebate otherwise required is less than \$1, no rebate need be made.

[ 1975, c. 433, §1 (RPR) .]

2. Upon prepayment in full, but not upon a refinancing, section 2-504, of a consumer credit transaction, whether or not precomputed, other than one pursuant to open-end credit, the creditor may collect or retain a minimum charge as permitted by section 2-201, subsection 6, and section 2-401, subsection 7, if the minimum charge was contracted for and the finance charge at the time of prepayment is less than the minimum charge contracted for.

[ 1975, c. 433, §1 (RPR) .]

3. The creditor shall recompute or redetermine the earned finance charge by applying, according to the actuarial method, the annual percentage rate of finance charge required to be disclosed to the consumer pursuant to law to the actual unpaid balances of the amount financed for the actual time that the unpaid balances were outstanding as of the date of prepayment, giving effect to each payment, including payments of any deferral and delinquency charges, as of the date of the payment. The administrator shall adopt rules to simplify the calculation of the unearned portion of the finance charge, including allowance of the use of tables or other methods derived by application of a percentage rate which deviates by not more than 1/2 of 1% from the rate of the finance charge required to be disclosed to the consumer pursuant to law, and based on the assumption that all payments were made as originally scheduled or as deferred.

[ 1979, c. 661, §2 (RPR) .]

4.

[ 1979, c. 661, §2 (RP) .]

5.

[ 1979, c. 661, §2 (RP) .]

6. For transactions in which payments are not scheduled to be made in substantially equal instalments at equal periodic intervals, the administrator shall adopt rules consistent with this section providing for the calculation of the unearned portion of the finance charge.

[ 1975, c. 433, §1 (RPR) .]

7. Except as otherwise provided in subsection 3, this section does not preclude the collection or retention by the creditor of delinquency charges, section 2-502.

[ 1979, c. 661, §3 (AMD) .]

8. If the maturity is accelerated for any reason and judgment is entered, the consumer is entitled to the same rebate as if payment had been made on the date judgment is entered.

[ 1975, c. 433, §1 (RPR) .]

9. Upon prepayment in full of a precomputed consumer credit transaction by the proceeds of consumer credit insurance, section 4-103, the consumer or his estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of insurance are paid to the creditor, but no later than 14 days after satisfactory proof of loss is furnished to the creditor.

[ 1975, c. 433, §1 (RPR) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 433, §1 (RPR). 1979, c. 661, §§2,3 (AMD) .

## Part 6: OTHER CREDIT TRANSACTIONS

### §2-601. FINANCE CHARGE FOR OTHER CREDIT TRANSACTIONS

Except where otherwise provided by law with respect to a credit transaction other than a consumer credit transaction, the parties may contract for the payment by the debtor of any finance charge. [ 1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW) .

## Article 3: REGULATION OF AGREEMENTS AND PRACTICES

### Part 1: GENERAL PROVISIONS

#### §3-101. SHORT TITLE

This Article shall be known and may be cited as the "Maine Consumer Credit Code -- Regulation of Agreements and Practices." [1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

#### §3-102. SCOPE

Parts 2, 3 and 4 of this Article apply, respectively, to disclosure, limitations on agreements and practices, and limitations on consumer's liability with respect to consumer credit transactions. Part 5 applies to home solicitation sales. [1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

### Part 2: DISCLOSURE

#### §3-201. ADVERTISING

1. No creditor may engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit transaction or an open-end credit plan.

[ 1987, c. 129, §54 (AMD) .]

2. Without limiting the generality of subsection 1 and without requiring a statement of rate of finance charge if the finance charge is not more than \$5 when the amount financed does not exceed \$75, or \$7.50 when the amount financed exceeds \$75, an advertisement with respect to a consumer credit transaction or an open-end credit plan is misleading if:

A. It states the rate of finance charge and the rate is not stated in the form required by the provisions on disclosure; or [1973, c. 762, §1 (NEW).]

B. It states the dollar amounts of the finance charge or instalment payments, and does not also state the rate of any finance charge and the number and amount of the installment payments. [1985, c. 819, Pt. A, §13 (AMD).]

[ 1987, c. 129, §55 (AMD) .]

3. In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

[ 1973, c. 762, §1 (NEW) .]

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

[ 1973, c. 762, §1 (NEW) .]

5. Advertising which complies with the Federal Consumer Credit Protection Act, 15 U.S.C.A. § 1601 et seq., does not violate subsection 2.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 819, §A13 (AMD). 1987, c. 129, §§54,55 (AMD).

### **§3-202. ENTITLEMENT TO COPY OF WRITTEN AGREEMENT**

When a written agreement that requires or provides for the signature of the consumer and that evidences a consumer credit transaction other than one pursuant to open-end credit, the consumer is entitled to a copy of the agreement upon consummation of the transaction or within a reasonable time thereafter in the case of transactions entered into by mail, telephone or electronic means. [1999, c. 150, §1 (RPR).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 281, §3 (AMD). 1981, c. 293, §3 (AMD). 1981, c. 618, §7 (RPR). 1999, c. 150, §1 (RPR).

### **§3-203. NOTICE OF ASSIGNMENT**

The consumer is authorized to pay the original creditor until he receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not clearly and conspicuously identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### **§3-204. CHANGE IN TERMS OF OPEN-END CREDIT ACCOUNTS**

1. If a creditor makes a change in the terms of an open-end credit account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers, section 5-201, and to the administrator, section 6-113.

[ 1973, c. 762, §1 (NEW) .]

2. Unless otherwise provided for in Article 8-A, a creditor may change the terms of an open-end credit account. Except as provided in subsections 3 and 3-A, the creditor shall give to the consumer written notice of any change of terms relating to penalties, interest or other charges at least 30 days before the effective date of the change. A change of terms that would increase any penalty, interest or other charges may not affect outstanding balances incurred prior to the effective date of any such change unless:

A. The creditor includes in the notice of change an offer to finance by a separate loan arrangement the outstanding unpaid balance as of the effective date of the change at the same rate of interest with the same repayment schedule as applies to that open-end credit account; [1983, c. 212, §6 (AMD) .]

B. The consumer may accept the offer of a separate loan arrangement with respect to the then existing unpaid balance anytime prior to 7 days before the change is to become effective; [1983, c. 212, §6 (AMD) .]

C. The creditor has legal authority to make such a loan; and [1983, c. 212, §6 (AMD) .]

D. No minimum finance charge is assessed nor prepayment penalty charged on the loan. [1983, c. 212, §6 (AMD).]

[ 2011, c. 427, Pt. A, §9 (AMD) .]

3. The notice procedure specified in subsection 2 does not have to be followed if:

A. The consumer, after receiving the notice of the change and his rights specified in subsection 2, agrees in writing to the change; or [1983, c. 720, §12 (AMD).]

B. [1983, c. 720, §12 (RP).]

C. The change applies only to debts incurred after a date specified in a notice of the change given 15 days prior to the effective date of the change. [1983, c. 212, §7 (AMD).]

[ 1983, c. 720, §12 (AMD) .]

3-A. No notice of a change in terms is required if the change involves no significant cost to the consumer.

[ 1983, c. 720, §13 (NEW) .]

4. The notice provided for in this section is given to the consumer when mailed to him at the address used by the creditor for sending periodic billing statements.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 178, (AMD). 1983, c. 212, §§6,7 (AMD). 1983, c. 720, §§11-13 (AMD). 1999, c. 150, §2 (AMD). 2011, c. 427, Pt. A, §9 (AMD).

### §3-205. RECEIPTS; STATEMENTS OF ACCOUNT; EVIDENCE OF PAYMENT

1. The creditor shall give or send to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A seller, but not an assignee, shall send, without request, a written receipt for each payment by money order on an obligation pursuant to a consumer credit sale. Sending to the customer a periodic statement showing a payment received by mail complies with this subsection, if it is sent to the debtor within 45 days after receipt of the payment.

[ 1973, c. 762, §1 (NEW) .]

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

[ 1973, c. 762, §1 (NEW) .]

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

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §3-206. NOTICE TO COSIGNERS AND SIMILAR PARTIES

**1. Notice required.** A consumer is not obligated as a cosigner, as that term is defined in section 1-301, subsection 14-A, with respect to a consumer credit transaction, unless, before or contemporaneously with signing any separate agreement or any writing setting forth the terms of the debtor's agreement or in the case of an open-end account or plan prior to the first extension of credit pursuant to the plan, the consumer receives a written notice conforming to the requirements of subsection 2 and the following notices required to be given to the debtor as applicable:

A. Notice of the right to cure default under Article V; [1981, c. 264, §1 (NEW) .]

B. The material disclosures required under Article 8-A; [2011, c. 427, Pt. D, §10 (AMD) .]

C. Notices required under Title 11, Article 9-A; and [1999, c. 699, Pt. D, §3 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

D. Notices required under Title 14, chapter 713. [1981, c. 264, §1 (NEW) .]

[ 2011, c. 427, Pt. D, §10 (AMD) .]

**2. Form of notice.** The notice required by subsection 1 shall be clear and conspicuous and shall contain the following information:

A. An identification of the creditor, debtor and date of transaction; [1981, c. 264, §1 (NEW) .]

B. A description of the nature and extent of the person's obligation in connection with the transaction; [1981, c. 264, §1 (NEW) .]

C. Except for open-end credit, the total of payments and, if applicable, the fact that delinquency charges and other costs may also be assessed; [1981, c. 638, §4 (AMD) .]

D. The fact that the creditor can take legal action against the person even though he has not received any personal benefit in connection with the transaction; and [1981, c. 264, §1 (NEW) .]

E. A statement informing the person of his right to a copy of the agreement that creates his obligation. [1981, c. 638, §5 (AMD) .]

[ 1981, c. 638, §§4 and 5 (AMD) .]

**3. Exception.** The notice required by this section need not be given to a seller, lessor or lender who is obligated to an assignee of his rights.

[ 1981, c. 264, §1 (NEW) .]

**4. Copy of agreement.** A person entitled to notice under this section shall be given a copy of any writing setting forth the terms of the debtor's agreement and any separate agreement signed by the person entitled to the notice.

[ 1981, c. 638, §6 (AMD) .]

**5. Priority for collection.** A creditor may not begin a legal action against a person entitled to notice under this section until he has exercised due diligence to collect the debt from the debtor. This subsection does not apply if the person is jointly and severally liable with respect to the transaction.

[ 1981, c. 264, §1 (NEW) .]

#### **6. Definitions.**

[ 1987, c. 129, §57 (RP) .]

**7. Application.** This section applies to all consumer credit transactions and open-end credit plans entered into after October 1, 1982.

[ 1987, c. 129, §58 (AMD) .]

**8. Notice not required where cosigners given notice in conformance with certain federal regulations.** The notice described in subsection 2 is not required in any consumer credit transaction or open-end credit plan in which the creditor gives a notice to cosigners in the form set forth in regulations promulgated by the Federal Trade Commission, the Federal Reserve Board or the Federal Home Loan Bank Board.

[ 1987, c. 129, §59 (AMD) .]

#### SECTION HISTORY

1981, c. 264, §1 (NEW). 1981, c. 638, §§2-8 (AMD). 1985, c. 134, §§1,2 (AMD). 1987, c. 129, §§56-59 (AMD). 1999, c. 699, §D3 (AMD). 1999, c. 699, §D30 (AFF). 2011, c. 427, Pt. D, §10 (AMD).

## **Part 3: LIMITATIONS ON AGREEMENTS AND PRACTICES**

### **§3-301. SECURITY IN SALES OR LEASES**

**1.** With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is \$2,800 or more, or, in the case of a security interest in goods, the debt secured is \$1,000 or more. Except as provided with respect to cross-collateral, section 3-302, a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

[ 1997, c. 727, Pt. B, §13 (AMD) .]

**2.** With respect to a consumer lease, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

[ 1981, c. 243, §§16 and 26 (AMD) .]

3. A security interest taken in violation of this section is void.

[ 1973, c. 762, §1 (NEW) .]

4.

[ 1997, c. 727, Pt. B, §14 (RP) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 243, §§15,16,26 (AMD). 1981, c. 551, §3 (AMD). 1985, c. 316, §2 (AMD). 1985, c. 763, §§A36,37 (AMD). 1997, c. 727, §§B13,14 (AMD).

### **§3-302. CROSS-COLLATERAL**

1. In addition to contracting for a security interest pursuant to the provisions on security in sales or leases, section 3-301, a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

[ 1973, c. 762, §1 (NEW) .]

2. If the seller contracts for a security interest in other property pursuant to this section, the rate of finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing, section 2-505, subsection 1. The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

[ 1987, c. 129, §60 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1987, c. 129, §60 (AMD).

### **§3-303. DEBT SECURED BY CROSS-COLLATERAL**

1. If debts arising from 2 or more consumer credit sales, other than sales pursuant to open-end credit, are secured by cross-collateral, section 3-302 or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item is paid.

[ 1981, c. 243, §17 (AMD) .]

2. Payments received by the seller upon an open-end credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

[ 1973, c. 762, §1 (NEW) .]

3. If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 243, §17 (AMD). 1981, c. 243, §§17,26 (AMD). 1981, c. 551, §3 (AMD).

### §3-304. USE OF MULTIPLE AGREEMENTS

1. A creditor may not use multiple agreements with intent to obtain a higher finance charge than would otherwise be permitted by the provisions of the Article on Finance Charges and Related Provisions, Article II.

[ 1973, c. 762, §1 (NEW) .]

2. With respect to a supervised loan, a lender uses multiple agreements if, with intent to obtain a higher finance charge than would otherwise be permitted, he allows any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender.

[ 1973, c. 762, §1 (NEW) .]

3. The intent necessary, under subsections 1 and 2, shall be rebuttably presumed in any transaction in which a creditor who is required to disclose an annual percentage rate which is greater than 18% per year in a significant portion of its consumer credit transactions uses multiple agreements with the result of obtaining a higher credit service charge than would otherwise be permitted by this Article.

[ 1973, c. 762, §1 (NEW) .]

4. The excess amount of finance charge provided for in this section is an excess charge for the purposes of the provisions on rights of parties, section 5-201, and the provisions on civil actions by administrator, section 6-113.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §3-305. NO ASSIGNMENT OF EARNINGS

1. A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable at will.

[ 1973, c. 762, §1 (NEW) .]

2. A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

[ 1973, c. 762, §1 (NEW) . ]

SECTION HISTORY

1973, c. 762, §1 (NEW).

### **§3-306. AUTHORIZATION TO CONFESS JUDGMENT PROHIBITED**

No agreement for a consumer credit transaction may contain an authorization for any person to confess judgment on any claim. No seller or lessor may take such an authorization. Any such authorization is void.

[1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

### **§3-307. CERTAIN NEGOTIABLE INSTRUMENTS PROHIBITED**

With respect to a consumer credit sale or consumer lease, the creditor may not take a negotiable instrument, other than a currently dated check or a draft payable within 7 days of such sale or lease. [1981, c. 243, §18 (AMD).]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 243, §§18,26 (AMD). 1981, c. 551, §3 (AMD).

### **§3-308. SCHEDULE OF PAYMENTS; BALLOON PAYMENTS**

With respect to a consumer credit transaction having a schedule of payments requiring more than one payment of principal other than one pursuant to open-end credit: [1985, c. 113, §2 (RPR).]

1. Except as provided in this section, no creditor may contract for or receive payments of principal and interest pursuant to a schedule of payments under which any one payment is not substantially equal to all other payments, excluding any down payment receivable by the creditor or under which the intervals between any consecutive payments differ substantially;

[ 1985, c. 113, §2 (RPR) . ]

2. When a consumer's livelihood is dependent upon seasonal or intermittent income, the parties may agree in a separate writing that one or more payments or the intervals between one or more payments may be reduced or expanded in accordance with the needs of the consumer if the payments or intervals are expressly related to the consumer's expected income;

[ 1985, c. 113, §2 (RPR) . ]

3. A schedule of payments may provide for the deferral of the first periodic payment subsequent to any down payment for a period of not more than 12 months, except that interest or costs may not accrue in connection with the deferral of the first periodic payment if the deferral is for a period of time in excess of 120 days;

[ 2011, c. 87, §1 (AMD) . ]

4. A schedule of payments may require a final payment not substantially equal to all other periodic payments if the transaction is made for a term of not less than 4 years and if the contract evidencing the consumer credit transaction gives the consumer the right to refinance the amount of the final payment in order to fully amortize the obligation on terms then generally offered by the creditor, if the consumer satisfies reasonable credit standards and if the property satisfies reasonable loan-to-value standards. The administrator shall examine the reasonableness of standards during regular examinations and upon consumer complaint. At least 60 days but not more than 180 days prior to the maturity of the loan, the creditor must notify the consumer in writing of the maturity date and the amount due on the maturity date. The 4-year limitation does not apply to a consumer credit transaction secured by a motor vehicle if the contract evidencing the transaction otherwise conforms to the requirements of this section and also permits the consumer to transfer the motor vehicle to the creditor in lieu of making the final payment without further liability, except that the contract may provide for the assessment against the consumer of one or more of the following:

- A. A reasonable disposition fee; [2003, c. 543, §1 (NEW).]
- B. Reasonable charges for excess mileage; [2003, c. 543, §1 (NEW).]
- C. Reasonable charges for excess wear and tear; and [2003, c. 543, §1 (NEW).]
- D. Reasonable charges for damage to the motor vehicle; and [2003, c. 543, §1 (NEW).]

[ 2003, c. 543, §1 (AMD) .]

5. With respect to any transaction in violation of this section, the consumer shall have the right, at any time, without further cost or obligation, to revise the schedule of payments to conform both the payments and intervals to the average of all payments and intervals.

[ 1985, c. 113, §2 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 243, §§19,26 (AMD). 1981, c. 551, §3 (AMD). 1985, c. 113, §2 (RPR). 1997, c. 94, §2 (AMD). 2001, c. 82, §1 (AMD). 2001, c. 482, §1 (AMD). 2003, c. 543, §1 (AMD). 2011, c. 87, §1 (AMD).

### §3-309. REFERRAL SALES

With respect to a consumer credit sale or consumer lease, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. An agreement containing a violation of this section is unenforceable by the seller or lessor; and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §3-310. VARIABLE RATE TRANSACTIONS

1. In connection with a consumer credit transaction in which the interest rate may vary during the term of the transaction, the creditor shall make disclosures in accordance with section 8-504.

- A. [2013, c. 464, §1 (RP).]
- B. [2013, c. 464, §1 (RP).]

C. [2013, c. 464, §1 (RP).]

D. [2013, c. 464, §1 (RP).]

E. [1989, c. 457, §§3, 9 (RP); 1989, c. 600, Pt. B, §§7, 8 (AFF).]

F. [1989, c. 457, §§3, 9 (RP); 1989, c. 600, Pt. B, §§7, 8 (AFF).]

G. [1989, c. 457, §§3, 9 (RP); 1989, c. 600, Pt. B, §§7, 8 (AFF).]

H. [1989, c. 457, §§3, 9 (RP); 1989, c. 600, Pt. B, §§7, 8 (AFF).]

[ 2011, c. 427, Pt. A, §10 (AMD); 2013, c. 464, §1 (AMD) .]

**1-A.** In connection with a consumer credit transaction in which the interest rate may vary during the term of the transaction, the creditor may only use an index or other method that is beyond its control for determining any increase or decrease in the interest rate.

[ 1989, c. 457, §§4, 9 (AMD); 1989, c. 600, Pt. B, §§7, 8 (AFF) .]

**2.** A variation in the interest rate in accordance with the disclosures required by subsection 1 shall not be considered a refinancing under section 2-504 or a change in terms under section 3-204.

[ 1989, c. 457, §§5, 9 (AMD); 1989, c. 600, Pt. B, §§7, 8 (AFF) .]

**3.** A variation in the interest rate not in accordance with the disclosures of limits on interest rate changes and examples of the effects of a change made in accordance with subsection 1, shall be considered a charge in excess of that allowed by this Code under section 5-201, subsections 3 and 4.

[ 1989, c. 457, §§6, 9 (AMD); 1989, c. 600, Pt. B, §§7, 8 (AFF) .]

**4.** Subsection 1-A does not apply to a consumer loan secured by a savings or time deposit if the difference between the rate of interest on the savings or time deposit and the interest rate on the loan at no time exceeds the difference between the 2 when the loan was made.

[ 1989, c. 457, §§7, 9 (AMD); 1989, c. 600, Pt. B, §§7, 8 (AFF) .]

**5.**

[ 1987, c. 396, §9 (RP) .]

**6.**

[ 1987, c. 396, §10 (RP) .]

#### SECTION HISTORY

1981, c. 138, (NEW). 1981, c. 579, (AMD). 1983, c. 212, §8 (AMD). 1983, c. 720, §§14-20 (AMD). 1985, c. 336, §§5, 6 (AMD). 1985, c. 763, §A38 (AMD). 1987, c. 129, §61 (AMD). 1987, c. 396, §§9, 10 (AMD). 1989, c. 457, §§3-7, 9 (AMD). 1989, c. 600, §§B7, 8 (AFF). 1999, c. 150, §3 (AMD). 2011, c. 427, Pt. A, §10 (AMD). 2013, c. 464, §1 (AMD).

### **§3-311. CONSUMER'S CHOICE OF ATTORNEY IN RESIDENTIAL MORTGAGE TRANSACTION**

Every supervised lender which accepts an application for a residential mortgage loan for one to 4 residential units and which requires that an attorney search the title of the subject real estate shall permit the prospective mortgagee to select a qualified attorney of his own choice to search the title of the subject real

estate and certify that title to the lender or land title insurance company, provided that the lender may require the prospective mortgagor's attorney to provide it with evidence of adequate liability insurance or land title insurance or such other written policy requirements as the lender may deem necessary to protect its interests, provided that if all such requirements are met by the attorney chosen by the mortgagor, no additional legal costs may be assessed by the lender against the mortgagor for review of the title search or any other relevant title documents by the lender, its title company or attorney. [1985, c. 311, §1 (RPR).]

Every supervised lender subject to this section shall provide written notice to the prospective mortgagor that he has the right to select a qualified attorney of his own choice for the performance of title work. The notice shall inform the prospective mortgagor that if the attorney chosen by the mortgagor meets the lender's requirements, then no additional fees may be charged to the mortgagor for title work. If the prospective mortgagor indicates on the written notice that he does not wish to exercise his right to select an attorney, then the lender may recommend an attorney. [1985, c. 311, §1 (NEW).]

Nothing in this section may be construed to require certification of title to a supervised lender if that lender does not so require, or to a land title insurance company if that company does not so require. [1985, c. 311, §1 (RPR).]

#### SECTION HISTORY

1983, c. 150, §1 (NEW). 1985, c. 311, §1 (RPR).

### §3-312. INTEREST TO BE PAID ON FUNDS HELD IN ESCROW

A supervised lender, including any of its assignees, that makes loans secured by a mortgage on real estate and which holds funds of a mortgagor in an escrow account for the payment of taxes or insurance premiums, either on its own behalf or on behalf of another mortgagee, shall pay interest on those funds in accordance with Title 9-B, section 429. [1983, c. 679, §1 (NEW).]

#### SECTION HISTORY

1983, c. 679, §1 (NEW).

### §3-313. REAL ESTATE APPRAISALS; COPIES

A creditor that imposes a fee on a person for the cost of an appraisal of any real estate shall furnish to the person, at no cost, one copy of the appraisal upon request, if the request is made within 90 days after the creditor has provided notice of action taken on the application for credit or the date of the closing, whichever is later, or 90 days after the application is withdrawn. [1999, c. 150, §4 (AMD).]

#### SECTION HISTORY

1987, c. 265, §1 (NEW). 1999, c. 150, §4 (AMD).

### §3-314. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A creditor shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the creditor is a financial institution as defined in those regulations.

This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. This section does not apply to a supervised financial organization. [2001, c. 262, Pt. A, §1 (NEW).]

#### SECTION HISTORY

2001, c. 262, §A1 (NEW).

### **§3-315. CHOICE OF ACCOUNTING, TAX OR ATTEST SERVICES PROVIDER**

A supervised lender may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an accounting, tax or attest services provider who is accredited as a certified public accountant, public accountant or enrolled agent, except that the supervised lender may require the provider chosen by the purchaser or borrower to provide adequate evidence of liability insurance or such other written policy requirements as the supervised lender may determine necessary to protect its interest. [2007, c. 466, Pt. B, §5 (AFF); 2007, c. 466, Pt. B, §3 (RPR).]

#### SECTION HISTORY

2007, c. 185, §1 (NEW). 2007, c. 273, Pt. A, §1 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2007, c. 466, Pt. B, §5 (AFF). 2007, c. 466, Pt. B, §3 (RPR).

### **§3-316. REAL ESTATE SETTLEMENT PROCEDURES**

A creditor and its mortgage loan originators shall comply with the provisions of the federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq. and its implementing regulation, Regulation X, 12 Code of Federal Regulations, Section 1024.1 et seq. [2013, c. 464, §2 (AMD).]

#### SECTION HISTORY

2007, c. 466, Pt. B, §4 (NEW). 2007, c. 466, Pt. B, §5 (AFF). 2011, c. 427, Pt. B, §9 (AMD). 2013, c. 464, §2 (AMD).

## **Part 4: LIMITATIONS ON CONSUMER'S LIABILITY**

### **§3-401. RESTRICTION ON LIABILITY IN CONSUMER LEASE**

The obligation of a lessee upon expiration of a consumer lease may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default. [1981, c. 243, §20 (AMD).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 243, §§20,26 (AMD). 1981, c. 551, §3 (AMD).

### **§3-402. LIMITATION ON DEFAULT CHARGES**

1. The agreement with respect to a consumer credit transaction may not provide for any charges as a result of default by the consumer, except that the agreement may provide for the following:

A. Charges authorized by other provisions of this Act; [1991, c. 237, (NEW).]

B. Notwithstanding section 2-507, reasonable charges incurred in realizing on a security interest in personal property securing a consumer loan, consumer lease or a consumer credit sale, other than attorney's fees; and [1999, c. 150, §5 (AMD).]

C. Notwithstanding section 2-507, reasonable attorney's fees, legal expenses and other reasonable costs incurred in realizing on real property securing a consumer loan or a consumer credit sale. [1991, c. 237, (NEW).]

[ 1999, c. 150, §5 (AMD) .]

2. A provision in violation of this section is unenforceable.

[ 1991, c. 237, (NEW) .]

3. Notwithstanding subsections 1 and 2, a creditor that complies with Title 14, sections 6071 and 6073 is entitled to the remedies provided in those sections when an instrument that the creditor has taken in connection with a consumer loan, consumer lease or consumer credit sale is dishonored.

[ 1999, c. 150, §6 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 293, §4 (AMD). 1991, c. 237, (RPR). 1999, c. 150, §§5,6 (AMD).

### §3-403. ASSIGNEE SUBJECT TO DEFENSES

1. With respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding that:

A. There is an agreement to the contrary; or [1973, c. 762, §11 (NEW).]

B. The assignee is a holder in due course of a negotiable instrument issued in violation of the provisions on prohibition of certain negotiable instruments, section 3-307. [1973, c. 762, §11 (NEW).]

[ 1981, c. 243, §§ 21, 26 (AMD) .]

2. The assignee's liability under subsection 1 may not exceed the amount owing to the assignee with respect to the sale or lease at the time the assignee has notice of a claim or defense of the buyer or lessee. If debts arising from 2 or more consumer credit sales, other than pursuant to open-end credit, or consumer leases are consolidated, payments received after the consolidation are deemed, for the purpose of determining the amount owing the assignee with respect to a sale or lease, to have been first applied to the payment of debts arising from the sales or leases first made; if the debts consolidated arose from sales or leases made on the same day, payments are deemed to have been first applied to the smallest debt. Payments received upon a revolving charge account are deemed, for the purpose of determining the amount owing, the assignee with respect to a sale, to have been first applied to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

[ 1973, c. 762, §1 (NEW) .]

3. No agreement may provide greater rights for an assignee than this section permits and any provision granting such greater rights is unenforceable.

[ 1973, c. 762, §1 (NEW) .]

4. For the purposes of this section, assignee includes the issuer of a credit card, other than a lender credit card, when such card is used in a consumer sale or lease made with a person other than the issuer.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 243, §§21,26 (AMD). 1981, c. 551, §3 (AMD).

### §3-404. INTERLOCKING LOANS

1. A lender who makes a consumer loan for the purpose of enabling a consumer to buy from a seller goods or services, is subject to all claims and defenses of the consumer against the seller arising from the sale of the goods and services if:

A. The cash price of the item with respect to which a dispute exists is in excess of \$50 and is made in this State by a seller who allows the consumer to purchase the goods or services pursuant to a lender credit card or similar arrangement involving third parties and the residence of the consumer is in this State and the consumer has made a good faith effort to communicate to the seller the existence of the dispute; [1975, c. 284, §1 (AMD).]

B. The lender was a person having a legal relationship with the seller and the relationship was not remote or was a factor in making the sale or loan; [1973, c. 762, §1 (NEW).]

C. The seller guaranteed the loan or otherwise assumed the risk of loss by the lender upon the loan; or [1973, c. 762, §1 (NEW).]

D. The lender directly supplied the seller with a form used by the debtor to evidence or secure the loan. [1973, c. 762, §1 (NEW).]

[ 1981, c. 243, §§22, 26 (AMD) .]

2. The lender's liability under this section may not exceed the amount owing to the lender with respect to the cash price of the disputed item at the time the lender has notice of a claim or defense of the buyer against the seller. If 2 or more consumer loans, other than pursuant to a revolving loan account, are consolidated, payments received after the consolidation are deemed, for the purpose of determining the amount owing the lender with respect to the sale, to have been first applied to the payment of the loans first made; if the loans consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smallest loan. Payments received upon open-end credit are deemed, for the purpose of determining the amount owing the lender with respect to the sale, to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of loans in the order in which the entries to the account showing the loans were made.

[ 1975, c. 284, §2 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 284, §§1,2 (AMD). 1981, c. 243, §§22,26 (AMD). 1981, c. 551, §3 (AMD).

### §3-404-A. INTERLOCKING LEASES

1. A lessor who enters into a consumer lease for the purpose of enabling a consumer to obtain the use and possession of goods from a seller who is a merchant with respect to the goods is subject to all claims and defenses of the consumer against the seller with respect to the leased goods if:

A. The lessor was a person having a legal relationship with the seller and the relationship was not remote or was a factor in entering into the lease; [1991, c. 805, §1 (NEW).]

B. The seller guaranteed the lease or otherwise assumed the risk of loss by the lessor upon the lease; or [1991, c. 805, §1 (NEW).]

C. The lessor directly supplied the seller with a form used by the lessee to evidence or secure the lease. [1991, c. 805, §1 (NEW).]

[ 1991, c. 805, §1 (NEW) .]

2. The lessor's liability under this section may not exceed the amount that would be due to the lessor if the lease were terminated on the date the lessor receives notice of a claim or defense of the lessee against the seller.

[ 1991, c. 805, §1 (NEW) .]

#### SECTION HISTORY

1991, c. 805, §1 (NEW).

## Part 5: HOME SOLICITATION SALES

### §3-501. DEFINITION: "HOME SOLICITATION SALE"

"Home solicitation sale" means a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It includes a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card. It does not include a sale made pursuant to a preexisting open-end credit account, a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale which is subject to the provisions on the consumer's right to rescind certain transactions of the Federal Truth in Lending Act. A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for in whole or in part by a consumer loan in which the lender is subject to defenses arising from the sale, section 3-404. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §3-502. BUYER'S RIGHT TO CANCEL

1. In addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this Part.

[ 1973, c. 762, §1 (NEW) .]

1-A. In addition to any other right to avoid a contract or sale, the first-time buyer of a home solicitation sale of a home food service plan has the right prior to delivery of the food or nonfood items to cancel the sale until midnight of the 10th day after the date on which the buyer signs an agreement or offer to purchase that complies with this Part.

[ 1991, c. 750, §1 (NEW) .]

2. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

[ 1973, c. 762, §1 (NEW) .]

3. Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

[ 1973, c. 762, §1 (NEW) . ]

4. Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

[ 1973, c. 762, §1 (NEW) . ]

5. If the agreement or offer to purchase requires the seller to affix goods permanently to real estate or its appurtenances, then the seller may not begin performance as long as the buyer has the right to cancel.

[ 1981, c. 187, §1 (NEW) . ]

6. If the agreement or offer to purchase requires the seller to deliver a home food service plan, the seller shall allow the first-time buyer of a home food service plan to cancel the plan, without charge, at the time of delivery of the food or nonfood items.

[ 1991, c. 750, §1 (NEW) . ]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 187, §1 (AMD). 1991, c. 750, §1 (AMD).

### **§3-503. FORM OF AGREEMENT OR OFFER; STATEMENT OF BUYER'S RIGHTS**

1. In a home solicitation sale, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs, contains a statement of the buyer's rights which complies with subsection 2, and the terms of the sale. A completely executed copy of the agreement shall be furnished by the seller to the buyer immediately after the buyer signs the agreement.

[ 1973, c. 762, §1 (NEW) . ]

2. The statement must:

A. Appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL;" and [1973, c. 762, §1 (NEW) . ]

B. Read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of .....(Stated date) when cancellation right lapses. The notice must be mailed to: ..... (Insert name and mailing address of seller). If you cancel by this date, the seller may not keep any of your cash down payment. If this agreement requires the seller to affix goods to real estate, then the seller may not begin the work until ..... (Stated date) when cancellation right lapses." [1981, c. 187, §2 (AMD) . ]

[ 1981, c. 187, §2 (AMD) . ]

3. A home solicitation sales contract which contains the notice of cancellation forms and content required by the Federal Trade Commission's trade regulation rule providing for a time period within which a home solicitation sale may be cancelled shall be deemed as complying with the requirements of this Part, so long as the Federal Trade Commission rule provides at least equal information to the consumer concerning his right to cancel as is required by this Part.

[ 1973, c. 762, §1 (NEW) .]

4. Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 134, §1 (AMD). 1981, c. 187, §2 (AMD).

### **§3-503-A. FROZEN FOOD CONTRACTS**

*(REPEALED)*

#### SECTION HISTORY

1991, c. 239, §1 (NEW). 1991, c. 750, §2 (RP).

### **§3-504. RESTORATION OF DOWN PAYMENT; NO RETENTION OF CANCELLATION FEE**

1. Within 20 days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. A provision permitting the seller to keep all or any part of any payment, note or evidence of indebtedness is in violation of this section and unenforceable.

[ 1973, c. 762, §1 (NEW) .]

2. If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

[ 1973, c. 762, §1 (NEW) .]

3. Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

[ 1973, c. 762, §1 (NEW) .]

4. The seller is not entitled to retain any cancellation fee.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### **§3-505. DUTY OF BUYER; NO COMPENSATION FOR SERVICES PRIOR TO CANCELLATION**

1. Except as provided by the provisions on retention of goods by the buyer, subsection 3 of section 3-504, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is presumed to be a reasonable time.

[ 1973, c. 762, §1 (NEW) . ]

2. The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

[ 1973, c. 762, §1 (NEW) . ]

3. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

[ 1973, c. 762, §1 (NEW) . ]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### **§3-506. LIMITATION**

This Part does not apply to any consumer credit transaction covered by Article 8-A and subject to the right of rescission pursuant to the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq., nor does it apply to any sale, by any dealer or agent or salesperson of a registered dealer, registered pursuant to Title 32, chapter 135, of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to Title 32, chapter 135 or expressly exempt from registration thereof. [ 2011, c. 427, Pt. D, §11 (AMD). ]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 564, §45 (AMD). 1981, c. 698, §19 (AMD). 1987, c. 129, §62 (AMD). 2005, c. 65, §C4 (AMD). 2011, c. 427, Pt. D, §11 (AMD).

### **§3-507. VIOLATION AS UNFAIR TRADE PRACTICE**

Any violation of this Part shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act. [1973, c. 762, §1 (NEW). ]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

## Article 4: INSURANCE

### Part 1: INSURANCE IN GENERAL

#### §4-101. SHORT TITLE

This Article shall be known and may be cited as the "Maine Consumer Credit Code -- Insurance."  
[1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

#### §4-102. SCOPE; RELATION TO CREDIT INSURANCE ACT; APPLICABILITY TO PARTIES

1. Except as provided in subsection 2, Parts 1, 2 and 3 of this Article apply to insurance provided or to be provided in relation to a consumer credit transaction.

[ 1997, c. 315, §1 (AMD) .]

2. The provision on cancellation by a creditor, section 4-304, applies to loans, the primary purpose of which is the financing of insurance. No other provision of Parts 1, 2 and 3 of this Article applies to insurance so financed.

[ 1997, c. 315, §1 (AMD) .]

3. This Article supplements and does not repeal the Credit Insurance Act. The provisions of this Act concerning administrative controls, liabilities and penalties do not apply to persons acting as insurers. The similar provisions of the Credit Insurance Act do not apply to creditors and debtors, except as otherwise provided in this Article. The administrator shall have the power under Article VI to enforce against creditors the provisions of the Credit Insurance Act referred to in this Article.

[ 1973, c. 762, §1 (NEW) .]

##### SECTION HISTORY

1973, c. 762, §1 (NEW). 1997, c. 315, §1 (AMD).

#### §4-103. DEFINITION: "CONSUMER CREDIT INSURANCE," "CREDIT INSURANCE ACT"

In this Act: [1973, c. 762, §1 (NEW).]

1. "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

A. Insurance provided in relation to a credit transaction in which a payment is scheduled more than 15 years after the extension of credit; [1975, c. 288, §1 (AMD).]

B. Insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring consumers of the creditor; or [1973, c. 762, §1 (NEW).]

C. Insurance indemnifying the creditor against loss due to the consumer's default. [1973, c. 762, §1 (NEW).]

[ 1975, c. 288, §1 (AMD) .]

2. "Credit Insurance Act" means Title 24-A, chapter 37.

[ 2001, c. 138, §1 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 288, §1 (AMD). 2001, c. 138, §1 (AMD).

### **§4-104. CREDITOR'S PROVISION OF AND CHARGE FOR INSURANCE; EXCESS AMOUNT OF CHARGE**

1. Except as otherwise provided in Parts 1, 2 and 3 of this Article and subject to the provisions on additional charges, section 2-501, and maximum finance charges, Parts 2 and 4 of Article II, a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by that creditor. This Act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

[ 1997, c. 315, §2 (AMD) .]

2. The excess amount of a charge for insurance provided for in agreements in violation of Parts 1, 2 and 3 of this Article is an excess charge for the purposes of the provisions of the Article on Remedies and Penalties, Article V, as to effect of violations on rights of parties, section 5-201, and of the provisions of the Article on Administration, Article VI, as to civil actions by the administrator, section 6-113.

[ 1997, c. 315, §2 (AMD) .]

3. In any consumer credit sale or any supervised loan, except pursuant to open-end credit sales, a creditor may not contract for or receive a separate charge for consumer credit insurance providing for accident and health coverage unless there is a minimum payment of \$30 per month or a loan duration of at least 18 months. All consumer credit insurance providing for accident and health coverage in any consumer credit sale or any supervised loan shall provide for a waiting period of 30 days or more. If a creditor offers consumer credit insurance providing for accident and health coverage for which a separate charge may be received, the creditor shall offer the consumer the option of purchasing consumer credit insurance which does not pay a benefit for the 30-day waiting period and shall disclose to the consumer the cost thereof in accordance with section 2-501, subsection 2, paragraph B.

[ 1981, c. 151, (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 288, §2 (AMD). 1981, c. 151, (AMD).  
1997, c. 315, §2 (AMD).

### **§4-105. CONDITIONS APPLYING TO INSURANCE TO BE PROVIDED BY CREDITOR**

The provisions of Title 24-A, section 2857, shall apply to insurance provided or to be provided in relation to a consumer credit transaction. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

**§4-106. UNCONSCIONABILITY**

1. In applying the provisions of this Act on unconscionability, sections 5-108 and 6-111, to a separate charge for insurance, consideration shall be given, among other factors, to:

- A. Potential benefits to the consumer including the satisfaction of his obligations; [1973, c. 762, §1 (NEW).]
- B. The creditor's need for the protection provided by the insurance; and [1973, c. 762, §1 (NEW).]
- C. The relation between the amount and terms of credit granted and the insurance benefits provided. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

2. If consumer credit insurance otherwise complies with Parts 1, 2 and 3 of this Article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in and of itself unconscionable in the absence of other practices and circumstances.

[ 1997, c. 315, §3 (AMD) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1997, c. 315, §3 (AMD).

**§4-107. MAXIMUM CHARGE BY CREDITOR FOR INSURANCE**

1. Except as provided in subsection 2, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the consumer for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the consumer is determined, conforming to any rate filings required by law and made by the insurer with the Superintendent of Insurance.

[ 1973, c. 762, §1 (NEW) .]

2. A creditor who provides consumer credit insurance in relation to open end credit may calculate the charge to the consumer in each billing cycle by applying the current premium rate to the unpaid balance of debt in the same manner as is permitted with respect to finance charges by the provisions on finance charges for consumer credit sales pursuant to open end credit, section 2.202.

[ 1973, c. 762, §1 (NEW) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW).

**§4-108. REFUND OR CREDIT REQUIRED; AMOUNT**

The provisions of Title 24-A, sections 2859, 2860, and 2861, shall apply to insurance provided or to be provided in relation to a consumer credit transaction. [1973, c. 762, §1 (NEW).]

## SECTION HISTORY

1973, c. 762, §1 (NEW).

#### **§4-109. EXISTING INSURANCE; CHOICE OF INSURER**

The provisions of Title 24-A, section 2863 shall apply to insurance provided or to be provided in relation to a consumer credit transaction. [1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

#### **§4-110. CHARGE FOR INSURANCE IN CONNECTION WITH A REFINANCING OR CONSOLIDATION**

The provisions of Title 24-A, section 2856, subsection 4 and section 2859, shall apply to insurance provided or to be provided in relation to a consumer credit transaction. [1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

#### **§4-111. COOPERATION BETWEEN ADMINISTRATOR AND SUPERINTENDENT OF INSURANCE**

The administrator and the Superintendent of Insurance are authorized and directed to consult and assist one another in maintaining compliance with Parts 1, 2 and 3 of this Article. They may jointly pursue investigations, prosecute suits and take other official action as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of Parts 1, 2 and 3 of this Article, or of the insurance laws, rules and regulations of this State, the administrator shall advise the Superintendent of Insurance of the circumstances. [1997, c. 315, §4 (AMD).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW). 1997, c. 315, §4 (AMD).

#### **§4-112. ADMINISTRATIVE ACTION OF SUPERINTENDENT OF INSURANCE**

1. To the extent of required responsibility under Parts 1, 2 and 3 of this Article, the Superintendent of Insurance shall issue rules with respect to insurers, and with respect to refunds, section 4-108, forms, schedules of premium rates and charges, section 4-203, and the Superintendent of Insurance's approval or disapproval thereof and, in case of violation, may make an order for compliance.

[ 1997, c. 315, §5 (AMD) .]

2.

[ 1985, c. 763, Pt. A, §39 (RP) .]

##### SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A39 (AMD). 1997, c. 315, §5 (AMD).

### **Part 2: CONSUMER CREDIT INSURANCE**

## §4-201. TERM OF INSURANCE

The provisions of Title 24-A, section 2856, shall apply to insurance provided or to be provided in relation to a consumer credit transaction. [1973, c. 762, §1 (NEW).]

### SECTION HISTORY

1973, c. 762, §1 (NEW).

## §4-202. AMOUNT OF INSURANCE

The provisions of Title 24-A, section 2855, shall apply to insurance provided or to be provided in relation to a consumer credit transaction. [1973, c. 762, §1 (NEW).]

### SECTION HISTORY

1973, c. 762, §1 (NEW).

## §4-203. FILING AND APPROVAL OF RATES AND FORMS

The provisions of Title 24-A, section 2858, shall apply to insurance provided or to be provided in relation to a consumer credit transaction. [1973, c. 762, §1 (NEW).]

### SECTION HISTORY

1973, c. 762, §1 (NEW).

## §4-204. NOTICE OF RIGHT TO CANCEL CREDIT INSURANCE IN OPEN-END TRANSACTIONS

A creditor who provides consumer credit insurance in relation to open-end credit shall, at least annually, inform the consumer of the voluntary nature of the insurance and of his right to cancel that insurance at will. [1985, c. 336, §7 (NEW).]

### SECTION HISTORY

1985, c. 336, §7 (NEW).

# Part 3: PROPERTY AND LIABILITY INSURANCE

## §4-301. PROPERTY INSURANCE

The following provisions apply to insurance provided or to be provided in relation to a consumer credit transaction: [1997, c. 315, §6 (NEW).]

1. A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

A. The insurance covers a substantial risk of loss of or damage to property related to the credit transaction; [1973, c. 762, §1 (NEW).]

B. The amount, terms and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; [1973, c. 762, §1 (NEW).]

C. The term of the insurance is reasonable in relation to the term of credit. [1973, c. 762, §1 (NEW).]

[ 1975, c. 368, §1 (AMD) .]

2. The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

[ 1973, c. 762, §1 (NEW) .]

3. With respect to a transaction, except pursuant to open-end credit, a creditor may not contract for or receive a separate charge for insurance against loss of or damage to property, unless the amount financed exclusive of charges for the insurance is \$1,400 or more and the cash price of the item or property is \$1,400 or more.

[ 1997, c. 727, Pt. B, §15 (AMD) .]

4. With respect to a transaction pursuant to open-end credit, the administrator may adopt rules consistent with the principles set out in subsections 1 and 2 prescribing whether, and the conditions under which, a creditor may contract for or receive a separate charge for insurance against loss of or damage to property.

[ 1975, c. 368, §2 (NEW) .]

5.

[ 1997, c. 727, Pt. B, §16 (RP) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 368, §§1,2 (AMD). 1985, c. 763, §A40 (AMD). 1997, c. 315, §6 (AMD). 1997, c. 727, §§B15,16 (AMD).

### **§4-302. INSURANCE ON CREDITOR'S INTEREST ONLY**

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the consumer is on the consumer only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### **§4-303. LIABILITY INSURANCE**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1987, c. 129, §63 (AMD). 1997, c. 315, §7 (RP).

### **§4-304. CANCELLATION BY CREDITOR**

A creditor shall not request cancellation of a policy of property or liability insurance except after the consumer's default or in accordance with a written authorization by the consumer and until written notice is delivered to the consumer or mailed to him at his address as stated by him. The notice shall state that the policy may be cancelled on a date not less than 10 days after the notice is delivered, or, if the notice is mailed, not less than 13 days after it is mailed. [1975, c. 316, (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 316, (AMD).

## Part 4: INSURANCE ACTIVITIES BY SUPERVISED LENDERS

### §4-401. SCOPE

**1. Scope.** This Part applies to supervised lenders who are not supervised financial organizations.

[ 1997, c. 315, §8 (NEW) .]

**2. Exceptions.** Except for sections 4-402 and 4-405, this Part does not apply to group health and group life insurance to the extent authorized by Title 24-A, chapters 31 and 35 when the insured is enrolled in the insurance policy, credit life and credit health insurance to the extent authorized by Title 24-A, chapter 37, credit property insurance, credit involuntary unemployment insurance, forced placed property insurance, a vendor's single interest policy or any other insurance product as determined by the Superintendent of Insurance.

[ 1997, c. 315, §8 (NEW) .]

#### SECTION HISTORY

1997, c. 315, §8 (NEW).

### §4-402. INSURANCE AGENCY ACTIVITIES

A supervised lender and any affiliate may become licensed under Title 24-A as an insurance agent or agency, broker or consultant for the sale of insurance products in this State and may act as an insurance agent, broker or consultant for the sale of insurance products in this State. [1997, c. 315, §8 (NEW).]

#### SECTION HISTORY

1997, c. 315, §8 (NEW).

### §4-403. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 315, §8 (NEW).]

**1. Affiliate.** "Affiliate" means any of the following entities:

A. A subsidiary of a supervised lender; [1997, c. 315, §8 (NEW).]

B. An entity of which a supervised lender is a subsidiary; [1997, c. 315, §8 (NEW).]

C. An employee, officer other than a director or licensed 3rd-party agent of a supervised lender or any institution listed in paragraph A or B; [1997, c. 315, §8 (NEW).]

D. A person or entity possessing 5% or more of the ownership interests of a supervised lender or any institution listed in paragraph A or B; or [1997, c. 315, §8 (NEW).]

E. An insurer or insurance agent, broker or consultant utilizing space in the retail area of a supervised lender, or an institution listed in paragraph A or B in order to engage in the transaction of insurance when payments for use of such space are made to the supervised lender or other such institution pursuant to a space-sharing agreement based directly or indirectly on a percentage of the volume of business conducted by the insurer, insurance agent, broker or consultant. [1997, c. 315, §8 (NEW).]

[ 1997, c. 315, §8 (NEW) .]

**2. Customer.** "Customer" means a person or an authorized representative who has been personally and directly offered or presently maintains an investment security, trust, credit or an insurance product with a supervised lender.

[ 1997, c. 315, §8 (NEW) .]

**3. Insurance agent or agency.** "Insurance agent or agency" means a person engaged in the business of an insurance agent as defined in Title 24-A, section 1502.

[ 1997, c. 315, §8 (NEW) .]

**4. Insurance broker.** "Insurance broker" means a person engaged in the business of an insurance broker as defined in Title 24-A, section 1506.

[ 1997, c. 315, §8 (NEW) .]

**5. Insurance consultant.** "Insurance consultant" means a person engaged in the business of an insurance consultant as defined in Title 24-A, section 1402, subsection 4, 8 or 11.

[ 1999, c. 127, Pt. A, §18 (AMD) .]

**6. Insurance product.** "Insurance product" means a contract of insurance that is offered for sale by a licensed agent or broker employed by or affiliated with a supervised lender.

[ 1997, c. 315, §8 (NEW) .]

**7. Licensed 3rd-party agent.** "Licensed 3rd-party agent" means a licensed insurance agent, broker or consultant who engages in authorized insurance activities related to insurance products directly on behalf of a specified licensed insurance entity through an independent contractor relationship.

[ 1997, c. 315, §8 (NEW) .]

**8. Ownership interest.** "Ownership interest" includes general partnership shares, limited partnership shares and shares of stock that possess any voting rights.

[ 1997, c. 315, §8 (NEW) .]

**9. Subsidiary.** "Subsidiary" means any corporation, partnership, association or other business entity in which either:

A. One or more supervised lenders or any of their officers, employees, agents or representatives possess, directly or indirectly, singly or in the aggregate, an ownership interest of at least 25%; or [ 1997, c. 315, §8 (NEW) .]

B. It is determined by the Superintendent of Consumer Credit Protection after notice and opportunity for hearing that one or more supervised lenders or any of their officers, employees, agents or representatives, singly or in the aggregate exercise a controlling influence over the management and policies of the entity. [1997, c. 315, §8 (NEW); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

[ 1997, c. 315, §8 (NEW); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

#### SECTION HISTORY

1997, c. 315, §8 (NEW). 1999, c. 127, §A18 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

#### **§4-404. CHOICE OF INSURANCE AGENT OR BROKER**

A supervised lender or its affiliate that negotiates or sells insurance products to purchasers or borrowers as authorized under section 4-402 may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an insurance agent or company under applicable provisions set forth in Title 24-A. [1997, c. 315, §8 (NEW).]

##### SECTION HISTORY

1997, c. 315, §8 (NEW).

#### **§4-405. TIE-IN ARRANGEMENTS**

A supervised lender, a subsidiary of a supervised lender or an entity of which a supervised lender is a subsidiary may not sell in any manner an insurance product as authorized under section 4-402 or fix or vary the consideration for that product on the condition, agreement, requirement or understanding that the purchaser or borrower obtain additional or other credit, property or other service from the supervised lender, a subsidiary of a supervised lender or an entity of which a supervised lender is a subsidiary. This section does not prohibit a tie-in involving insurance products that is permitted under Title 24-A. [1997, c. 315, §8 (NEW).]

##### SECTION HISTORY

1997, c. 315, §8 (NEW).

#### **§4-406. DISTINGUISHING INSURANCE PRODUCTS FROM LOAN PRODUCTS; IDENTIFICATION OF INSURANCE BROKERS AND AGENTS**

To the extent practicable, sales of insurance products authorized by this Part must take place in a manner that minimizes customer confusion between any noninsurance product offered by the supervised lender or its affiliates and those insurance products. A supervised lender, or its affiliates, is in compliance with this section if it utilizes signs clearly visible to its customers that distinguish insurance products of the supervised lender, or its affiliates, from its noninsurance products and that adequately identify insurance agents, brokers and consultants affiliated with the supervised lender. [1997, c. 315, §8 (NEW).]

##### SECTION HISTORY

1997, c. 315, §8 (NEW).

#### **§4-407. RULEMAKING**

The Superintendent of Financial Institutions, the Superintendent of Insurance and the Superintendent of Consumer Credit Protection may undertake joint rulemaking, pursuant to this section, Title 9-B, section 448, subsection 5 and Title 24-A, section 1443-A, subsection 3 to carry out the purposes of section 4-406, including issues regarding signs, the physical location of sales of insurance and identification of agents and brokers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders. In adopting rules pursuant to this Part, the Superintendent of Financial Institutions, the Superintendent of Insurance and the Superintendent of Consumer Credit Protection shall consider the possibility of confusion and perception of coercion among the insurance consuming public, the need for cost-effective delivery of insurance products to insurance consumers and the importance of parity among agents and brokers affiliated with federally chartered and state-chartered financial institutions and credit unions. Any rule adopted may not interfere significantly with the ability of an agent or broker to solicit or negotiate the sale of an insurance product, whether or not that agent or broker is affiliated with a financial institution, credit union, financial institution holding company or supervised lender, except when no other

reasonable alternative exists that protects the insurance consuming public. Rules adopted under this Part are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing in this section is intended to restrict or interfere with the ability of the Bureau of Insurance, the Bureau of Financial Institutions or the Bureau of Consumer Credit Protection to adopt rules with respect to areas in which the respective agencies have independent jurisdiction. [1999, c. 127, Pt. A, §19 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF); 2007, c. 273, Pt. B, §§5, 6 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

#### SECTION HISTORY

1997, c. 315, §8 (NEW). 1999, c. 127, §A19 (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §§5, 6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

## Article 5: REMEDIES AND PENALTIES

### Part 1: LIMITATIONS ON CREDITORS' REMEDIES

#### §5-101. SHORT TITLE

This Article shall be known and may be cited as the "Maine Consumer Credit Code -- Remedies and Penalties." [1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

#### §5-102. SCOPE

This Part applies to actions or other proceedings to enforce rights arising from consumer credit transactions; and, in addition, to extortionate extensions of credit, section 5-107. [2013, c. 2, §9 (COR).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW). RR 2013, c. 2, §9 (COR).

#### §5-103. RESTRICTIONS ON DEFICIENCY JUDGMENTS

1. This section applies to any consumer credit sale of goods or services and to any supervised loan.

[ 1973, c. 762, §1 (NEW) .]

2. If a creditor takes possession of or voluntarily accepts surrender of goods in which that creditor has a security interest to secure a debt and the amount financed is \$2,800 or less, the consumer and any sureties are not personally liable to the creditor for the unpaid balance of the debt.

[ 1997, c. 727, Pt. B, §17 (AMD) .]

3. For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to open end credit, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests, section 3-303.

[ 1973, c. 762, §1 (NEW) .]

4. The consumer may be liable in damages to the creditor if the consumer has willfully or intentionally damaged the collateral or if, after default and demand, the consumer has concealed the collateral from the creditor.

[ 1973, c. 762, §1 (NEW) .]

5. If the creditor elects to bring an action against the consumer for a debt arising from a consumer loan or consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral and obtains judgment:

A. He may not repossess the collateral; and [1973, c. 762, §1 (NEW).]

B. The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment. [1975, c. 288, §3 (AMD).]

[ 1975, c. 288, §3 (AMD) .]

**6.**

[ 1997, c. 727, Pt. B, §18 (RP) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 288, §3 (AMD). 1985, c. 763, §A41 (AMD). 1997, c. 727, §§B17,18 (AMD).

**§5-104. NO GARNISHMENT BEFORE JUDGMENT**

Prior to entry of judgment in an action against the consumer for debt arising from a consumer credit transaction, the creditor may not obtain an interest in any property of the debtor by attachment, garnishment or like proceedings. [1973, c. 762, §1 (NEW).]

## SECTION HISTORY

1973, c. 762, §1 (NEW).

**§5-105. LIMITATION ON GARNISHMENT****1.** For the purposes of this Part:

A. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and [1973, c. 762, §1 (NEW) .]

B. "Garnishment" means an installment payment order under Title 14, chapter 502. [1973, c. 762, §1 (NEW) .]

[ 1973, c. 762, §1 (NEW) .]

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

A. Twenty-five percent of the individual's disposable earnings for that week; and [2007, c. 7, §1 (RPR) .]

B. The amount by which 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, 29 United States Code, Section 206(a)(I), or the state minimum wage prescribed by Title 26, section 664, whichever is higher, in effect at the time the earnings are payable.

In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a multiple of the minimum hourly wage equivalent in effect to that set forth in this paragraph. [2007, c. 7, §1 (RPR) .]

[ 2007, c. 7, §1 (RPR) .]

**3.** No court may make, execute or enforce an order or process in violation of this section.

[ 1973, c. 762, §1 (NEW) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1995, c. 614, §A5 (AMD). 2007, c. 7, §1 (AMD).

## §5-106. NO DISCHARGE FROM EMPLOYMENT FOR GARNISHMENT

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction. [1973, c. 762, §1 (NEW).]

### SECTION HISTORY

1973, c. 762, §1 (NEW).

## §5-107. EXTORTIONATE EXTENSIONS OF CREDIT

1. If it is the understanding of the creditor and the consumer at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.

[ 1973, c. 762, §1 (NEW) .]

2. If it is shown that an extension of credit was made at an annual rate exceeding 33% calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection 1.

[ 1973, c. 762, §1 (NEW) .]

### SECTION HISTORY

1973, c. 762, §1 (NEW).

## §5-108. UNCONSCIONABILITY; INDUCEMENT BY UNCONSCIONABLE CONDUCT

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

A. The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or [1973, c. 762, §1 (NEW).]

B. Any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

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

[ 1973, c. 762, §1 (NEW) .]

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

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §5-109. DEFAULT

An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable only to the extent that: [1973, c. 762, §1 (NEW).]

1. The consumer fails to make a payment as required by agreement; or

[ 1973, c. 762, §1 (NEW) .]

2. The prospect of payment, performance or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment is on the creditor.

[ 1973, c. 762, §1 (NEW) .]

3. The following without limitation shall constitute a significant impairment of the prospect of payment, performance or realization of collateral:

A. Death, insolvency, assignment for the benefit of creditors, the commencement of any proceeding under any bankruptcy or insolvency laws by or against debtors; [1973, c. 762, §1 (NEW).]

B. Loss, theft, substantial damage to or destruction of the collateral not covered by insurance; [1973, c. 762, §1 (NEW).]

C. Sale or prior encumbrance of the collateral; [1987, c. 129, §64 (AMD).]

D. Failure to renew insurance on the collateral; or termination of insurance on the collateral when substitute insurance is not obtained before the insurance coverage terminates; and [1987, c. 129, §64 (AMD).]

E. Discovery by the creditor of a misstatement of a material fact in any document signed by the consumer which forms part of the basis for extending credit. [1987, c. 129, §64 (NEW).]

[ 1987, c. 129, §64 (AMD) .]

4. The consumer fails to make a payment as required by agreement if he fails to pay when due an amount equal to or greater than the amount of the average installment under a schedule of payments, other than any down payment or balloon payment permitted under section 3-308, which conforms both as to amounts and intervals to the average of all installments and intervals under the agreement. The unpaid amount due may consist of any unpaid installment or accumulation of partially unpaid installments, delinquency or deferral charges, or any combination thereof.

[ 1979, c. 486, (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 250, (AMD). 1979, c. 486, (AMD).  
1987, c. 129, §64 (AMD).

**§5-110. NOTICE OF CONSUMER'S RIGHT TO CURE**

1. With respect to a consumer credit transaction, after a consumer has been in default for 10 days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer the notice described in this section. For purposes of this section, goods that are collateral shall include any right of setoff that the creditor may have.

A creditor gives notice to the consumer under this section by mailing the notice to the consumer's last known address:

A. By certified mail, return receipt requested. For purposes of this paragraph, the time when notice is given shall be the date the consumer signs the receipt or, if the notice is undeliverable, the date the post office last attempts to deliver it; or [1979, c. 417, §2 (NEW).]

B. By ordinary mail. For purposes of this paragraph, the time when notice is given shall be the date the consumer receives it. A post office department certificate of mailing to the consumer shall be conclusive proof of receipt on the 3rd calendar day after mailing. [1979, c. 417, §2 (NEW).]

[1985, c. 336, §8 (AMD).]

2. Except as provided in subsection 3, the notice shall be in writing and shall conspicuously state the name, address and telephone number of the creditor to whom payment is to be made, a brief identification of the credit transaction, the consumer's right to cure the default and the amount of payment and date by which 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 creditor)

(Account number, if any)

(Brief identification of credit transaction)

(Date) is the LAST DAY FOR PAYMENT

(Amount) is the AMOUNT NOW DUE

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law.

If you are late again within the next 12 months in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

[1985, c. 336, §9 (AMD).]

2-A. If a consumer credit transaction is secured by a motor vehicle, the notice must conform to the requirements of subsection 2, except that the following paragraph must be included between the penultimate paragraph and the final paragraph:

The rights we may exercise under law include repossession of the motor vehicle securing this debt. If the motor vehicle is repossessed, either involuntarily or voluntarily, it may be sold and you may owe the difference between the net proceeds from the sale and the remaining balance due under the contract.

This subsection applies only to notices sent on or after January 1, 2004.

[2003, c. 98, §1 (NEW).]

3. If the consumer credit transaction is an insurance premium loan, the notice shall conform to the requirements of subsection 2 and a notice in substantially the form specified in that subsection complies with this subsection, except for the following:

A. In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as an insurance premium loan and each insurance policy or contract that may be cancelled; [1985, c. 763, Pt. A, §42 (AMD).]

B. In lieu of the statement in the form of notice specified in subsection 2 that the creditor may exercise his rights under the law, the statement that each policy or contract identified in the notice may be cancelled; and [1975, c. 429, §2 (RPR).]

C. The last paragraph of the form of notice specified in subsection 2 shall be omitted. [1975, c. 429, §2 (RPR).]

[ 1985, c. 763, Pt. A, §42 (AMD) .]

**4.** If the goods that are collateral in a consumer credit transaction include a right of setoff, the notice shall conform to the requirements of subsection 2 and a notice in substantially the form specified in that subsection complies with this subsection, except for the following:

A. The 3rd sentence in the next to the last paragraph of the form of notice specified in subsection 2 shall read: If you do not pay by that date, we may exercise our rights under the law, including the right to set off funds in your checking or savings accounts with us against the balance on this delinquent account; and [1979, c. 402, (NEW).]

B. The first sentence in the last paragraph of the form of notice shall read: If you are late again within the next 12 months in making your payments, we may exercise our rights, including the right of setoff, without sending you another notice like this one. [1985, c. 336, §10 (AMD).]

[ 1985, c. 336, §10 (AMD) .]

**5.**

[ 1981, c. 618, §8 (RP) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 429, §2 (RPR). 1977, c. 159, §2 (AMD). 1979, c. 402, (AMD). 1979, c. 417, §§1,2 (AMD). 1981, c. 281, §4 (AMD). 1981, c. 618, §8 (AMD). 1985, c. 336, §§8-10 (AMD). 1985, c. 763, §A42 (AMD). 2003, c. 98, §1 (AMD).

### §5-111. CURE OF DEFAULT

**1.** With respect to a consumer credit transaction, except as provided in subsection 2, after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation, nor take possession of or otherwise enforce a security interest in goods that are collateral until 14 days after a notice of the consumer's right to cure, as provided in section 5-110, is given, nor with respect to an insurance premium loan, give notice of cancellation as provided in subsection 4 until 10 days after a notice of the consumer's right to cure, as provided in section 5-110, is given. For purposes of this section, goods that are collateral shall include any right of set-off that the creditor may have. Until expiration of the minimum applicable period after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his rights under the agreement as though the defaults had not occurred.

[ 1985, c. 763, Pt. A, §43 (AMD) .]

2. With respect to defaults on the same obligation and subject to subsection 1, after a creditor has once given a notice of consumer's right to cure, as provided in section 5-110, this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to a default that occurs within 12 months after an earlier default as to which a creditor has given a notice of consumer's right to cure, as provided in section 5-110. For the purpose of this section, in open-end credit, the obligation is the unpaid balance of the account.

[ 1985, c. 763, Pt. A, §44 (AMD) .]

3. This section and the provisions on waiver, agreements to forego rights and settlement of claims, as provided in section 1-107, do not prohibit a consumer from voluntarily surrendering possession of goods which are collateral and the creditor from thereafter accelerating maturity of the obligation and enforcing the obligation and his security interest in the goods at any time after default.

[ 1975, c. 180, (AMD) .]

4. If a default on an insurance premium loan is not cured, the lender may give notice of cancellation of each insurance policy or contract to be cancelled. If given, the notice of cancellation shall be in writing and given to the insurer who issued the policy or contract and to the insured. The insurer, within 2 business days after receipt of the notice of cancellation together with a copy of the insurance premium loan agreement if not previously given to him, shall give any notice of cancellation required by the policy, contract or law and, within 10 business days after the effective date of the cancellation, pay to the lender any premium unearned on the policy or contract as of that effective date. Within 10 business days after receipt of the unearned premium, the lender shall pay to the consumer indebted upon the insurance premium loan agreement any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium loan.

[ 1985, c. 763, Pt. A, §45 (AMD) .]

5.

[ 1981, c. 618, §9 (RP) .]

6. Notwithstanding the other provisions of this section, a notice to cure default for a consumer credit transaction secured by a mortgage subject to Title 14, section 6111 must satisfy the requirements of Title 14, section 6111 and not the requirements of this section.

[ 2009, c. 476, Pt. A, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 180, (AMD). 1975, c. 429, §2 (RPR).  
1977, c. 159, §3 (AMD). 1981, c. 281, §5 (AMD). 1981, c. 618, §9 (AMD).  
1985, c. 336, §§11,12 (AMD). 1985, c. 763, §§A43-45 (AMD). 2009, c.  
476, Pt. A, §1 (AMD).

## §5-112. CREDITOR'S RIGHT TO TAKE POSSESSION AFTER DEFAULT

Upon default by a consumer, unless the consumer voluntarily surrenders possession of the collateral to the creditor, the creditor may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling, unless such entry has been authorized after default, and without the use of force or other breach of the peace. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §5-113. VENUE

An action against a consumer arising from a consumer credit transaction shall be brought in any county or division of the consumer's residence, section 1-201, subsection 6, in the county or division in which the transaction was made or where an interest in land secures the consumer's obligation, the action may be brought in the county or division in which the land or a part thereof is located. The consumer may have the action removed to the county or division of the consumer's current residence upon motion accompanied by an allegation of a claim or defense to the action. If the residence of the consumer is not within this State, the action may be brought in the county or division in which the sale, lease or loan was made. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §5-114. STAY OF ENFORCEMENT OF JUDGMENT

At any time after the entry of a judgment in favor of a creditor against a consumer in an action arising from a consumer credit transaction, the court, for cause and upon motion of a party or on its own motion, may, while such court retains jurisdiction, stay enforcement of the judgment by order upon just and equitable conditions, and continue, modify or revoke the order as the interests of justice may require. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §5-115. MISREPRESENTATION

A creditor or a person acting for him may not induce a consumer to enter into a consumer credit transaction by misrepresentation of a material fact with respect to the terms and conditions of the extension of credit. A consumer so induced may rescind the sale, lease or loan or recover actual damages, or both. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §5-116. ILLEGAL, FRAUDULENT OR UNCONSCIONABLE CONDUCT IN ATTEMPTED COLLECTION OF DEBTS

1. In attempting to collect an alleged debt arising from a consumer credit sale, consumer lease or consumer loan, a person shall not:

A. Use or threaten force or violence; [1973, c. 762, §1 (NEW).]

B. Threaten criminal prosecution; [1973, c. 762, §1 (NEW).]

C. Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false; [1973, c. 762, §1 (NEW).]

D. Communicate more than twice or threaten to communicate more than twice to the debtor's employer information concerning the existence of a debt before or after obtaining final judgment against the debtor except as permitted by statute; [1973, c. 762, §1 (NEW).]

E. Disclose or threaten to disclose to a person other than the debtor or his spouse information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this subsection does not prohibit the disclosure to another person of information permitted to be disclosed to him by statute; [1973, c. 762, §1 (NEW).]

F. Disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact; [1973, c. 762, §1 (NEW).]

G. Claim, or attempt or threaten to enforce a right that has been barred by statute or a final order of the Supreme Judicial Court or a court of the United States; [1973, c. 762, §1 (NEW).]

H. Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, government agency, or attorney-at-law when it is not; or [1973, c. 762, §1 (NEW).]

I. Engage in conduct in violation of a rule adopted and published by the administrator after like conduct has been restrained or enjoined by a final order of a court in a civil action by the administrator against any person pursuant to the provisions or injunctions against fraudulent or unconscionable agreements or conduct, section 6-111. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

## §5-116-A. DEBTS OWED TO HEALTH CARE PROVIDERS

**1. Definition of "health care provider."** For purposes of this section, "health care provider" means a physician, health care practitioner, hospital, clinic, clinical laboratory, health care facility or other person or facility that provides health care services and is licensed or registered by the State.

[ 2009, c. 526, §1 (NEW) .]

**2. Agreement by or on behalf of health care provider.** An agreement by a health care provider, or by a debt collector on behalf of a health care provider, to accept partial payments over time without assessment of interest from a consumer on a debt for health care services is not a consumer credit transaction as defined by section 1-301, subsection 12.

[ 2009, c. 526, §1 (NEW) .]

**3. Disclosure of available payment arrangements.** A health care provider shall notify a consumer of the availability of any payment arrangements offered by the health care provider to satisfy a debt for health care services.

[ 2009, c. 526, §1 (NEW) .]

**4. Rehabilitation of defaulted medical debt.** A payment arrangement offered by a health care provider must provide a consumer the opportunity to reasonably rehabilitate, cure or remedy a defaulted status of a debt for health care services under terms and conditions established by the health care provider, including, but not limited to, making payment in full or making 6 consecutive monthly payments in a timely manner.

[ 2009, c. 526, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 526, §1 (NEW).

## §5-117. PROHIBITED PRACTICES

A seller may not: [1991, c. 524, §1 (NEW).]

**1. Misrepresentations.** Misrepresent any material fact relating to the terms or conditions of sale;

[ 1991, c. 524, §1 (NEW) . ]

**2. False impressions.** Create an impression that is false or the seller does not believe to be true; and

[ 1991, c. 524, §1 (NEW) . ]

**3. False promises.** Promise performance that the seller does not intend to perform or knows will not be performed.

[ 1991, c. 524, §1 (NEW) . ]

#### SECTION HISTORY

1991, c. 524, §1 (NEW) .

## §5-118. UNLICENSED LOAN TRANSACTIONS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Automated clearinghouse" means the nationwide electronic funds transfer system that provides for an interbank exchange of either checks or automated debit or credit entries. [ 2013, c. 480, §1 (NEW) . ]

B. "Financial account" means a checking, savings, share, stored value, prepaid, payroll card or other depository account. [ 2013, c. 480, §1 (NEW) . ]

C. "Lender" means a person engaged in the business of making loans of money and charging, contracting for or receiving on any such loan interest, a finance charge, a discount or consideration. For purposes of this section, "lender" does not include a supervised financial organization. [ 2013, c. 480, §1 (NEW) . ]

D. "Process" or "processing" includes printing a check, draft or other form of negotiable instrument drawn on or debited against a consumer's financial account, formatting or transferring data for use in connection with the debiting of a consumer's financial account by means of such an instrument or an electronic funds transfer or arranging for such services to be provided to a lender. [ 2013, c. 480, §1 (NEW) . ]

E. "Processor" means a person who engages in processing. For purposes of this section, "processor" does not include the automated clearinghouse. [ 2013, c. 480, §1 (NEW) . ]

[ 2013, c. 480, §1 (NEW) . ]

**2. Certain loans prohibited.** It is an unfair or deceptive act or practice in commerce, a violation of the Maine Unfair Trade Practices Act and a violation of this Title for a lender directly or through an agent to solicit or make a loan to a consumer by any means unless the lender is in compliance with Article 2, Part 3 or is otherwise exempt from the requirements of Article 2, Part 3.

[ 2013, c. 480, §1 (NEW) . ]

**3. Certain processing prohibited.** It is an unfair or deceptive act or practice in commerce, a violation of the Maine Unfair Trade Practices Act and a violation of this Title for a processor, other than a supervised financial organization, to process a check, draft, other form of negotiable instrument or an electronic funds

transfer from a consumer's financial account in connection with a loan solicited from or made by any means to a consumer unless the lender is in compliance with Article 2, Part 3 or is otherwise exempt from the requirements of Article 2, Part 3.

[ 2013, c. 480, §1 (NEW) .]

**4. Certain assistance to lenders or processors prohibited.** It is an unfair or deceptive act or practice in commerce, a violation of the Maine Unfair Trade Practices Act and a violation of this Title for a person or lender to provide substantial assistance to a lender or processor when the person or lender or the person's or lender's authorized agent receives notice from a regulatory, law enforcement or similar governmental authority, knows from its normal monitoring and compliance systems or consciously avoids knowing that the lender or processor is in violation of subsection 2 or 3 or is engaging in an unfair or deceptive act or practice in commerce. This subsection does not apply to a supervised financial organization.

[ 2013, c. 480, §1 (NEW) .]

#### SECTION HISTORY

2013, c. 480, §1 (NEW) .

## Part 2: CONSUMERS' REMEDIES

### §5-201. EFFECT OF VIOLATIONS ON RIGHTS OF PARTIES

**1.** If a creditor has violated the provisions of this Act applying to collection of excess charges or enforcement of rights, section 1-201, subsection 5, waiver clauses, section 1-107, use of multiple agreements, section 3-304, certain negotiable instruments, section 3-307, assignee subject to defenses, sections 3-403 and 3-404, restrictions on liability in consumer leases, section 3-401, balloon payment, section 3-308, security in sales or leases, section 3-301, cross-collateral, sections 3-302 and 3-303, assignments of earnings, section 3-305, attorney's fees, section 2-507, limitations on default charges, section 3-402, authorizations to confess judgment, section 3-306, restrictions on interests in land as security, section 2-307, limitations on the schedule of payments or loan term for regulated loans, section 2-308, for credit insurance, section 4-104, separate charges for excess charge for property insurance, section 4-301, restrictions on deficiency judgments, section 5-103, garnishment before judgment, section 5-104, or limitations on garnishment, section 5-105, cure of default, section 5-111, misrepresentation, section 5-115, illegal, fraudulent or unconscionable conduct in an attempted collection of debts, section 5-116, any aggrieved consumer has a right to recover actual damages from a person violating this Act, or in lieu thereof any consumer named as a plaintiff in the complaint as originally filed has a right to recover from a person violating this Act an amount determined by the court not less than \$250 nor more than \$1,000. With respect to violations from open-end credit, no action pursuant to this subsection may be brought more than 2 years after the violations occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than 2 years after the due date of the last scheduled payment of the agreement.

[ 1979, c. 660, §9 (AMD) .]

**2.** If a creditor has violated the provisions of this Act applying to authority to make supervised loans, section 2-301, the debtor is not obligated to pay any application fee, prepaid finance charge or closing cost, nor the loan finance charge owed for the first 12 months of the loan. If the debtor has paid any part of the application fee, prepaid finance charge, closing cost or loan finance charge owed for the first 12 months of the loan, the debtor has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to open-end credit, no action pursuant

to this subsection may be brought more than 2 years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

[ 1993, c. 496, §1 (AMD) .]

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

[ 1973, c. 762, §1 (NEW) .]

**4.** If a creditor has contracted for or received a charge in excess of that allowed by this Act, or if a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from the creditor or the person liable an amount determined by the court not less than \$250 nor more than \$1,000. With respect to excess charges arising from open-end credit, no action pursuant to this subsection may be brought more than 2 years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made, or the date the agreement was paid in full, whichever was earlier.

[ 1987, c. 129, §65 (AMD) .]

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

[ 1973, c. 762, §1 (NEW) .]

**6.** If an employer discharges an employee in violation of the provisions prohibiting discharge, section 5-106, the employee may within one year bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for 6 weeks.

[ 1973, c. 762, §1 (NEW) .]

**7.** A creditor has no liability under subsection 1 or subsection 4 if, within 60 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the debtor a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

[ 1985, c. 763, Pt. A, §47 (AMD) .]

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

[ 1993, c. 496, §2 (AMD) .]

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

[ 1973, c. 762, §1 (NEW) .]

10. A creditor has no liability under subsection 1 or subsection 4, or under subsection 2 of section 6-113, for any act done or omitted in good faith in conformity with any rule, regulation or interpretation thereof by the administrator, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 134, §2 (AMD). 1979, c. 660, §9 (AMD). 1985, c. 763, §§A46,47 (AMD). 1987, c. 129, §65 (AMD). 1993, c. 496, §§1,2 (AMD).

### **§5-202. REFUNDS AND PENALTIES AS SET-OFF TO OBLIGATION**

Refunds or penalties to which the consumer is entitled pursuant to this Part may be set off against the consumer's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

## **Part 3: CRIMINAL PENALTIES**

### **§5-301. VIOLATIONS**

Any creditor, any officer or employee of a creditor, or any other person who wilfully and knowingly violates any of the provisions of this Act, or directly or indirectly counsels, aids or abets such violation, shall be punished by a fine of not more than \$2,500 for each offense, or by imprisonment for not more than 6 months, or by both. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

## Article 6: ADMINISTRATION

### Part 1: POWERS AND FUNCTIONS OF ADMINISTRATOR

#### §6-101. SHORT TITLE

This Article shall be known and may be cited as the "Maine Consumer Credit Code -- Administration."  
[1973, c. 762, §1 (NEW).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

#### §6-102. APPLICABILITY

This Part applies to persons who in this State: [1973, c. 762, §1 (NEW).]

1. Make or solicit consumer credit transactions; or

[ 1973, c. 762, §1 (NEW) .]

2. Directly collect payments from or enforce rights against consumers arising from consumer credit transactions, wherever they are made.

[ 1973, c. 762, §1 (NEW) .]

##### SECTION HISTORY

1973, c. 762, §1 (NEW).

#### §6-103. ADMINISTRATION

There is created and established the Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation. The Superintendent of Consumer Credit Protection is the head of the Bureau of Consumer Credit Protection. As used in this Act, and except as provided in section 1-301, subsection 2, "administrator" means the Superintendent of Consumer Credit Protection. The administrator is appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and to confirmation by the Legislature. The administrator is appointed for a 5-year term, or until a successor is appointed and qualified. Any vacancy occurring must be filled by appointment for the unexpired portion of the term. The administrator may be removed from office for cause by the Governor and Title 5, section 931, subsection 2 does not apply.  
[2007, c. 273, Pt. B, §3 (RPR); 2007, c. 695, Pt. A, §47 (AFF).]

##### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 771, §109 (AMD). 1981, c. 359, §3 (AMD). 1981, c. 501, §26 (AMD). 1983, c. 553, §§9,46 (AMD). 1985, c. 763, §A48 (AMD). 1987, c. 105, §1 (AMD). 1987, c. 402, §A84 (AMD). 1987, c. 769, §A39 (RPR). 1989, c. 702, §E5 (AMD). 1995, c. 309, §6 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 502, §H2 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §3 (RPR). 2007, c. 695, Pt. A, §47 (AFF).

## §6-104. POWERS OF ADMINISTRATOR; RELIANCE ON RULES; DUTY TO REPORT

1. In addition to other powers granted by this Act, the administrator within the limitations provided by law may:

- A. Receive and act on complaints, take action designed to obtain voluntary compliance with this Act, or refer cases to the Attorney General who shall appear for and represent the administrator in court; [1973, c. 762, §1 (NEW).]
- B. Counsel persons and groups on their rights and duties under this Act; [1973, c. 762, §1 (NEW).]
- C. Establish programs for the education of consumers with respect to credit practices and problems; [1973, c. 762, §1 (NEW).]
- D. Make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public; [1973, c. 762, §1 (NEW).]
- E. Adopt, amend, and repeal rules to carry out the specific provisions of this Act; [1973, c. 762, §1 (NEW).]
- F. Maintain offices within this State; [1973, c. 762, §1 (NEW).]
- G. With the approval of the Commissioner of Professional and Financial Regulation, appoint any necessary hearing examiners, clerks and other employees and agents and fix their compensation, subject to the Civil Service Law; [1995, c. 309, §7 (AMD); 1995, c. 309, §29 (AFF).]
- H. Maintain a public file of all enforcement proceedings instituted and of their disposition, including all assurances of voluntary compliance accepted and their terms and the pleadings and briefs in all actions in which the administrator is a party; [2011, c. 427, Pt. A, §11 (AMD).]
- I. Convene meetings of individuals representing various segments of the public and the consumer credit industry to advise and consult with the administrator concerning the exercise of powers under this Act and to make recommendations to the administrator. The administrator may authorize reimbursement of reasonable expenses incurred in attending the meetings; and [2011, c. 427, Pt. A, §12 (AMD).]
- J. To the extent permitted in Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Section 1042, enforce the provisions of Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 or regulations issued under those provisions with respect to entities that are state-chartered, incorporated, licensed or otherwise authorized to do business under the laws of this State and secure remedies under provisions of Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 or remedies otherwise provided under other provisions of law with respect to entities that are state-chartered, incorporated, licensed or otherwise authorized to do business under the laws of this State. [2011, c. 427, Pt. A, §13 (NEW).]

[ 2011, c. 427, Pt. A, §§11-13 (AMD) .]

2. Except for refund of an excess charge, no liability is imposed under this Act for an act done or omitted in conformity with a rule or advisory ruling of the administrator notwithstanding that after the act or omission the rule or advisory ruling may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

[ 1983, c. 212, §9 (AMD) .]

3. On or before August 1st each year, the administrator shall report to the Commissioner of Professional and Financial Regulation for the preceding fiscal year ending June 30th on the operation of the administrator's office, on the use of consumer credit in the State and on the problems of persons of small

means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator is authorized to conduct research and make appropriate studies. The report must include a description of the examination and investigation procedures and policies of the administrator's office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this Act, a statement of the number and percentages of offices that are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and consumers that have come to the administrator's attention through the administrator's examinations and investigations and the disposing of them under existing law, and a general statement of the activities of the administrator's office and of others to promote the purposes of this Act.

[ 1993, c. 1, §21 (COR) .]

**4.** In addition to other rule-making requirements imposed by law, the administrator shall:

A. Adopt as a rule a description of the organization of his office, stating the general course and method of the operations of his office and the methods whereby the public may obtain information or make submissions or requests; [1985, c. 763, Pt. A, §49 (NEW) .]

B. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the administrator or his office; [1985, c. 763, Pt. A, §49 (NEW) .]

C. Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the administrator in the discharge of his functions; and [1985, c. 763, Pt. A, §49 (NEW) .]

D. Make available for public inspection all final orders, decisions and opinions. [1985, c. 763, Pt. A, §49 (NEW) .]

[ 1985, c. 763, Pt. A, §49 (NEW) .]

**5.** No rule, order or decision of the administrator is valid or effective against any person or party, nor may it be invoked by the administrator or any party, for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

[ 1985, c. 763, Pt. A, §49 (NEW) .]

**6.** Any rule, license, opinion, bulletin or advisory ruling issued by the Superintendent of Consumer Credit Protection remains applicable to supervised financial organizations after December 31, 1995 unless subsequently modified by the Superintendent of Financial Institutions. In addition, any rule, license, opinion, bulletin or advisory ruling issued by the Superintendent of Consumer Credit Protection with respect to all regulated entities other than supervised financial organizations remains in effect after December 31, 1995 as if issued by the Director of Consumer Credit Regulation.

[ 1995, c. 309, §10 (NEW); 1995, c. 309, §29 (AFF); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 767, §7 (AMD). 1983, c. 212, §9 (AMD). 1983, c. 553, §46 (AMD). 1985, c. 763, §A49 (AMD). 1985, c. 785, §B53 (AMD). RR 1993, c. 1, §§20,21 (COR). 1995, c. 309, §§7-10 (AMD). 1995, c. 309, §29 (AFF). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2011, c. 427, Pt. A, §§11-13 (AMD).

**§6-104-A. DEPUTY SUPERINTENDENT***(REPEALED)*

## SECTION HISTORY

1981, c. 501, §27 (NEW). 1995, c. 309, §11 (AMD). 1995, c. 309, §29 (AFF).

**§6-105. ADMINISTRATIVE POWERS WITH RESPECT TO SUPERVISED FINANCIAL ORGANIZATIONS**

1. With respect to supervised financial organizations, all powers of the administrator under this Act must be exercised by the Superintendent of Financial Institutions.

[ 1995, c. 309, §12 (AMD); 1995, c. 309, §29 (AFF); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

2.

[ 1995, c. 309, §29 (AFF); 1995, c. 309, §12 (RP) .]

3. An administrator, as defined in section 1-301, subsection 2, and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this Act. They may jointly pursue investigations, prosecute suits and take other official action, as they determine appropriate, if either of them otherwise is empowered to take the action.

[ 1995, c. 309, §12 (AMD); 1995, c. 309, §29 (AFF) .]

4. In carrying out the responsibilities assigned under section 1-301, subsection 2, the Superintendent of Financial Institutions shall designate an employee within the Bureau of Financial Institutions and shall assign to that employee the responsibility of promoting the purposes and policies of the Maine Consumer Credit Code with respect to supervised financial organizations.

[ 1995, c. 309, §12 (NEW); 1995, c. 309, §29 (AFF); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1987, c. 129, §66 (AMD). 1995, c. 309, §12 (AMD). 1995, c. 309, §29 (AFF). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF).

**§6-105-A. UNIFORM MULTISTATE AUTOMATED LICENSING SYSTEM**

For the purposes of participating in the establishment and implementation of a uniform multistate automated licensing system, referred to in this section as "the system," for loan brokers, supervised lenders that are not supervised financial organizations and individual mortgage loan originators thereof, the administrator may undertake the following actions. [2011, c. 427, Pt. B, §10 (AMD).]

1. The administrator may establish new rules, consistent with the principles for operation and implementation established by the system, that are necessary for the State to participate in the system, including rules authorizing the system to collect license fees on behalf of the State and remit those fees to the State, authorizing collection fees by the system to pay for its services, authorizing the system to process and

maintain license records and authorizing use of the system's uniform forms, upon the director's finding that each new rule is consistent with the public interest and the purposes of this Act. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2007, c. 273, Pt. A, §2 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

2. The administrator may require a credit and background investigation of each applicant for a license as a loan broker, a supervised lender that is not a supervised financial organization or a mortgage loan originator thereof by means including fingerprint checks for state and national criminal histories, commencing at the time the State joins the system pursuant to this section. The cost of the investigations must be charged to the applicants. Information obtained or held by the administrator pursuant to this subsection is nonpublic pursuant to section 6-116 and not subject to disclosure.

[ 2011, c. 427, Pt. B, §11 (AMD) .]

Any information provided by or to the administrator pursuant to this section that has been designated as confidential by another state's regulatory agency remains the property of the agency furnishing the information and must be kept confidential by the administrator and the system except as authorized by the agency that furnished the information. [2007, c. 273, Pt. A, §2 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

#### SECTION HISTORY

2007, c. 273, Pt. A, §2 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2011, c. 427, Pt. B, §§10, 11 (AMD).

## §6-106. EXAMINATIONS AND INVESTIGATIONS

1. The administrator may, at any time, but not more frequently than once every 3 months, conduct an examination or make an investigation of any person he believes has engaged in conduct governed by this Act. For these purposes, the administrator shall have free and reasonable access to the offices, places of business and records of the person and may make and procure copies of those records, books, documents or other tangible things without employing the subpoena powers provided by subsection 2.

[ 1987, c. 129, §67 (RPR) .]

2. For the purposes of this section, the administrator may administer oaths or affirmations and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to an examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

[ 1987, c. 129, §67 (RPR) .]

3. If the person's records are located outside this State, that person, at the administrator's option, either shall make the records available to the administrator at a convenient location within the State or allow the administrator or his representatives to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

[ 1987, c. 129, §67 (RPR) .]

4. If the administrator finds a violation of this Act, he may notify any party to the transaction involved.

[ 1987, c. 129, §67 (NEW) .]

5. If any individual without lawful excuse fails to obey a subpoena or to give testimony when directed to do so by the administrator or obstructs the proceedings by any means, whether or not in the presence of the administrator, that individual is guilty of contempt. The administrator, through the Attorney General, may file a complaint in the Superior Court setting forth the facts constituting the contempt and requesting an order returnable in not less than 2 days nor more than 5 days, directing the alleged contemner to show cause before the court why he should not be punished for contempt. If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender for contempt.

[ 1987, c. 129, §67 (NEW) .]

6. The expenses of the administrator necessarily incurred in the examination or investigation of any person engaged in conduct governed by this Act must be chargeable to that person. The expenses of the administrator incurred in the examination of supervised financial organizations must be assessed in accordance with the provisions of Title 9-B, section 214, subsection 1. With respect to any other person, that person must be assessed for the actual expenses incurred by the administrator, including, but not necessarily limited to, travel expenses and the proportionate part of the salaries and expenses of examiners engaged in the examination or investigation. Notwithstanding this subsection, for a person other than a supervised financial organization, the administrator may adjust the examination assessments to make more equitable travel-related costs that result from a creditor's location in this State. Notice of the assessment of those costs must be given to the person by the administrator as soon as feasible after the close of the examination or investigation and the person must have the time specified by the administrator to pay the assessment, which may not be less than 30 days.

[ 1997, c. 727, Pt. B, §19 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-E (AMD). 1981, c. 235, §4 (AMD). 1987, c. 129, §67 (RPR). 1997, c. 727, §B19 (AMD).

### §6-107. APPLICATION OF PART ON ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Except as otherwise provided, an administrative action taken by the administrator pursuant to this Article or the Part on supervised lenders, Part 2, of the Article on Finance Charges, Article II, may be taken under Part on Administrative Procedure and Judicial Review, Part 4, of this Article, notwithstanding Title 9-B, section 231, subsections 2 and 3 and section 233. [1977, c. 564, §46 (AMD) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 564, §46 (AMD).

### §6-108. ADMINISTRATIVE ENFORCEMENT ORDERS

1. After notice and hearing, the administrator may order any person to cease and desist from engaging in violations of this Act or any lawful regulation issued by the administrator and may further order that the person take appropriate corrective action to reimburse consumers in cases where consumers have been charged amounts in excess of those permitted by this Act. Notice and hearing need not be provided prior to issuance of an order to cease and desist, when, in the opinion of the administrator, immediate action is required to protect the public interest, and:

- A. The creditor has not complied with section 6-202; or [1973, c. 762, §1 (NEW) .]
- B. The creditor does not maintain a permanent place of business in this State. [1973, c. 762, §1 (NEW) .]

A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Superior Court. The proceeding for review is initiated and conducted in accordance with Title 5, chapter 375, subchapter VII.

[ 1983, c. 389, (AMD) .]

**2.**

[ 1977, c. 694, §155-G (RP) .]

**3.** An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

[ 1973, c. 762, §1 (NEW) .]

**4.** The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

[ 1977, c. 694, §155-H (AMD) .]

**5.** If no proceeding is initiated, the administrator, through the Attorney General, may obtain a decree of the Superior Court for enforcement of its order upon showing that the order was issued in compliance with this section, that no proceeding for review was timely initiated and that the respondent is subject to the jurisdiction of the court. The decree of the Superior Court may also provide any relief available in an action brought under section 6-110.

[ 1977, c. 694, §155-I (AMD) .]

**6.** With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but, through the Attorney General, may bring a civil action for an injunction, section 6-111.

[ 1973, c. 762, §1 (NEW) .]

**7.** No order may be issued under this section if the creditor establishes by a preponderance of evidence that a violation was unintentional and the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error except that this subsection does not apply if the violation had previously been brought to the attention of the creditor by way of examination, investigation or formal complaint through the administrator, or if the violation involves the obligation to refund excess charges, as specified in section 5-201, subsections 2 and 3 or section 9-405, subsections 2 and 4.

[ 1993, c. 496, §3 (AMD) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155F-155I (AMD). 1983, c. 212, §10 (AMD). 1983, c. 389, (AMD). 1985, c. 763, §A50 (AMD). 1993, c. 496, §3 (AMD).

## §6-109. ASSURANCE OF DISCONTINUANCE

If it is claimed that a person has engaged in conduct which could be subject to an order by the administrator, section 6-108, or by a court, sections 6-110 to 6-112, the administrator may accept an assurance in writing that the person will not engage in the same or in similar conduct in the future. Such an assurance may include any, or any combination, of the following: Stipulations for the voluntary payment by the creditor of the costs of investigation or of an amount to be held in escrow as restitution to debtors aggrieved by past or future conduct of the creditor or to cover costs of future investigation, or admissions of past specific acts by the creditor or that such acts violated this Act or other statutes. A violation of an assurance of discontinuance shall be a violation of this Act. [1973, c. 762, §1 (NEW).]

### SECTION HISTORY

1973, c. 762, §1 (NEW).

## §6-110. INJUNCTIONS AGAINST VIOLATIONS OF ACT

The administrator, through the Attorney General, may bring a civil action to restrain any person from violating this Act. [1975, c. 134, §3 (AMD).]

In such an action, the court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any practices prohibited by this Act, to reform contracts to conform to this Act or to rescind contracts in which a violation has tended to induce the debtor to contract with the creditor, even though the debtors are not parties to the action. In such an action, the court may, in its discretion, award the administrator his reasonable costs of investigation and reasonable attorneys' fees incurred in bringing the action. An action under this section and an action under section 6-113 may be brought jointly using a single complaint. [1983, c. 212, §11 (AMD).]

### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 134, §3 (AMD). 1983, c. 212, §11 (AMD).

## §6-111. INJUNCTIONS AGAINST UNCONSCIONABLE AGREEMENTS AND FRAUDULENT OR UNCONSCIONABLE CONDUCT

1. The administrator, through the Attorney General, may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of:

A. Making or enforcing unconscionable terms or provisions of consumer credit transactions; [1973, c. 762, §1 (NEW).]

B. Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions; or [1973, c. 762, §1 (NEW).]

C. Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

2. In an action brought pursuant to this section, the court may grant relief only if it finds:

A. That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct; [1973, c. 762, §1 (NEW).]

B. That the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and [1973, c. 762, §1 (NEW).]

C. That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions. [1973, c. 762, §1 (NEW).]

[ 1973, c. 762, §1 (NEW) .]

3. In applying this section, consideration shall be given to each of the following factors, among others:

A. Belief by the creditor at the time consumer credit transactions are entered into that there was no reasonable probability of payment in full of the obligation by the consumer; [1973, c. 762, §1 (NEW) .]

B. In the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased; [1973, c. 762, §1 (NEW) .]

C. In the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees; [1973, c. 762, §1 (NEW) .]

D. The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and [1973, c. 762, §1 (NEW) .]

E. The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors. [1973, c. 762, §1 (NEW) .]

[ 1973, c. 762, §1 (NEW) .]

4. In an action brought pursuant to this section, a charge or practice expressly permitted by this Act is not in and of itself unconscionable in the absence of other practices or circumstances.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### **§6-112. TEMPORARY RELIEF**

With respect to an action brought to enjoin violations of the Act, section 6-110, or unconscionable agreements or fraudulent or unconscionable conduct, section 6-111, the administrator, through the Attorney General, may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate. [1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### **§6-113. CIVIL ACTIONS BY ADMINISTRATOR**

1. After demand, the administrator, through the Attorney General, may bring a civil action against a creditor for any violation listed in section 5-201 or for a violation of Article 8-A. An action may relate to transactions with more than one consumer. If it is found that the creditor has made a violation so listed, the court shall order respondent to grant to each consumer affected the option to recover all excess charges, to

have the contract reformed to conform to this Act or to rescind the contract. The court shall order amounts recovered or recoverable under this subsection paid to each consumer or set off against the consumer's obligation. A consumer's action takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. When an action takes precedence over another action under this subsection, to the extent appropriate, the other action may be stayed while the precedent action is pending and may be dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A consumer whose action is dismissed or results in a final judgment denying the claim may not participate in any subsequent recovery on the claim by the administrator.

[ 2011, c. 427, Pt. D, §12 (AMD) .]

2. The administrator, through the Attorney General, may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Act or violating an assurance of discontinuance, and if the court finds that the defendant has engaged in repeated violations, a willful violation of this Act or a violation of an assurance of discontinuance, it may assess a civil penalty of not more than \$5,000.

If the creditor establishes by a preponderance of evidence that repeated violations were the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under this subsection.

No civil penalty pursuant to this subsection may be imposed for violations of this Act occurring more than 2 years before the action is brought.

[ 1973, c. 762, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1981, c. 243, §§23,26 (AMD). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. D, §12 (AMD).

### §6-114. CONSUMER'S REMEDIES NOT AFFECTED

The grant of powers to the administrator in this Article does not affect remedies available to consumers under this Act or under other principles of law or equity. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §6-115. VENUE

The administrator, through the Attorney General, may bring actions or proceedings in a court in a county or division in which an act on which the action or proceeding is based occurred or in a county or division in which respondent resides or transacts business. [1973, c. 762, §1 (NEW).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW).

### §6-116. CONFIDENTIALITY OF RECORDS

The following records of the Bureau of Consumer Credit Protection shall be confidential, unless those records become part of the record of a judicial proceeding or administrative hearing: [1995, c. 309, §26 (AMD); 1995, c. 309, §29 (AFF); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

1. Records that identify consumers by name or identify accounts with information from which consumers can be identified by name, provided that, if the names and other information identifying consumers has been deleted, copies of any such records shall be public records;

[ 1985, c. 763, Pt. A, §51 (NEW) .]

2. Financial information not normally available to the public that is submitted in confidence by an individual or organization to comply with the licensing, registration or other regulatory functions of the administrator;

[ 2009, c. 402, §4 (AMD) .]

3. Proposed loan documents and other commercial paper submitted to be approved for use and not yet available to the general public or customers of the submitting institution or firm; and

[ 2009, c. 402, §5 (AMD) .]

4. Any contact information or financial information relating to a mortgagor submitted pursuant to Title 14, section 6111, subsection 3-A and any written notice sent to a mortgagor pursuant to Title 14, section 6111, subsection 4-A that includes a mortgagor's contact information.

[ 2009, c. 402, §6 (NEW) .]

#### SECTION HISTORY

1985, c. 763, §A51 (NEW). 1995, c. 309, §26 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 397, §1 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §5 (REV). 2007, c. 695, Pt. A, §47 (AFF). 2009, c. 402, §§4-6 (AMD).

## **§6-117. CONTRACTS WITH OTHER STATE AND FEDERAL AGENCIES**

1. The administrator may employ and engage experts, professionals or other personnel of other state or federal regulatory agencies as may be necessary to assist the administrator in carrying out the regulatory functions of this Act. The administrator may contract agency staff to other state and federal agencies to assist those other state and federal agencies in carrying out their regulatory functions.

[ 1999, c. 184, §5 (NEW) .]

2. The administrator may enter into cooperative agreements with other state, federal or foreign agencies to facilitate the regulatory functions of the administrator, including, but not limited to, information sharing, coordination of examinations and joint examinations.

[ 1999, c. 184, §5 (NEW) .]

3. Any information furnished pursuant to this section by or to the administrator that has been designated as confidential by the agency furnishing the information remains the property of the agency furnishing the information and must be kept confidential by the recipient of the information except as authorized by the furnishing agency.

[ 1999, c. 184, §5 (NEW) .]

#### SECTION HISTORY

1999, c. 184, §5 (NEW).

## Part 2: NOTIFICATION AND FEES

### §6-201. APPLICABILITY

This Part applies to a person engaged in this State in entering into consumer credit transactions and to a person having an office or place of business in this State who takes assignments of or undertakes direct collection of payments from or enforcement of rights against debtors arising from these transactions. In addition, this Part applies to a person, wherever located, who takes assignments of or undertakes direct collection of payments from or enforcement of rights against debtors arising from a consumer credit transaction subject to this Title. This Part also applies to a person, other than a supervised financial organization, wherever located, who takes assignments of or undertakes direct collection of payments from or enforcement of rights against debtors arising from a consumer credit transaction subject to Article 9. [2005, c. 206, §2 (AMD).]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1979, c. 660, §10 (AMD). 1989, c. 70, §2 (AMD). 1997, c. 727, §B20 (AMD). 2001, c. 371, §5 (AMD). 2005, c. 206, §2 (AMD).

### §6-202. NOTIFICATION

1. Persons subject to this Part shall file notification with the administrator before commencing business in this State, and, thereafter, on or before January 31st of each year. The notification filings must be made to the administrator and must be in a form and contain information that the administrator considers appropriate for the proper supervision and regulation of such persons.

- A. [2009, c. 228, §1 (RP).]
- B. [2009, c. 228, §1 (RP).]
- C. [2009, c. 228, §1 (RP).]
- D. [2009, c. 228, §1 (RP).]
- E. [2009, c. 228, §1 (RP).]
- F. [2009, c. 228, §1 (RP).]
- G. [2009, c. 228, §1 (RP).]

[ 2009, c. 228, §1 (AMD) .]

2.

[ 2009, c. 228, §1 (RP) .]

3. In addition to the notification filings required in subsection 1, the administrator may require reports and other information at such times and in such form as the administrator considers appropriate for the proper supervision of the persons subject to this Part.

[ 2009, c. 228, §1 (NEW) .]

4. If information in a notification required in subsection 1 becomes inaccurate after filing, the administrator must be advised in writing of the new or corrected information.

[ 2009, c. 228, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 767, §8 (AMD). 2009, c. 228, §1 (AMD).

## §6-203. FEES

1. A person required to file notification shall at the time he files such notification pay to the administrator an annual fee of \$20 for that year and an annual fee of \$10 for each branch thereof.

[ 1981, c. 460, (AMD) . ]

2. Persons required to file notification who are sellers, lessors or lenders shall pay an additional fee, at the time and in the manner stated in subsection 1, of \$25 for each \$100,000, or part thereof, of the original unpaid balances arising from consumer credit transactions entered into in this State within the preceding calendar year and held either by the seller, lessor or lender for more than 30 days after the inception of the sale, lease or loan giving rise to the obligations, or by an assignee who has not filed notification.

[ 2003, c. 462, §1 (AMD) . ]

2-A. For purposes of assessing fees under this section, a refinancing of a sale, lease or loan made by the original creditor of the obligation that results in an increase in the amount of an obligation over the unpaid principal balance of the prior sale, lease or loan is considered a new sale, lease or loan to the extent of the amount of the increase, and volume fees must be paid on the amount of the increase. Volume fees must be paid on the full amount of a refinancing of a sale, lease or loan made by a creditor other than the original creditor.

[ 2003, c. 462, §2 (NEW) . ]

3. Persons required to file notification who are assignees shall pay an additional fee, at the time and in the manner stated in subsection 1, of \$25 for each \$100,000, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit transactions entered into in this State taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

[ 1983, c. 204, §2 (AMD) . ]

3-A. Notwithstanding subsections 2 and 3, lenders who are supervised financial organizations shall pay a volume fee of \$20 for each \$100,000, or part thereof, of the original unpaid balances arising from or taken by assignment from consumer credit transactions entered into in this State during the previous calendar year.

[ 1993, c. 268, §2 (NEW) . ]

3-B. Notwithstanding subsections 2 and 3, lenders regulated by the Bureau of Consumer Credit Protection who are supervised lenders making loans secured by an interest in land shall pay a volume fee on the original unpaid balances arising from consumer credit transactions entered into in this State during the previous calendar year of:

A. Fifteen dollars for each \$100,000, or part thereof, if the fund balance of the Bureau of Consumer Credit Protection as of October 1st of the previous calendar year exceeds 125% of the office's current annual budget; or [2003, c. 654, §1 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

B. Twenty dollars for each \$100,000, or part thereof, if the fund balance of the Bureau of Consumer Credit Protection as of October 1st of the previous calendar year does not exceed 125% of the office's current annual budget. [2003, c. 654, §1 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

[ 2003, c. 654, §1 (RPR); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) . ]

**3-C.** The administrator may adjust the volume fees set out in subsections 2, 3 and 3-B by rule not more frequently than annually. In setting the fees, the administrator shall consider the reasonable costs of regulation of all aspects of such transactions and the staffing levels required to administer the responsibilities of the Bureau of Consumer Credit Protection. The fee assessed pursuant to subsections 2 and 3 may not exceed \$25 per \$100,000, and the fee assessed pursuant to subsection 3-B may not exceed \$20 per \$100,000. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2003, c. 654, §2 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

**4.**

[ 1987, c. 129, §68 (RP) .]

**4-A.** The bureau may charge fees to nonresident individuals and resident or nonresident organizations wishing to purchase educational materials produced and distributed by the bureau.

[ 1977, c. 179, §1 (NEW) .]

**5.** The aggregate of fees provided for by this section is appropriated for the use of the administrator. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in the following fiscal year.

[ 1973, c. 762, §1 (NEW) .]

**6. Volume fees.** Volume fees paid with respect to consumer credit transactions that are originated by a seller, lessor or lender, other than a supervised financial organization, and that are subsequently assigned to a financial institution, as defined in Title 9-B, section 131, subsection 17, or to a credit union, as defined in Title 9-B, section 131, subsection 12, within 30 days after the inception of the consumer credit transaction must be allocated within the Department of Professional and Financial Regulation, between the Bureau of Consumer Credit Protection and the Bureau of Financial Institutions in proportion to the reasonable costs of regulation of all aspects of such transactions. The agreement for allocation must be established by the Commissioner of Professional and Financial Regulation, in consultation with the Superintendent of Consumer Credit Protection and the Superintendent of Financial Institutions, not more frequently than every 24 months.

[ 1997, c. 393, Pt. B, §5 (AMD); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF); 2007, c. 273, Pt. B, §§5, 6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 179, §3 (AMD). 1975, c. 402, §§1,2 (AMD). 1977, c. 179, §1 (AMD). 1981, c. 460, (AMD). 1983, c. 204, §§1,2 (AMD). 1987, c. 129, §68 (AMD). 1987, c. 396, §11 (AMD). 1987, c. 590, (AMD). 1993, c. 268, §§1,2 (AMD). 1997, c. 155, §F1 (AMD). 1997, c. 155, §F2 (AFF). 1997, c. 393, §B5 (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2003, c. 462, §§1,2 (AMD). 2003, c. 654, §§1,2 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §§5, 6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

**§6-204. PENALTY**

1. The administrator may impose a penalty of \$5 per day on any person failing to comply with the requirements of sections 6-106, subsection 6; 6-202 and 6-203.

[ 1987, c. 129, §69 (AMD) . ]

2. No penalty may be imposed if the fees required by section 6-203, subsections 1 to 3, are paid not more than 30 days after the date established in section 6-202, subsection 1, or if the expenses of examination or investigation incurred by the administrator pursuant to section 6-106, subsection 6, are paid within the time period prescribed by the administrator which shall not be less than 30 days of receipt of notice by the examinee of their assessment.

[ 1987, c. 129, §70 (AMD) . ]

3. If a licensee fails to pay the fees required by section 6-203, subsections 1 to 3 on or before February 20th of any year, or if the licensee fails to pay the expenses of examination or investigation of the administrator within the time period prescribed by the administrator which shall not be less than 30 days of receipt of the notice of assessment, the failure may be treated by the administrator as grounds for revocation of the license.

[ 1987, c. 129, §70 (AMD) . ]

4. The administrator shall comply with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, in seeking compliance with this section. The administrator may seek enforcement of any order issued under this section in a court of competent jurisdiction.

[ 1979, c. 660, §11 (NEW) . ]

## SECTION HISTORY

1979, c. 660, §11 (NEW). 1983, c. 720, §21 (AMD). 1985, c. 763, §A52 (AMD). 1987, c. 129, §§69,70 (AMD).

**Part 3: COUNCIL OF ADVISORS ON CONSUMER CREDIT****§6-301. COUNCIL OF ADVISORS ON CONSUMER CREDIT**

*(REPEALED)*

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 295, §§26,27 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 309, §13 (RP).

**§6-302. FUNCTION OF COUNCIL; CONFLICT OF INTEREST**

*(REPEALED)*

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1995, c. 309, §29 (AFF). 1995, c. 309, §13 (RP).

**§6-303. MEETINGS**

*(REPEALED)*

## SECTION HISTORY

1973, c. 762, §1 (NEW). 1995, c. 309, §29 (AFF). 1995, c. 309, §13 (RP).

## **Part 4: ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW**

### **§6-401. APPLICABILITY AND SCOPE**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A53 (RP).

### **§6-402. DEFINITIONS IN PART: "CONTESTED CASE"; "LICENSE"; "LICENSING"**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-J (AMD). 1985, c. 763, §A54 (RP).

### **§6-403. PUBLIC INFORMATION; ADOPTION OF RULES; AVAILABILITY OF RULES**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A55 (RP).

### **§6-404. PROCEDURE FOR ADOPTION OF RULES**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-K (RPR). 1985, c. 763, §A56 (RP).

### **§6-405. TAKING EFFECT OF RULES**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-L (RPR). 1985, c. 763, §A57 (RP).

### **§6-406. PUBLICATION OF RULES**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-M (RP).

### **§6-407. PETITION FOR ADOPTION OF RULES**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-N (RP).

## **§6-408. DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES**

*(REPEALED)*

### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-O (AMD). 1983, c. 212, §12 (RP).

## **§6-409. ADVISORY RULINGS BY ADMINISTRATOR**

*(REPEALED)*

### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-P (RPR). 1985, c. 763, §A58 (RP).

## **§6-410. CONTESTED CASES**

*(REPEALED)*

### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-Q (RPR). 1985, c. 763, §A59 (RP).

## **§6-411. RULES OF EVIDENCE; OFFICIAL NOTICE**

*(REPEALED)*

### SECTION HISTORY

1973, c. 762, §1 (NEW). 1983, c. 212, §13 (AMD). 1985, c. 763, §A60 (RP).

## **§6-412. DECISIONS AND ORDERS**

*(REPEALED)*

### SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A61 (RP).

## **§6-413. LICENSES**

*(REPEALED)*

### SECTION HISTORY

1973, c. 762, §1 (NEW). 1985, c. 763, §A62 (RP).

## **§6-414. JUDICIAL REVIEW OF CONTESTED CASES**

*(REPEALED)*

### SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155R,155S (AMD). 1985, c. 763, §A63 (RP).

**§6-415. APPEALS**

*(REPEALED)*

SECTION HISTORY

1973, c. 762, §1 (NEW). 1977, c. 694, §§155-T (RP).

## Article 7: TRUTH-IN-LENDING

### Part 1: GENERAL PROVISIONS

#### **§7-101. SHORT TITLE**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

#### **§7-102. FINDINGS AND DECLARATION OF PURPOSE**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

#### **§7-103. DEFINITIONS AND RULES OF CONSTRUCTION**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

#### **§7-104. EXEMPTED TRANSACTIONS**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

#### **§7-105. REGULATIONS**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1979, c. 660, §12 (AMD). 1981, c. 243, §24 (RP).

#### **§7-106. DETERMINATION OF FINANCE CHARGE**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

#### **§7-107. DETERMINATION OF ANNUAL PERCENTAGE RATE**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

#### **§7-108. APPLICATION TO FEDERAL RESERVE BOARD**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-109. VIEWS OF OTHER AGENCIES**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-110. EFFECT ON OTHER LAWS**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-111. CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-112. PENALTIES INAPPLICABLE TO GOVERNMENTAL AGENCIES**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-112-A. LIABILITY OF ASSIGNEES**

*(REPEALED)*

SECTION HISTORY

1975, c. 567, §1 (NEW). 1981, c. 243, §24 (RP).

**§7-113. REPORTS BY ADMINISTRATOR**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-114. GENERAL REQUIREMENT OF DISCLOSURE**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-115. FORM OF DISCLOSURE; ADDITIONAL INFORMATION**

*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-116. EFFECT OF SUBSEQUENT OCCURRENCE**  
*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-117. RIGHT OF RESCISSION AS TO CERTAIN TRANSACTIONS**  
*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1975, c. 567, §§2,3 (AMD). 1975, c. 662, (AMD).  
1975, c. 770, §50 (AMD). 1981, c. 243, §24 (RP).

**§7-118. CONTENT OF PERIODIC STATEMENTS**  
*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-119. OPEN-END CONSUMER CREDIT PLANS**  
*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1975, c. 567, §§4-6 (AMD). 1981, c. 243, §24  
(RP).

**§7-120. SALES NOT UNDER OPEN END CREDIT PLANS**  
*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-121. CONSUMER LOANS NOT UNDER OPEN-END CREDIT PLANS**  
*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-122. CIVIL LIABILITY**  
*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

**§7-123. WRITTEN ACKNOWLEDGEMENT AS PROOF OF RECEIPT**  
*(REPEALED)*

SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

### **§7-124. CONFORMITY WITH FEDERAL LAW**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 446, §2 (NEW). 1977, c. 564, §47 (AMD). 1981, c. 243, §24 (RP).

### **§7-125. EXEMPTION FROM FEDERAL TRUTH-IN-LENDING ACT**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

### **§7-126. ISSUANCE OF CREDIT CARDS**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §24 (RP).

### **§7-127. LIABILITY OF HOLDER OF CREDIT CARD**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 446, §2 (NEW). 1981, c. 243, §§24,26 (RP).

## Article 8: TRUTH-IN-LENDING

### Part 1: GENERAL PROVISIONS

#### §8-101. SHORT TITLE

*(REPEALED)*

SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

#### §8-102. FINDINGS AND DECLARATION OF PURPOSE

*(REPEALED)*

SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

#### §8-103. DEFINITIONS AND RULES OF CONSTRUCTION

*(REPEALED)*

SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1991, c. 330, §1 (AMD). 1995, c. 326, §§2,3 (AMD). 2003, c. 49, §1 (AMD). 2007, c. 273, Pt. A, §§3, 4 (AMD). 2007, c. 273, Pt. A, §§37, 41 (AFF). 2007, c. 466, Pt. B, §6 (AMD). 2007, c. 466, Pt. B, §10 (AFF). 2007, c. 471, §§2-7 (AMD). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. A, §§1-6 (AMD). 2011, c. 427, Pt. A, §14 (RP).

#### §8-104. REGULATIONS; MODEL FORMS

*(REPEALED)*

SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1989, c. 502, §§D4,D5 (AMD). 1997, c. 155, §C2 (AMD). 2007, c. 273, Pt. C, §3 (AMD). 2007, c. 471, §8 (AMD). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. A, §7 (AMD). 2011, c. 427, Pt. A, §14 (RP).

#### §8-105. DETERMINATION OF FINANCE CHARGE

*(REPEALED)*

SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1987, c. 129, §§71,72 (AMD). 1995, c. 329, §2 (AMD). 1995, c. 614, §§A6-9,B1-3 (AMD). 1995, c. 614, §B4 (AFF). 2007, c. 273, Pt. C, §4 (AMD). 2009, c. 362, Pt. C, §2 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-106. DETERMINATION OF ANNUAL PERCENTAGE RATE***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1991, c. 330, §2 (AMD). 2009, c. 248, §1 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-106-A. NUMBER OF PERCENTAGE POINTS***(REPEALED)*

## SECTION HISTORY

1995, c. 326, §4 (NEW). 2007, c. 273, Pt. C, §5 (AMD). 2007, c. 471, §§9, 10 (AMD). 2007, c. 471, §18 (AFF). 2011, c. 427, Pt. A, §14 (RP).

**§8-107. EXEMPTION***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-108. ENFORCEMENT***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 243, §25 (NEW). 1981, c. 551, §3 (AMD). 1997, c. 155, §C3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-109. CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-110. PENALTIES INAPPLICABLE TO GOVERNMENTAL AGENCIES***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**Part 2: DISCLOSURE REQUIREMENTS****§8-201. GENERAL REQUIREMENT OF DISCLOSURE***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1987, c. 129, §73 (AMD). 1995, c. 614, §A10 (AMD). 2011, c. 427, Pt. A, §14 (RP).

## **§8-202. FORM OF DISCLOSURE; ADDITIONAL INFORMATION; TABULAR FORMAT REQUIRED FOR CERTAIN CREDIT AND CHARGE CARD DISCLOSURES**

*(REPEALED)*

### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1989, c. 472, §1 (NEW). 1989, c. 472, §1 (AMD). 2011, c. 427, Pt. A, §14 (RP).

## **§8-203. EFFECT OF SUBSEQUENT OCCURRENCE**

*(REPEALED)*

### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

## **§8-204. RIGHT OF RESCISSION AS TO CERTAIN TRANSACTIONS**

*(REPEALED)*

### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1981, c. 698, §20 (AMD). 1983, c. 720, §22 (AMD). 1987, c. 129, §74 (AMD). 1995, c. 614, §A11 (AMD). 2007, c. 273, Pt. C, §6 (AMD). 2011, c. 427, Pt. A, §14 (RP).

## **§8-205. OPEN-END CONSUMER CREDIT PLANS**

*(REPEALED)*

### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1989, c. 472, §2 (AMD). 2011, c. 427, Pt. A, §14 (RP).

## **§8-206. CONSUMER CREDIT NOT UNDER OPEN-END CREDIT PLANS**

*(REPEALED)*

### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1997, c. 155, §§C4, 5 (AMD). 2007, c. 273, Pt. A, §5 (AMD). 2007, c. 273, Pt. A, §41 (AFF). 2009, c. 362, Pt. A, §8 (AMD). 2009, c. 362, Pt. A, §16 (AFF). 2011, c. 427, Pt. A, §14 (RP).

## **§8-206-A. HIGH-RATE, HIGH-FEE MORTGAGES**

*(REPEALED)*

### SECTION HISTORY

1995, c. 326, §5 (NEW). 2003, c. 49, §§2-6 (AMD). 2007, c. 273, Pt. A, §§6-18 (AMD). 2007, c. 273, Pt. A, §§37, 41 (AFF). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §5 (REV). 2007, c. 273, Pt. C, §7 (AMD). 2007, c. 695, Pt. A, §47 (AFF). 2011, c. 427, Pt. A, §14 (RP).

**§8-206-B. REVERSE MORTGAGES***(REPEALED)*

## SECTION HISTORY

1995, c. 326, §5 (NEW). 2011, c. 427, Pt. A, §14 (RP).

**§8-206-C. HIGH-RATE, HIGH-FEE MORTGAGES; ADDITIONAL REQUIREMENTS***(REPEALED)*

## SECTION HISTORY

RR 2007, c. 1, §4 (COR). 2007, c. 273, Pt. A, §19 (NEW). 2007, c. 273, Pt. A, §§37,41 (AFF). 2009, c. 362, Pt. A, §9 (RP).

**§8-206-D. RESIDENTIAL MORTGAGE LOAN REQUIREMENTS***(REPEALED)*

## SECTION HISTORY

2007, c. 273, Pt. A, §20 (NEW). 2007, c. 273, Pt. A, §§37, 41 (AFF). 2007, c. 471, §§11, 12 (AMD). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. A, §10 (RP).

**§8-206-E. SPECIAL LIABILITY FOR VIOLATIONS OF RESIDENTIAL MORTGAGE LOAN, HIGHER-PRICED MORTGAGE LOAN AND HIGH-RATE, HIGH-FEE MORTGAGE LOAN REQUIREMENTS***(REPEALED)*

## SECTION HISTORY

RR 2007, c. 1, §5 (COR). 2007, c. 273, Pt. A, §21 (NEW). 2007, c. 273, Pt. A, §§37, 41 (AFF). 2009, c. 362, Pt. A, §11 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-206-F. INVESTIGATIVE AND LEGAL COMPLIANCE PERSONNEL***(REPEALED)*

## SECTION HISTORY

2007, c. 273, Pt. A, §22 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2011, c. 427, Pt. A, §14 (RP).

**§8-206-G. ANNUAL REPORT TO LEGISLATURE***(REPEALED)*

## SECTION HISTORY

2007, c. 273, Pt. A, §23 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2011, c. 427, Pt. A, §14 (RP).

**§8-206-H. HIGH-RATE, HIGH-FEE MORTGAGES***(REPEALED)*

## SECTION HISTORY

2009, c. 362, Pt. A, §12 (NEW). 2011, c. 427, Pt. A, §14 (RP).

### **§8-206-I. HIGHER-PRICED MORTGAGE LOANS**

*(REPEALED)*

#### SECTION HISTORY

2009, c. 362, Pt. A, §13 (NEW). 2011, c. 427, Pt. A, §14 (RP).

### **§8-206-J. RESIDENTIAL MORTGAGE LOAN REQUIREMENTS**

*(REPEALED)*

#### SECTION HISTORY

2009, c. 362, Pt. A, §14 (NEW). 2011, c. 427, Pt. A, §14 (RP).

### **§8-207. CONSUMER LEASE DISCLOSURES**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1987, c. 321, §§1-3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

### **§8-208. CIVIL LIABILITY**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1981, c. 698, §§21-23 (AMD). 1983, c. 720, §23 (AMD). 1989, c. 472, §§3,4 (AMD). RR 1995, c. 2, §18 (COR). 1995, c. 614, §§A12,C1 (AMD). 2007, c. 471, §13 (AMD). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. A, §15 (AMD). 2009, c. 362, Pt. A, §16 (AFF). 2011, c. 427, Pt. A, §14 (RP).

### **§8-208-A. CERTAIN LIMITATIONS ON LIABILITY**

*(REPEALED)*

#### SECTION HISTORY

1995, c. 614, §A13 (NEW). 1995, c. 614, Pt. A, §13 (NEW). 1997, c. 155, §C6 (AMD). 1997, c. 155, Pt. C, §6 (AMD). 2011, c. 427, Pt. A, §14 (RP).

### **§8-209. LIABILITY OF ASSIGNEES**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1987, c. 129, §75 (AMD). 1995, c. 614, §A14 (AMD). 2007, c. 273, Pt. C, §§8, 9 (AMD). 2007, c. 471, §§14-17 (AMD). 2007, c. 471, §18 (AFF). 2009, c. 362, Pt. C, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

## **Part 3: CREDIT CARD RESTRICTIONS**

**§8-301. ISSUANCE OF CREDIT CARDS***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-302. LIABILITY OF HOLDER OF CREDIT CARD***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-303. CREDIT CARD RESTRICTIONS***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 1991, c. 212, (AMD). 1991, c. 755, §1 (AMD). 1995, c. 614, §A15 (AMD). 1997, c. 660, §D1 (AMD). 2009, c. 113, §1 (AMD). 2009, c. 571, Pt. LLL, §1 (AMD). 2009, c. 618, §2 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-304. DISCLOSURE OF LISTS OF THE NAMES, ADDRESSES AND ACCOUNT NUMBERS OF CREDIT CARD HOLDERS***(REPEALED)*

## SECTION HISTORY

RR 1993, c. 1, §22 (COR). 1993, c. 86, §1 (NEW). 1993, c. 135, §1 (NEW). 2011, c. 427, Pt. A, §14 (RP).

**§8-305. RECURRING CHARGES TO CREDIT OR CHARGE CARDS***(REPEALED)*

## SECTION HISTORY

RR 1993, c. 1, §22 (RNU). 1993, c. 135, §1 (NEW). 2011, c. 427, Pt. A, §14 (RP).

**Part 4: FAIR CREDIT BILLING****§8-401. CORRECTION OF BILLING ERRORS***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

**§8-402. REGULATION OF CREDIT REPORTS***(REPEALED)*

## SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

### **§8-403. TREATMENT OF CREDIT BALANCES; RETURNS**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

### **§8-404. PROMPT CREDITING OF PAYMENTS**

*(REPEALED)*

#### SECTION HISTORY

1981, c. 243, §§25,26 (NEW). 1981, c. 551, §3 (AMD). 2011, c. 427, Pt. A, §14 (RP).

## Article 8-A: MAINE TRUTH-IN-LENDING

### §8-501. SHORT TITLE

This Article may be known and cited as the "Maine Consumer Credit Code - Truth-in-Lending." [2011, c. 427, Pt. A, §15 (NEW).]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW).

### §8-502. FINDINGS AND DECLARATION OF PURPOSE

The Legislature finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this Article to ensure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to the consumer and avoid the uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing and credit card practices. [2011, c. 427, Pt. A, §15 (NEW).]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW).

### §8-503. CONFORMITY WITH FEDERAL LAW

Unless the context otherwise indicates, any word or phrase that is not defined in this Article but that is defined in the Federal Truth in Lending Act, Title I of the federal Consumer Credit Protection Act, 15 United States Code, Section 1601 et seq. or its implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section 1026.1 et seq., has the meaning set forth in the Federal Truth in Lending Act and its implementing regulations. [2013, c. 464, §3 (AMD).]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW). 2013, c. 464, §3 (AMD).

### §8-504. MAINE CONSUMER CREDIT CODE - TRUTH-IN-LENDING

**1. Compliance with Federal Truth in Lending Act.** Notwithstanding any other law, a creditor shall comply with the Federal Truth in Lending Act, Title I of the federal Consumer Credit Protection Act, 15 United States Code, Section 1601 et seq. and its implementing regulations, Regulation Z, 12 Code of Federal Regulations, Section 1026.1 et seq. and Regulation M, 12 Code of Federal Regulations, Section 1013.1 et seq.

[ 2013, c. 464, §4 (AMD) .]

**2. Rule-making authority.** Consistent with the purposes of Title X and Title XIV of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 and with the purposes set forth in sections 1-102 and 8-502 and notwithstanding other law, the administrator may adopt rules substantially similar to or that afford more protection for consumers than those codified in 12 Code of Federal Regulations, Part 1026 and 12 Code of Federal Regulations, Part 1013. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. In adopting rules pursuant to this subsection, the administrator shall specifically consider whether there is a substantial impact on consumer protection before adopting rules affecting the following provisions of section 8-506:

A. The rate thresholds pertaining to high-cost mortgage loans in section 8-506, subsection 1, paragraph H; [2011, c. 427, Pt. A, §15 (NEW).]

- B. The prepayment penalties for high-cost mortgage loans in section 8-506, subsection 2, paragraph D; [2011, c. 427, Pt. A, §15 (NEW).]
- C. The assignee liability for high-cost mortgage loans in section 8-506, subsection 3; [2011, c. 427, Pt. A, §15 (NEW).]
- D. The ability to repay in section 8-506, subsection 4; [2011, c. 427, Pt. A, §15 (NEW).]
- E. The prohibition against flipping and the principles of tangible net benefit in section 8-506, subsection 5; and [2013, c. 464, §4 (AMD).]
- F. The enhanced penalties for violations in section 8-506, subsection 6. [2011, c. 427, Pt. A, §15 (NEW).]

The rules may contain classifications, differentiations or other provisions and may provide for adjustments and exceptions for any class of transactions subject to this Title that in the judgment of the administrator are necessary or proper to effectuate the purposes of this Title, or to prevent circumvention or evasion of or to facilitate compliance with, the provisions of this Title.

[ 2013, c. 464, §4 (AMD) .]

**3. Compliance with rules prior to effective date.** A creditor may comply with any rules adopted by the administrator pursuant to subsection 2 prior to the effective date of those rules.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW). 2013, c. 464, §4 (AMD).

## §8-505. ENFORCEMENT

**1. Enforcement under Article 6.** The administrator shall enforce this Article under the provisions of Article 6. When the Superintendent of Financial Institutions is acting as administrator, the superintendent may, in addition to the enforcement authority under Article 6, use any authority provided in Title 9-B for the supervision of financial institutions.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

**2. Reimbursement.** The administrator may adopt by rule a reimbursement program such that creditors subject to an administrative order under section 6-108 may be ordered to make whatever adjustments are necessary to ensure that any person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. In determining any readjustment, the administrator shall apply, with respect to the annual percentage rate, a tolerance allowed under the Federal Truth in Lending Act, 15 United States Code, Section 1607 and its implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section 1026.1 et seq. and, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance allowed by the Federal Truth in Lending Act and its implementing regulations for the annual percentage rate. The administrator may order partial adjustment or partial payments over an extended period if the administrator determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to the Federal Deposit Insurance Act.

[ 2013, c. 464, §5 (AMD) .]

**3. Criminal liability for willful and knowing violation.** Whoever willfully and knowingly gives false or inaccurate information or fails to provide information that the person is required to disclose under the provisions of this Article or any regulation issued thereunder, uses any chart or table authorized by the

administrator under this Article in such a manner as to consistently understate the annual percentage rate determined under this Article or otherwise fails to comply with any requirement imposed under this Article is guilty of a Class D crime.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

**4. Penalties inapplicable to governmental agencies.** A civil or criminal penalty provided under this Article for any violation thereof may not be imposed upon the United States or any agency thereof, or upon any state or political subdivision thereof, or any agency of any state or political subdivision thereof.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

**5. Civil liability.** Except as otherwise provided for transactions subject to section 8-506, subsection 6, any creditor that fails to comply with the requirements imposed under this Article with respect to any person is liable to that person as provided for in the Federal Consumer Credit Protection Act, 15 United States Code, Section 1640.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

**6. Liability of assignees.** Except as otherwise provided for transactions subject to section 8-506, subsection 3, any civil action for a violation of this Article that may be brought against a creditor may be maintained against any assignee of such creditor as provided for in the federal Consumer Credit Protection Act, 15 United States Code, Section 1641.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

**7. Attorney General.** The Attorney General has jurisdiction to enforce this Article against mortgage brokers as defined in section 8-506, subsection 1, paragraph J and supervised lenders that are not supervised financial organizations through their general regulatory powers and through civil process. The administrator, through the Attorney General, may bring a civil action to restrain any person from violating this Article.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW). 2013, c. 464, §5 (AMD).

### §8-506. ENHANCED RESTRICTIONS ON CERTAIN CREDITORS

In addition to the compliance requirements of section 8-504, subsection 1, unless otherwise required by rules adopted pursuant to section 8-504, subsection 2, a creditor shall comply with the following enhanced restrictions. [2011, c. 427, Pt. A, §15 (NEW).]

**1. Definitions.** The following definitions apply to the enhanced restrictions set forth in this section.

A. "Administrator" has the same meaning as set forth in section 1-301. [2011, c. 427, Pt. A, §15 (NEW).]

B. "Bona fide discount points" means an amount knowingly paid by a borrower for the express purpose of reducing, and that in fact does result in a bona fide reduction of, the interest rate applicable to a residential mortgage loan, as long as the undiscounted interest rate for the residential mortgage loan does not exceed the conventional mortgage rate by more than 2 percentage points for a residential mortgage loan secured by a first lien or by 3 1/2 percentage points for a residential mortgage loan secured by a subordinated lien. [2011, c. 427, Pt. A, §15 (NEW).]

C. "Borrower" means any natural person obligated to repay a loan, including a coborrower, cosigner or guarantor. [2011, c. 427, Pt. A, §15 (NEW).]

D. "Conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any superseding publication, as of the applicable time set forth in 12 Code of Federal Regulations, Section 1026.32(a)(1)(i). [2013, c. 464, §6 (AMD).]

E. "Conventional prepayment penalty" means any prepayment penalty or fee that may be collected or charged in a residential mortgage loan and that is authorized by law other than this section, as long as the residential mortgage loan does not have an annual percentage rate that exceeds the conventional mortgage rate by more than 2 percentage points and does not permit any prepayment fees or penalties that exceed 2% of the amount prepaid. [2011, c. 427, Pt. A, §15 (NEW).]

F. "Creditor" has the same meaning as set forth in section 1-301, subsection 17. For purposes of this section, "creditor" also includes an entity defined as a lender as set forth in 12 Code of Federal Regulations, Section 1024.2, including a mortgage broker. [2013, c. 464, §7 (AMD).]

G. "Excluded points and fees" means, in connection with a residential mortgage loan, all bona fide fees paid to a federal or state government agency that insures payment of some portion of a residential mortgage loan plus an amount not to exceed 2% of the total loan amount attributable to bona fide discount points or a conventional prepayment penalty. [2011, c. 427, Pt. A, §15 (NEW).]

H. "High-cost mortgage loan" means a residential mortgage loan in which the terms of the loan meet or exceed one or more of the following thresholds:

(1) Rate threshold, which, for a residential mortgage loan, is the point at which the annual percentage rate equals or exceeds the rate set forth in 12 Code of Federal Regulations, Section 1026.32(a)(1)(i) without regard to whether the residential mortgage loan may be considered a "residential mortgage transaction" or an extension of "open-end credit" as those terms are set forth in 12 Code of Federal Regulations, Section 1026.2; and

(2) The total points and fees threshold, which is:

(a) For loans in which the total loan amount is \$40,000 or more, the point at which the total points and fees payable in connection with the residential mortgage loan less any excluded points and fees exceed 5% of the total loan amount; and

(b) For loans in which the total loan amount is less than \$40,000, the point at which the total points and fees payable in connection with the residential mortgage loan less any excluded points and fees exceed 6% of the total loan amount. [2013, c. 464, §8 (AMD).]

I. "Higher-priced mortgage loan" has the same meaning as set forth in the Federal Truth in Lending Act and its implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section 1026.35(a). "Higher-priced mortgage loan" also includes a residential mortgage loan that is a nontraditional mortgage as described in the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued September 29, 2006 and published in 71 Federal Register, 58609 on October 4, 2006 and as updated from time to time, except that "higher-priced mortgage loan" does not include a mortgage that does not allow a borrower to defer repayment of principal or interest. [2013, c. 464, §8 (AMD).]

J. "Mortgage broker" has the same meaning as set forth in 12 Code of Federal Regulations, Section 1024.2, except as otherwise provided in this Article. [2013, c. 464, §8 (AMD).]

K. "Points and fees" has the same meaning as set forth in 12 Code of Federal Regulations, Section 1026.32(b)(1). In addition, "points and fees" includes:

(1) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;

(2) All prepayment fees and penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and

(3) All compensation paid directly or indirectly to a mortgage broker from any source, including a mortgage broker that originates a loan in its own name in a table-funded transaction.

For open-end loans, points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the loan documents and the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line. [ 2013, c. 464, §8 (AMD) . ]

L. "Residential mortgage loan" means an extension of credit, including an open-end credit plan, in which:

- (1) The loan does not exceed the maximum original principal obligation as set forth in and from time to time adjusted according to the provisions of 12 United States Code, Section 1454(a)(2);
- (2) The loan is considered a federally related mortgage loan as set forth in 12 Code of Federal Regulations, Section 1024.2;
- (3) The loan is not a reverse mortgage transaction or a loan made primarily for business, agricultural or commercial purposes;
- (4) The loan is not a construction loan; and
- (5) The loan is secured by the borrower's principal dwelling. [ 2013, c. 464, §8 (AMD) . ]

M. "Servicing" has the same meaning as set forth in 12 Code of Federal Regulations, Section 1024.2 and includes any other activities or responsibilities undertaken in connection with a residential mortgage loan by a person who acts as a servicer with respect to that residential mortgage loan, including collection and default management functions. [ 2013, c. 464, §8 (AMD) . ]

N. "Total loan amount" means the principal of a loan minus those points and fees that are included in the principal amount of the loan. For open-end loans, the total loan amount must be calculated using the total line of credit allowed under the residential mortgage loan at closing. [ 2011, c. 427, Pt. A, §15 (NEW) . ]

[ 2013, c. 464, §§6-8 (AMD) . ]

**2. High-cost mortgage loans; restrictions.** A high-cost mortgage loan is subject to the provisions applying to certain closed-end home mortgages covered by Regulation Z, 12 Code of Federal Regulations, Section 1026.32 and the following restrictions.

A. In connection with a high-cost mortgage loan, a creditor may not directly or indirectly finance any points or fees. [ 2011, c. 427, Pt. A, §15 (NEW) . ]

B. In addition to the limitation on balloon payments found in Regulation Z, 12 Code of Federal Regulations, Section 1026.32, a high-cost mortgage loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This paragraph does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower. [ 2013, c. 464, §9 (AMD) . ]

C. A creditor may not make a high-cost mortgage loan without first receiving certification from a counselor with a 3rd-party, nonprofit organization approved by the United States Department of Housing and Urban Development, a housing financing agency of this State or the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection that the borrower has received counseling on the advisability of the loan transaction. [ 2011, c. 427, Pt. A, §15 (NEW) . ]

D. A prepayment fee or penalty may not be included in the loan documents or charged under the terms of a high-cost mortgage loan. [ 2011, c. 427, Pt. A, §15 (NEW) . ]

[ 2013, c. 464, §9 (AMD) . ]

**3. High-cost mortgage loans; assignee liability.** The following provisions apply to a claim made by a borrower against a purchaser or assignee of a high-cost mortgage loan.

A. Any person who purchases or is otherwise assigned a high-cost mortgage loan is subject to all affirmative claims and any defenses with respect to the loan that the borrower may assert against a creditor of the loan, except that this paragraph does not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that it:

- (1) Has in place, at the time of the purchase or assignment of the subject loan, policies that expressly prohibit the purchaser or assignee's purchase or acceptance of assignment of any high-cost mortgage loan;
- (2) Requires by contract that a seller or assignor of residential high-cost mortgage loans to the purchaser or assignee represent and warrant to the purchaser or assignee that neither the seller or assignor will sell or assign any high-cost mortgage loans to the purchaser or assignee, nor that the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and
- (3) Exercises reasonable due diligence, at the time of purchase or assignment of residential mortgage loans or within a reasonable period of time after the purchase or assignment of such residential mortgage loans, intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost mortgage loan. For purposes of this subparagraph, reasonable due diligence must provide for sampling and may not require loan-by-loan review. [2011, c. 427, Pt. A, §15 (NEW).]

B. Notwithstanding paragraph A, liability pursuant to this subsection may not accrue to a purchaser or assignee of a high-cost mortgage loan as a result of an alleged violation by a creditor of subsection 5. [2011, c. 427, Pt. A, §15 (NEW).]

[ 2011, c. 427, Pt. A, §15 (NEW) . ]

**4. Ability to repay.** A creditor may not extend a high-cost mortgage loan or a higher-priced mortgage loan to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, employment, assets other than the collateral, credit history, debt-to-income ratio, current obligations and mortgage-related obligations.

A. For purposes of this subsection, mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property or against liability arising out of the ownership or use of the property or insurance protecting the creditor against the consumer's default or other credit loss, and similar expenses. [2011, c. 427, Pt. A, §15 (NEW).]

B. Under this subsection, a creditor must verify the consumer's repayment ability as follows.

- (1) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's federal Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records or other 3rd-party documents that provide reasonably reliable evidence of the consumer's income or assets. For the purposes of this subparagraph, "reasonably reliable evidence of the consumer's income or assets" includes, but is not limited to, statements from investment advisors, broker-dealers and others in a fiduciary relationship with the consumer as long as the statements reflect the consumer's actual income and not estimated, projected or anticipated income or a range of earnings for a consumer's type or class of employment.
- (2) A creditor must verify the consumer's current obligations. [2011, c. 427, Pt. A, §15 (NEW) . ]

C. A creditor is presumed to have complied with this subsection with respect to a transaction if the creditor:

- (1) Verifies the consumer's repayment ability as provided in paragraph B;

(2) Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first 7 years following consummation and taking into account current obligations and mortgage-related obligations; and

(3) Assesses the consumer's repayment ability taking into account at least one of the following:

(a) The ratio of total debt obligations to income; and

(b) The income the consumer will have after paying debt obligations. [ 2011, c. 427, Pt. A, §15 (NEW) . ]

D. Notwithstanding paragraph C, no presumption of compliance is available for a transaction for which:

(1) The regular periodic payments for the first 7 years would cause the principal balance to increase; or

(2) The term of the loan is less than 7 years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance. [ 2011, c. 427, Pt. A, §15 (NEW) . ]

E. This subsection does not apply to a temporary or so-called "bridge" loan with a term of 12 months or less, such as a loan to purchase a new dwelling when the consumer plans to sell a current dwelling within 12 months. [ 2011, c. 427, Pt. A, §15 (NEW) . ]

[ 2011, c. 427, Pt. A, §15 (NEW) . ]

**5. Flipping.** A creditor or a mortgage broker may not knowingly or intentionally engage in the act or practice of flipping a residential mortgage loan when making a high-cost mortgage loan or higher-priced mortgage loan. The administrator may adopt rules defining with reasonable specificity the requirements for compliance with this subsection. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. For the purposes of this subsection, "flipping a residential mortgage loan" means the making of a residential mortgage loan to a borrower that refinances an existing residential mortgage loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all the circumstances, including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.

[ 2011, c. 427, Pt. A, §15 (NEW) . ]

**6. Special liability.** This subsection applies to any violation of this section in connection with the origination, brokering or servicing of a residential mortgage loan. This subsection does not apply to a purchaser or assignee of a residential mortgage loan except as permitted in subsection 3.

A. Any person who has been found in violation of this section with regard to residential mortgage loans may be liable to the borrower for the following:

(1) Actual damages, including consequential and incidental damages. The borrower may not be required to demonstrate reliance in order to receive actual damages;

(2) Punitive damages for violations of subsections 2 and 5, when the violation was malicious or reckless;

(3) Costs, including reasonable attorney's fees; and

(4) Statutory damages as follows:

(a) For violations described in subsection 2, statutory damages equal to 2 times the finance charge paid under the loan and forfeiture of the remaining interest under the loan; and

(b) For any other violations of this section, statutory damages in the amount of \$5,000 per violation. [ 2011, c. 427, Pt. A, §15 (NEW) . ]

B. A borrower may be granted injunctive, declaratory and other equitable relief that the court determines appropriate in an action to enforce compliance with this section. [2011, c. 427, Pt. A, §15 (NEW).]

C. The right of rescission granted under 15 United States Code, Chapter 41, Subchapter I, Part A for a violation of that law is available to a borrower acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a residential mortgage loan at any time during the term of the loan. Any recoupment claim asserted pursuant to this provision is limited to amounts required to reduce or extinguish the borrower's liability under the residential mortgage loan plus amounts required to recover costs, including reasonable attorney's fees. This paragraph may not be construed to limit recoupment rights available to the borrower under any other law. [2011, c. 427, Pt. A, §15 (NEW).]

D. The remedies provided in this subsection are not intended to be the exclusive remedies available to a borrower, nor must the borrower exhaust any administrative remedies provided under this subsection or any other applicable law before proceeding under this subsection. [2011, c. 427, Pt. A, §15 (NEW).]

E. Any person who knowingly violates a provision of this section is guilty of a Class E crime. [2011, c. 427, Pt. A, §15 (NEW).]

F. A creditor in a residential mortgage loan who, when acting in good faith, fails to comply with any provision of this section related to residential mortgage loans is deemed not to have violated this section if the creditor establishes that either:

(1) Within 30 days of the loan closing and prior to receiving any notice of the compliance failure, the creditor has made appropriate restitution to the borrower and appropriate adjustments have been made to the loan; or

(2) Within 60 days of the loan closing and prior to receiving any notice of the compliance failure, when the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the borrower is notified of the compliance failure, appropriate restitution is made to the borrower and appropriate adjustments are made to the loan. Examples of a bona fide error include clerical, calculation, computer malfunction and programming and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error. [2011, c. 427, Pt. A, §15 (NEW).]

G. The remedies provided in this subsection are cumulative. [2011, c. 427, Pt. A, §15 (NEW).]

H. Notwithstanding any other provision of law, a residential mortgage loan agreement may not include any provision that waives any borrower's remedies available at law or equity, whether acting individually or on behalf of others similarly situated, or the borrower's rights to civil discovery or appeal. Any such provision is unenforceable and void as a matter of law. [2011, c. 427, Pt. A, §15 (NEW).]

I. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a residential mortgage loan agreement that allows a person to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum established in this State where the borrower may otherwise properly bring a claim or defense or that limits in any way any claim or defense the borrower may have is unconscionable and void as a matter of law. [2011, c. 427, Pt. A, §15 (NEW).]

J. It is a violation of this section for any person to attempt in bad faith to avoid the application of this section by dividing any loan transaction into separate parts or structuring a residential mortgage loan transaction as an open-end loan for the purpose of evading the provisions of this section when the loan

would have been a high-cost mortgage loan if the loan had been structured as a closed-end loan or by engaging in any other subterfuge with the intent of evading any provision of this section. [ 2011, c. 427, Pt. A, §15 (NEW). ]

[ 2011, c. 427, Pt. A, §15 (NEW) . ]

**7. Exemption for supervised financial organizations and the Maine State Housing Authority.** This section does not apply to any supervised financial organization as defined in section 1-301, subsection 38-A or to the Maine State Housing Authority.

[ 2011, c. 427, Pt. A, §15 (NEW) . ]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW). 2013, c. 464, §§6-9 (AMD).

### §8-507. EXEMPTION FROM THE FEDERAL TRUTH IN LENDING ACT

**1. Preservation of federal exemption.** As required by the Federal Truth in Lending Act, 15 United States Code, Section 1633 and its implementing regulation, Regulation Z, 12 Code of Federal Regulations, Section 1026.29, the administrator may take any action necessary to apply for or to preserve a determination by the federal Consumer Financial Protection Bureau or its successor agency that under the laws of this State any class of credit transactions within this State is subject to requirements substantially similar to federal requirements and that there are adequate provisions for enforcement of such requirements.

[ 2013, c. 464, §10 (AMD) . ]

**2. Application.** This Article does not apply to any class of credit transactions within this State that is subject to the requirements of the Federal Truth in Lending Act, Title I of the federal Consumer Credit Protection Act unless any such class of transactions has first been exempted by a regulation of the federal Consumer Financial Protection Bureau and that exemption remains in effect.

[ 2013, c. 464, §10 (AMD) . ]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW). 2013, c. 464, §10 (AMD).

### §8-508. AUTHORITY OF ADMINISTRATOR

The administrator, by rule or order, shall prohibit acts or practices in connection with: [ 2011, c. 427, Pt. A, §15 (NEW). ]

**1. Unfair or deceptive mortgage loans.** The making of a residential mortgage loan that the administrator finds unfair, deceptive or designed to evade the provisions of section 8-506; and

[ 2011, c. 427, Pt. A, §15 (NEW) . ]

**2. Refinancing; abusive lending practices.** The refinancing of a residential mortgage loan that the administrator finds is associated with abusive lending practices or that is otherwise not in the interest of the borrowing public.

[ 2011, c. 427, Pt. A, §15 (NEW) . ]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 427, Pt. A, §15 (NEW).]

SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW).

## §8-509. CREDIT CARD AND DEBIT CARD SURCHARGE PROHIBITION

**1. Surcharge prohibited.** A seller in a sales transaction may not impose a surcharge on a cardholder who elects to use a credit card or debit card in lieu of payment by cash, check or similar means. For purposes of this section, "surcharge" means any means of increasing the regular price to a cardholder that is not imposed on a customer paying by cash, check or similar means. A discount or reduction from the regular price is not a surcharge.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

**2. Surcharge permitted for governmental entity.** Notwithstanding subsection 1, a governmental entity may impose a surcharge for payments made with a credit card or debit card for taxes, fines, charges, utility fees, regulatory fees, license or permit fees or the provision of a specific service provided by that governmental entity if the surcharge:

A. Is disclosed clearly to the consumer prior to payment; and [2011, c. 427, Pt. A, §15 (NEW) .]

B. Does not exceed the costs associated with providing the credit card or debit card service that are directly incurred by the governmental entity or assessed by an authorized 3rd-party payment service provider for a credit card or debit card transaction. If there is not a cost assessed by an authorized 3rd-party payment service provider for a debit card transaction, the governmental entity may not impose a surcharge associated with a debit card transaction. [2011, c. 427, Pt. A, §15 (NEW) .]

A governmental entity shall disclose to the consumer that the surcharge may be avoided if the consumer makes payments by cash, check or other means not a credit card or debit card. A governmental entity is not subject to any liability to the issuer of a credit card or an authorized 3rd-party payment service provider for nonpayment of credit card charges by the consumer. As used in this subsection, "governmental entity" includes, but is not limited to, a county established or governed by Title 30-A, Part 1, a municipality as defined in Title 30-A, section 2001, subsection 8, a quasi-municipal corporation as defined in Title 30-A, section 2604, subsection 3, the Judicial Department as described in Title 4, the University of Maine System, the Maine Community College System and the Maine Maritime Academy.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW).

## §8-510. DISCLOSURE OF LISTS OF THE NAMES, ADDRESSES AND ACCOUNT NUMBERS OF CREDIT CARD HOLDERS

**1. Disclosure prohibited.** Except as provided in subsection 2, it is unlawful for a person, business, corporation, partnership, agency, financial institution, credit card registration service or other entity to rent, sell, exchange or otherwise disclose or make available to another person or entity a list containing the names, addresses and account numbers of credit card holders without the express, written permission of the credit card holders.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

**2. Exceptions.** The following disclosures of lists containing the names, addresses and account numbers of credit card holders are not prohibited:

A. Disclosure to or from a consumer reporting agency, as defined in Title 10, section 1308, subsection 3, as long as the transfer is for purposes of compliance with and in a manner consistent with the terms of the Fair Credit Reporting Act; [2013, c. 588, Pt. C, §1 (AMD).]

B. Disclosure between a parent corporation and a subsidiary or affiliate of that corporation or between subsidiaries or affiliates of a parent corporation; [2011, c. 427, Pt. A, §15 (NEW).]

C. Disclosure in connection with the sale or pledge, or negotiation of the sale or pledge, of any portion of a business or the assets of a business, as long as the party to whom disclosure is made maintains the confidentiality of the information disclosed; [2011, c. 427, Pt. A, §15 (NEW).]

D. Disclosure in connection with authorization, processing, billing, collection, charge-back, fraud prevention or credit card recovery; and [2011, c. 427, Pt. A, §15 (NEW).]

E. Disclosure pursuant to state or federal law or at the direction of a governmental entity pursuant to law or in response to a court order. [2011, c. 427, Pt. A, §15 (NEW).]

[ 2013, c. 588, Pt. C, §1 (AMD) .]

**3. Violation.** A violation of this section constitutes a violation of the Maine Consumer Credit Code and the Maine Unfair Trade Practices Act.

[ 2011, c. 427, Pt. A, §15 (NEW) .]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW). 2013, c. 588, Pt. C, §1 (AMD).

## **§8-511. RECURRING CHARGES TO CREDIT CARD OR CHARGE CARD ACCOUNTS**

If a sale of goods, services or insurance is charged to a credit card or charge card account on an annual basis without substantially contemporaneous authorizations by the consumer, the seller shall inform the consumer of the voluntary nature of the charge to the credit card or charge card account and of the steps necessary to prevent this charge at least 30 days prior to the annual charge. The card issuer may provide the notice on behalf of the seller. This section does not apply to insurance subject to notice and cancellation rights pursuant to section 4-204. [2011, c. 427, Pt. A, §15 (NEW).]

#### SECTION HISTORY

2011, c. 427, Pt. A, §15 (NEW).

## Article 9: CONSUMER CREDIT TRANSACTIONS MADE TO ACQUIRE REAL ESTATE OR SECURED BY FIRST-LIEN MORTGAGES

### Part 1: GENERAL PROVISIONS

#### §9-101. SCOPE

This Article applies to all consumer credit transactions made by creditors that are not supervised financial organizations, that are made to finance or refinance the acquisition of real estate or the initial construction of a dwelling or that are secured by a first-lien mortgage on real estate and applies to the servicing of those transactions. [2017, c. 106, §10 (AMD).]

##### SECTION HISTORY

1987, c. 396, §12 (NEW). 2007, c. 273, Pt. A, §24 (AMD). 2007, c. 273, Pt. A, §41 (AFF). 2017, c. 106, §10 (AMD).

### Part 2: LICENSING

#### §9-201. AUTHORITY TO MAKE OR SERVICE SUPERVISED LOANS; LICENSING

The provisions of sections 2-301 to 2-304 control the authority of supervised lenders and mortgage loan servicers that are not supervised financial organizations to make or service loans governed by this Article. [2017, c. 106, §11 (AMD).]

##### SECTION HISTORY

1987, c. 396, §12 (NEW). 2017, c. 106, §11 (AMD).

### Part 3: REGULATION OF AGREEMENTS AND PRACTICES

#### §9-301. ADVERTISING

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

[ 1987, c. 396, §12 (NEW) .]

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

[ 1987, c. 396, §12 (NEW) .]

##### SECTION HISTORY

1987, c. 396, §12 (NEW).

#### §9-302. TERMS AND CONDITIONS OF CONSUMER CREDIT TRANSACTIONS; RULEMAKING

1. In addition to other rule making authority that the administrator may have, he may adopt reasonable rules in accordance with this section governing agreements which are alternative mortgage transactions as defined in the Alternative Mortgage Transaction Parity Act of 1982, the United States Code, Title 12, Section

3802, subsection 1. In adopting any rule, the administrator shall take into consideration the terms of any similar rules adopted by the Superintendent of Financial Institutions for supervised financial organizations chartered under the laws of this State.

[ 1987, c. 396, §12 (NEW); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

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

A. The maximum amount by which the annual percentage rate may change during a period of time and over the entire term of the agreement; [1987, c. 396, §12 (NEW).]

B. The minimum notice that may be required to be given to the mortgagor prior to a change in the annual percentage rate; [1987, c. 396, §12 (NEW).]

C. Acceptable indices that may be used by creditors for the purpose of determining when, and the amount by which changes in the annual percentage rate may occur and what effects, if any, the choice of index may have on the rate movement allowances specified in paragraph A; [1987, c. 396, §12 (NEW).]

D. Appropriate hypothetical examples to illustrate the effects of changes in the annual percentage rate; [1987, c. 396, §12 (NEW).]

E. Permissible variations in payment schedules, payment amounts, loan amortization and loan term resulting from rate variations or other contract terms; and [1987, c. 396, §12 (NEW).]

F. Permissible limitations on refunds of prepaid finance charges and notice requirements for prepayment. [1987, c. 396, §12 (NEW).]

[ 1987, c. 396, §12 (NEW) .]

#### SECTION HISTORY

1987, c. 396, §12 (NEW). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF).

### **§9-303. CONSUMER'S CHOICE OF TITLE ATTORNEY IN CONSUMER CREDIT TRANSACTIONS SECURED BY REAL ESTATE**

1. Every creditor, which accepts an application for consumer credit transaction involving one to 4 residential units and which requires that an attorney search the title of the subject real estate, shall permit the prospective mortgagor to select a qualified attorney of his own choice to search the title of the subject real estate and certify that title to the creditor or land title insurance company, provided that the creditor may require the prospective mortgagor's attorney to provide it with evidence of adequate liability insurance or land title insurance or such other written policy requirements as the creditor may deem necessary to protect its interests, provided that if all such requirements are met by the attorney chosen by the mortgagor, no additional legal costs may be assessed by the creditor against the mortgagor for review of the title search or any other relevant title documents by the creditor, its title company or attorney.

[ 1987, c. 396, §12 (NEW) .]

2. Every creditor subject to this section shall provide written notice to the prospective mortgagor that he has the right to select a qualified attorney of his own choice for the performance of title work. The notice shall inform the prospective mortgagor that if the attorney chosen by the mortgagor meets the creditor's

requirements, then no additional fees may be charged to the mortgagor for title work. If the prospective mortgagor indicates on the written notice that he does not wish to exercise his right to select an attorney, then the creditor may recommend an attorney.

[ 1987, c. 396, §12 (NEW) . ]

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

[ 1987, c. 396, §12 (NEW) . ]

#### SECTION HISTORY

1987, c. 396, §12 (NEW).

### **§9-304. SERVICING REQUIREMENTS OF ASSIGNED CONSUMER CREDIT TRANSACTIONS**

No consumer credit transaction secured by a mortgage on real estate may be assigned under this article unless: [1987, c. 396, §12 (NEW).]

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

[ 1987, c. 396, §12 (NEW) . ]

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

[ 1987, c. 396, §12 (NEW) . ]

#### SECTION HISTORY

1987, c. 396, §12 (NEW).

### **§9-305. INTEREST TO BE PAID ON FUNDS HELD IN ESCROW**

A creditor, including any of its assignees, that enters into consumer credit transactions secured by a mortgage on real estate and which holds funds of a mortgagor in an escrow account for the payment of taxes or insurance premiums, either on its own behalf or on behalf of another mortgagee, shall pay interest on those funds in accordance with Title 9-B, section 429. [1987, c. 396, §12 (NEW).]

#### SECTION HISTORY

1987, c. 396, §12 (NEW).

### **§9-305-A. TIMELY PAYMENTS FROM ESCROW**

A creditor, assignee or servicer that holds or controls funds of a consumer in an escrow account for the payment of taxes or insurance premiums shall make timely payments from that escrow account for a consumer credit transaction secured by a mortgage on real estate. A creditor, assignee or servicer is liable to the consumer for actual damages resulting from failure to make timely payments from that escrow

account. The creditor, assignee or servicer shall also rectify the results of a failure to make timely payments, including causing corrections of the consumer's credit report and causing the discharge of any liens against the consumer's real estate. [ 2005, c. 206, §3 (NEW) . ]

## SECTION HISTORY

2005, c. 206, §3 (NEW) .

**§9-305-B. TIMELY RESPONSES TO REQUESTS FOR PAYOFF FIGURES**

A creditor, assignee or servicer shall respond to a request for a payoff figure within 3 business days following receipt of such a request from a consumer or an agent of the consumer for a consumer credit transaction secured by a mortgage on real estate. The response must include a precise payoff figure as of a date certain and must contain information permitting the consumer or the consumer's agent to update that figure, such as providing a per diem rate from a date certain. A charge may not be assessed for the first 2 requests in any calendar year, and a charge for each subsequent request may not exceed \$5. [ 2005, c. 206, §3 (NEW) . ]

## SECTION HISTORY

2005, c. 206, §3 (NEW) .

**§9-306. NOTICE OF ASSIGNMENT**

A consumer is not obligated to make payments on a consumer credit transaction to any creditor, other than the original creditor, until he receives notification of assignment of rights to payment and that payment is to be made to the assignee. A notification which does not clearly and conspicuously identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor. [ 1987, c. 396, §12 (NEW) . ]

## SECTION HISTORY

1987, c. 396, §12 (NEW) .

**§9-307. RECEIPTS; STATEMENTS OF ACCOUNT; EVIDENCE OF PAYMENT**

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

[ 1987, c. 396, §12 (NEW) . ]

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

[ 1987, c. 396, §12 (NEW) . ]

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

[ 1987, c. 396, §12 (NEW) .]

#### SECTION HISTORY

1987, c. 396, §12 (NEW).

### **§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 9-302, subsection 1, at any time without penalty. [1995, c. 614, Pt. A, §16 (AMD).]

#### SECTION HISTORY

1987, c. 396, §12 (NEW). 1995, c. 614, §A16 (AMD).

### **§9-309. REAL ESTATE APPRAISALS; COPIES**

A creditor that imposes a fee on a person for the cost of an appraisal of any real estate shall furnish to the person, at no cost, one copy of the appraisal upon request, if the request is made within 90 days after the creditor has provided notice of action taken on the application for credit or the date of the closing, whichever is later, or 90 days after the application is withdrawn. [1999, c. 150, §7 (AMD).]

#### SECTION HISTORY

1987, c. 396, §12 (NEW). 1999, c. 150, §7 (AMD).

### **§9-310. PRIVACY OF CONSUMER FINANCIAL INFORMATION**

A creditor shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the creditor is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [2001, c. 1, §14 (COR).]

#### SECTION HISTORY

RR 2001, c. 1, §14 (COR). 2001, c. 262, §A2 (NEW).

### **§9-311. CHOICE OF ACCOUNTING, TAX OR ATTEST SERVICES PROVIDER**

A creditor may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an accounting, tax or attest services provider who is accredited as a certified public accountant, public accountant or enrolled agent, except that the creditor may require the provider chosen by the purchaser or borrower to provide adequate evidence of liability insurance or such other written policy requirements as the creditor may determine necessary to protect its interest. [2007, c. 466, Pt. B, §10 (AFF); 2007, c. 466, Pt. B, §7 (RPR).]

#### SECTION HISTORY

2007, c. 185, §2 (NEW). 2007, c. 273, Pt. A, §25 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2007, c. 466, Pt. B, §10 (AFF). 2007, c. 466, Pt. B, §7 (RPR).

### §9-311-A. REAL ESTATE SETTLEMENT PROCEDURES

A creditor and its mortgage loan originators shall comply with the provisions of the federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq. and its implementing regulation, Regulation X, 12 Code of Federal Regulations, Section 1024.1 et seq. [2013, c. 464, §11 (AMD).]

#### SECTION HISTORY

2007, c. 466, Pt. B, §8 (NEW). 2007, c. 466, Pt. B, §10 (AFF). 2011, c. 427, Pt. B, §12 (AMD). 2013, c. 464, §11 (AMD).

### §9-312. FALSE INFORMATION ON APPLICATION FOR CREDIT

A supervised lender, or any mortgage loan originator of a supervised lender, may not knowingly permit, encourage or assist a consumer to submit false information on any application for credit, nor may a supervised lender or mortgage loan originator of a supervised lender knowingly falsify such information on a consumer's application. [2011, c. 427, Pt. B, §13 (AMD).]

#### SECTION HISTORY

2007, c. 273, Pt. A, §26 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2011, c. 427, Pt. B, §13 (AMD).

### §9-313. RATE LOCKS

If a supervised lender charges a consumer a fee to lock in a certain interest rate for a certain length of time, that supervised lender shall: [2007, c. 273, Pt. A, §27 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

1. Take steps that are necessary to actually secure or guarantee the specified rate for the appropriate length of time;

[ 2007, c. 273, Pt. A, §27 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

2. Select a time period within which the loan can reasonably be expected to close; and

[ 2007, c. 273, Pt. A, §27 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

3. Use good faith efforts to close the loan within the rate lock period.

[ 2007, c. 273, Pt. A, §27 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

#### SECTION HISTORY

2007, c. 273, Pt. A, §27 (NEW). 2007, c. 273, Pt. A, §41 (AFF).

## §9-314. PREPAYMENT PENALTY RIDERS

A supervised lender may not impose a prepayment penalty provision through use of a rider or amendment to the loan contract if the terms of the loan contract state that no such prepayment penalty may be imposed or that such a penalty is not specifically authorized under state law. [2007, c. 273, Pt. A, §28 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

### SECTION HISTORY

2007, c. 273, Pt. A, §28 (NEW). 2007, c. 273, Pt. A, §41 (AFF).

## Part 4: REMEDIES AND PENALTIES

### §9-401. MISREPRESENTATION

A creditor or a person acting for him may not induce a consumer to enter into a consumer credit transaction by misrepresentation of a material fact with respect to the terms and conditions of the extension of credit. A consumer so induced may rescind the sale, lease or loan or recover actual damages, or both. [1987, c. 396, §12 (NEW).]

### SECTION HISTORY

1987, c. 396, §12 (NEW).

### §9-402. UNCONSCIONABILITY; INDUCEMENT BY UNCONSCIONABLE CONDUCT

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

A. The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or [1987, c. 396, §12 (NEW).]

B. Any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result. [1987, c. 396, §12 (NEW).]

[ 1987, c. 396, §12 (NEW) .]

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

[ 1987, c. 396, §12 (NEW) .]

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

[ 1987, c. 396, §12 (NEW) .]

### SECTION HISTORY

1987, c. 396, §12 (NEW).

### §9-403. ILLEGAL, FRAUDULENT OR UNCONSCIONABLE CONDUCT IN ATTEMPTED COLLECTION OF DEBTS

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

- A. Use or threaten force or violence; [1987, c. 396, §12 (NEW).]
- B. Threaten criminal prosecution; [1987, c. 396, §12 (NEW).]
- C. Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false; [1987, c. 396, §12 (NEW).]
- D. Communicate more than twice or threaten to communicate more than twice to the debtor's employer information concerning the existence of a debt before or after obtaining final judgment against the debtor, except as permitted by law; [1987, c. 396, §12 (NEW).]
- E. Disclose or threaten to disclose to a person other than the debtor or his spouse, information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this subsection does not prohibit the disclosure to another person of information permitted to be disclosed to him by law; [1987, c. 396, §12 (NEW).]
- F. Disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact; [1987, c. 396, §12 (NEW).]
- G. Claim, attempt or threaten to enforce a right that has been barred by law or a final order of the Supreme Judicial Court or a court of the United States; [1987, c. 396, §12 (NEW).]
- H. Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, government agency or attorney-at-law when it is not; or [1987, c. 396, §12 (NEW).]
- I. Engage in conduct in violation of a rule adopted and published by the administrator after like conduct has been restrained or enjoined by a final order of a court in a civil action by the administrator against any person pursuant to the provisions or injunctions against fraudulent or unconscionable agreements or conduct, section 6-111. [1987, c. 396, §12 (NEW).]

[ 1987, c. 396, §12 (NEW) .]

#### SECTION HISTORY

1987, c. 396, §12 (NEW).

### §9-404. STAY OF ENFORCEMENT OF JUDGMENT

At any time after the entry of a judgment in favor of a creditor against a consumer in an action arising from a consumer credit transaction, the court, for cause and upon motion of a party or on its own motion, while such court retains jurisdiction, may stay enforcement of the judgment by order upon just and equitable conditions and continue, modify or revoke the order as the interests of justice may require. [1987, c. 396, §12 (NEW).]

#### SECTION HISTORY

1987, c. 396, §12 (NEW).

### §9-405. EFFECT OF VIOLATIONS ON RIGHTS OF PARTIES

1. If a creditor, assignee or servicer has violated the provisions of this article applying to timely payments from escrow, section 9-305-A, timely responses to requests for payoff figures, section 9-305-B, misrepresentation, section 9-401, or illegal, fraudulent or unconscionable conduct in an attempted collection

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

[ 2005, c. 206, §4 (AMD) . ]

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

[ 1987, c. 396, §12 (NEW) . ]

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

[ 1987, c. 396, §12 (NEW) . ]

4. If a creditor has violated the provisions of this article applying to authority to make supervised loans, section 9-201, the debtor is not obligated to pay any application fee, prepaid finance charge or closing cost, nor the loan finance charge owed for the first 12 months of the loan. If the debtor has paid any part of the application fee, prepaid finance charge, closing cost or loan finance charge owed for the first 12 months of the loan, the debtor has a right to recover the payment from the person violating this article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

[ 1993, c. 496, §4 (AMD) . ]

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

[ 1987, c. 396, §12 (NEW) . ]

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

[ 1987, c. 396, §12 (NEW) . ]

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

[ 1993, c. 496, §4 (AMD) . ]

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

[ 1987, c. 396, §12 (NEW) .]

9. A creditor has no liability under subsections 1 or 3, or under section 6-113, subsection 2, for any act done or omitted in good faith in conformity with any rule or interpretation thereof by the administrator, notwithstanding that after such act or omission has occurred, the rule or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

[ 1987, c. 396, §12 (NEW) .]

#### SECTION HISTORY

1987, c. 396, §12 (NEW). 1993, c. 496, §4 (AMD). 2005, c. 206, §4 (AMD).

### **§9-406. REFUNDS AND PENALTIES AS SET-OFF TO OBLIGATION**

Refunds or penalties to which the consumer is entitled pursuant to this Part may be set off against the consumer's obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part. [1987, c. 396, §12 (NEW).]

#### SECTION HISTORY

1987, c. 396, §12 (NEW).

### **§9-407. CRIMINAL PENALTIES**

Any creditor, any officer or employee of a creditor, or any other person who willfully and knowingly violates this article, or directly or indirectly counsels, aids or abets that violation, shall be punished by a fine of not more than \$2,500 for each offense or by imprisonment for not more than 6 months, or by both. [1987, c. 396, §12 (NEW).]

#### SECTION HISTORY

1987, c. 396, §12 (NEW).

### **§9-408. VIOLATION OF THE MAINE UNFAIR TRADE PRACTICES ACT**

Any violation of this article constitutes a violation of the Maine Unfair Trade Practices Act. [2009, c. 402, §7 (NEW).]

#### SECTION HISTORY

2009, c. 402, §7 (NEW).

## Article 10: LOAN BROKERS

### Part 1: GENERAL PROVISIONS

#### §10-101. SHORT TITLE

This article may be known and cited as the "Maine Consumer Credit Code - Loan Brokers." [ 2005 , c. 274 , §3 (AMD) . ]

#### SECTION HISTORY

1989, c. 70, §3 (NEW). 2005, c. 274, §3 (AMD).

#### §10-102. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 70, §3 (NEW) . ]

1. "Loan broker" is defined as follows.

A. "Loan broker" means any person who, with respect to the extension of consumer credit by others, provides or offers to provide, in return for the separate payment of money or other valuable consideration, any of the following services:

- (1) Improving a consumer's credit record, history or rating;
- (2) Arranging for or obtaining an extension of credit for a consumer; or
- (3) Providing advice or assistance to a consumer with respect to subparagraph (1) or (2).

"Loan broker" also means any person who serves as a facilitator of a refund anticipation loan or refund anticipation check, whether or not in return for the separate payment of money or other valuable consideration. [2009, c. 248, §2 (AMD) . ]

B. "Loan broker" does not include:

- (1) A supervised financial organization;
- (2) A supervised lender other than a supervised financial organization, except that, with respect to any transaction in which a supervised lender other than a supervised financial organization is acting solely as a loan broker, section 10-302 applies;
- (3) A person licensed by the Real Estate Commission to the extent that the person is engaged in activities regulated by that commission;
- (4) A person currently admitted to the practice of law in this State;
- (5) Any nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) to the extent that the organization's activities are consistent with those set forth in its application for tax exemption to the Internal Revenue Service;
- (6) A consumer reporting agency, as defined in the Fair Credit Reporting Act, Title 10, chapter 209-B;
- (7) An affiliate of a supervised lender when the affiliate provides services described in paragraph A, subparagraph (1), (2) or (3) for or on behalf of that supervised lender and when the affiliate is not compensated by the consumer for those services;
- (8) An employee of a supervised lender or an employee of an affiliate of a supervised lender when the employee provides services described in paragraph A, subparagraph (1), (2) or (3) for or on behalf of that supervised lender or affiliate and when the employee or the affiliate is not compensated by the consumer for those services;

(9) A person paid by a supervised lender or a consumer to document a loan, attend or conduct a loan closing, disburse loan proceeds or record or file loan documents;

(10) A person who performs marketing services for a creditor, such as a telemarketer, an advertising agency or a mailing house, when the person is not compensated by the consumer for those services;

(11) A seller of consumer goods or services that provides services described in paragraph A, subparagraph (1), (2) or (3) in connection with a sale or proposed sale of consumer goods or services by that seller when the seller is not compensated by a consumer for those services; or

(12) An employee of a seller of consumer goods or services that provides services described in paragraph A, subparagraph (1), (2) or (3) in connection with a sale or proposed sale of consumer goods or services by that seller when the employee or seller is not compensated by a consumer for those services.

For the purposes of this paragraph, "affiliate" has the same meaning as defined in Title 9-B, section 131, subsection 1-A. [2013, c. 588, Pt. C, §2 (AMD).]

[ 2013, c. 588, Pt. C, §2 (AMD) .]

**2.** "Bona fide 3rd-party fee" means a verifiable fee paid to a 3rd party for a credit report, appraisal, investigation, title examination or survey.

[ 1989, c. 70, §3 (NEW) .]

**2-A.** "Facilitator of a refund anticipation loan or refund anticipation check" means a person who individually or in conjunction or cooperation with another person:

A. Solicits the execution of, processes, receives or accepts application or agreement for a refund anticipation loan or refund anticipation check; [2009, c. 248, §3 (NEW).]

B. Services or collects upon a refund anticipation loan or refund anticipation check; or [2009, c. 248, §3 (NEW).]

C. Facilitates the making of a refund anticipation loan or refund anticipation check in any other manner. [2009, c. 248, §3 (NEW).]

If there is no 3rd-party facilitator of a refund anticipation loan or refund anticipation check because a creditor directly solicits the execution of, receives or accepts application or agreement for a refund anticipation loan or refund anticipation check, that creditor is considered a facilitator of a refund anticipation loan or refund anticipation check for purposes of this subsection. For purposes of this subsection, "creditor" means any person who makes a refund anticipation loan or who takes assignment of a refund anticipation loan.

[ 2009, c. 248, §3 (NEW) .]

**3.**

[ 2011, c. 427, Pt. B, §14 (RP) .]

**4.** "Refund anticipation check" means a check, stored value card or other payment mechanism representing the proceeds of the consumer's tax refund that was issued by a depository institution or other person that received a direct deposit of the consumer's tax refund or tax credit and for which the consumer has paid a fee or other consideration.

[ 2009, c. 248, §4 (NEW) .]

5. "Refund anticipation loan" means a loan that is secured by or that the creditor arranges to be repaid directly or indirectly from the proceeds of the consumer's income tax refund or tax credits. A refund anticipation loan also includes any sale, assignment or purchase of a consumer's tax refund at a discount or for a fee, whether or not the consumer is required to repay the buyer or assignee if the federal Internal Revenue Service reduces the consumer's tax refund.

[ 2009, c. 248, §5 (NEW) .]

6. "Refund anticipation loan fee" means the charge, fee or other consideration charged or imposed directly or indirectly by the creditor for the making of or in connection with a refund anticipation loan. "Refund anticipation loan fee" includes any charge, fee or other consideration for a deposit account if the deposit account is used for the receipt of the consumer's tax refund to repay the amount owed on the loan.

[ 2009, c. 248, §6 (NEW) .]

7. "Refund anticipation loan interest rate" or "interest rate" means the interest rate based on the creditor's reasonable estimate of the time the refund will be delivered.

[ 2011, c. 427, Pt. D, §13 (AMD) .]

#### SECTION HISTORY

1989, c. 70, §3 (NEW). 1991, c. 824, §A10 (AMD). 1993, c. 495, §1 (AMD). 1997, c. 66, §5 (AMD). 2001, c. 371, §6 (AMD). 2001, c. 509, §§1,2 (AMD). 2005, c. 164, §8 (AMD). 2005, c. 274, §4 (AMD). 2009, c. 248, §§2-7 (AMD). 2011, c. 427, Pt. B, §14 (AMD). 2011, c. 427, Pt. D, §13 (AMD). 2013, c. 588, Pt. C, §2 (AMD).

## Part 2: REGISTRATION AND BONDING

### §10-201. LICENSING AND BIENNIAL RELICENSING

A person desiring to engage or continue in business in this State as a loan broker shall apply to the administrator for a license under this Article as set forth in this section. The administrator may refuse the application if it contains erroneous or incomplete information. A license may not be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant and, when applicable, its partners, officers and directors and, when applicable, the character and fitness of its mortgage loan originators, warrant belief that the business will be operated honestly and fairly within the purposes of this Title. [2013, c. 466, §7 (NEW) .]

**1. Loan broker whose activities include arranging for or obtaining an extension of credit for a residential mortgage loan.** A loan broker subject to this section whose activities include arranging for or obtaining an extension of credit for a residential mortgage loan must apply for a license electronically through the nationwide mortgage licensing system and registry. The initial application must include a fee of \$300 and a renewal application must include a fee of \$150. An application for a branch location license for a location other than that of the first licensed location from which the applicant conducts business or from which the applicant conducts business under a different name than that listed on the first license must be accompanied by a license fee of \$150 and an annual renewal fee of \$75. The applicant must also pay such nationwide mortgage licensing system and registry processing fees as are established by the nationwide mortgage licensing system and registry. A license expires on December 31st of each year and must be renewed through the nationwide mortgage licensing system and registry. Notwithstanding other remedies available under this Title, an application received after the due date is subject to an additional fee of \$100. A licensed loan broker subject to this subsection may conduct business only through a mortgage loan originator who possesses a current, valid license.

[ 2013, c. 466, §7 (NEW) .]

**2. Loan broker whose activities do not include arranging for or obtaining an extension of credit for a residential mortgage loan.** The initial application for a license as a loan broker subject to this section whose activities do not include arranging for or obtaining an extension of credit for a residential mortgage loan must be made directly to the administrator. Initial licenses are granted for a period not to exceed 2 years and expire January 31st. The initial application must include a fee of \$600, and a biennial relicensing application must include a fee of \$300. An application for a branch location license for a location other than that of the first licensed location from which the applicant conducts business or from which the applicant conducts business under a different name than that listed on the first license must be accompanied by a license fee of \$300 and a biennial renewal fee of \$150. Notwithstanding other remedies available under this Title, applications received after the due date are subject to an additional fee of \$100.

[ 2013, c. 466, §7 (NEW) .]

A licensed loan broker may conduct business only through a mortgage loan originator who possesses a current, valid license. [2013, c. 466, §7 (NEW).]

The administrator may direct each licensee to file composite annual and quarterly reports relating to all brokered loans arranged or obtained by that licensee. Information contained in annual and quarterly reports is confidential and may be published only in composite form. The administrator may at any time require additional reports if the administrator determines such action necessary to the proper supervision of licensees. [2013, c. 466, §7 (NEW).]

#### SECTION HISTORY

1989, c. 70, §3 (NEW). 1993, c. 495, §2 (AMD). 2005, c. 164, §9 (AMD). 2005, c. 274, §5 (AMD). 2005, c. 683, §B4 (RPR). 2009, c. 243, §3 (AMD). 2011, c. 427, Pt. B, §15 (AMD). 2013, c. 466, §7 (RPR).

## §10-202. BOND

Each application must be accompanied by evidence of a surety bond, in a form approved by the administrator in the aggregate amount of \$25,000, to run to the State for use by the State and any person or persons who may have a cause of action against a loan broker. Notwithstanding this section, the aggregate amount of a surety bond accompanying the application of a loan broker conducting business solely as a facilitator of a refund anticipation loan or refund anticipation check must be \$10,000. The terms of the bond must run concurrent with the period of time during which the license is in effect. [2009, c. 248, §8 (AMD).]

#### SECTION HISTORY

1989, c. 70, §3 (NEW). 1997, c. 727, §B21 (AMD). 2005, c. 274, §6 (AMD). 2009, c. 248, §8 (AMD).

## Part 3: REGULATION OF PRACTICES

### §10-301. ESCROW OF FUNDS

Each loan broker shall place fees from consumers, other than bona fide 3rd-party fees, in an escrow account separate from any operating accounts of the business, pending completion of services offered. With respect to loan brokers offering to arrange for or obtain extensions of credit for consumers, or provide advice or assistance to arrange for or obtain extensions of credit, "completion of services offered" means procurement of credit under the terms agreed to by the parties. [2005, c. 274, §7 (AMD).]

#### SECTION HISTORY

1989, c. 70, §3 (NEW). 1993, c. 495, §3 (AMD). 2005, c. 274, §7 (AMD).

## §10-302. REQUIREMENT FOR WRITTEN AGREEMENT

Each agreement between a consumer and a loan broker must be in writing, dated and signed by the consumer and must include the following: [2005, c. 274, §8 (AMD).]

1. A full and detailed description of the services to be performed for the consumer, including all guarantees and all promises of full or partial refund of fees paid, whether or not services are completed, and the length of time for which the agreement remains in effect before return of the fees for nonperformance can be required by the consumer;

[1993, c. 495, §4 (AMD) .]

2. The terms and conditions of payment, including the total of all payments to be made by the consumer or by any other person or entity, whether to the loan broker or to some other person; and

[2007, c. 273, Pt. A, §29 (AMD); 2007, c. 273, Pt. A, §41 (AFF) .]

3. The following notice:

NOTICE TO CONSUMER: Do not sign this agreement before you read it. You are entitled to a copy of this agreement.

[1989, c. 70, §3 (NEW) .]

### SECTION HISTORY

1989, c. 70, §3 (NEW). 1993, c. 495, §4 (AMD). 2005, c. 274, §§8,9 (AMD). 2007, c. 273, Pt. A, §41 (AMD). 2007, c. 273, Pt. A, §29 (AFF).

## §10-303. REQUIREMENT FOR WRITTEN DISCLOSURE

Before any agreement is entered into, or before any money is paid by a consumer, whichever occurs first, the loan broker shall provide the consumer with written disclosure of material consumer protections, including the following: [2005, c. 274, §10 (AMD).]

1. The existence and purpose of the surety bond on file with the State, and the procedure for instituting an action against that bond;

[1989, c. 70, §3 (NEW) .]

2. The requirement that all fees from the consumer, other than bona fide 3rd-party fees, be placed in an escrow account; and

[1989, c. 70, §3 (NEW) .]

3. The requirement for a written, signed agreement between the parties.

[1989, c. 70, §3 (NEW) .]

### SECTION HISTORY

1989, c. 70, §3 (NEW). 2005, c. 274, §10 (AMD).

## §10-303-A. GOOD FAITH AND FAIR DEALING

1. A loan broker shall, in addition to duties imposed by other statutes or at common law:

A. Act in good faith and with fair dealing in any transaction, practice or course of business in connection with the brokering or making of any mortgage loan; [2007, c. 273, Pt. A, §30 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

B. Safeguard and account for any money handled for the borrower; [2007, c. 273, Pt. A, §30 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

C. Follow reasonable and lawful instructions from the borrower; [2007, c. 273, Pt. A, §30 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

D. Use reasonable skill, care and diligence; [2007, c. 273, Pt. A, §30 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

E. Timely and clearly disclose to the borrower material information that might reasonably affect the borrower's rights, interests or ability to receive the borrower's intended benefit from the residential mortgage loan, including the total compensation the broker would receive from any of the loan options the broker presents to the borrower; and [2007, c. 273, Pt. A, §30 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

F. Make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges and repayment terms of the loan. [2007, c. 273, Pt. A, §30 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

[ 2007, c. 273, Pt. A, §30 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

2. The duties and standards of care created in this section may not be waived or modified.

[ 2007, c. 273, Pt. A, §30 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

#### SECTION HISTORY

2007, c. 273, Pt. A, §30 (NEW). 2007, c. 273, Pt. A, §41 (AFF).

### §10-304. ADVERTISING

1. A loan broker may not engage in this State in false or misleading advertising concerning the terms and conditions of any services or assistance offered.

[ 2005, c. 274, §11 (AMD) .]

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

[ 1989, c. 70, §3 (NEW) .]

3. A loan broker shall include its license number in all print advertising in this State.

[ 2005, c. 274, §11 (NEW) .]

#### SECTION HISTORY

1989, c. 70, §3 (NEW). 2005, c. 274, §11 (AMD).

## §10-305. RULEMAKING

The administrator may adopt reasonable rules pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, and in accordance with this article governing loan brokers. [2005, c. 274, §12 (AMD).]

### SECTION HISTORY

1989, c. 70, §3 (NEW). 2005, c. 274, §12 (AMD).

## §10-306. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A loan broker shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the loan broker is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [2005, c. 274, §13 (AMD).]

### SECTION HISTORY

2001, c. 262, §A3 (NEW). 2005, c. 274, §13 (AMD).

## §10-307. REAL ESTATE SETTLEMENT PROCEDURES

A loan broker and its mortgage loan originators shall comply with the provisions of 12 United States Code, Section 2601 et seq., the federal Real Estate Settlement Procedures Act of 1974 and its implementing regulation, Regulation X, 12 Code of Federal Regulations, Section 1024.1 et seq. [2013, c. 464, §12 (AMD).]

### SECTION HISTORY

2007, c. 273, Pt. A, §31 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2007, c. 466, Pt. B, §9 (AMD). 2007, c. 466, Pt. B, §10 (AFF). 2011, c. 427, Pt. B, §16 (AMD). 2013, c. 464, §12 (AMD).

## §10-307-A. APPLICATION OF TRUTH IN LENDING LIMITS

A loan broker and its mortgage loan originators shall comply with the provisions of the Federal Truth in Lending provisions of Article 8-A and any rules adopted in accordance with that Article. [2011, c. 427, Pt. A, §16 (NEW).]

### SECTION HISTORY

2011, c. 427, Pt. A, §16 (NEW).

## §10-308. FALSE INFORMATION ON APPLICATION FOR CREDIT

A loan broker or any mortgage loan originator of a loan broker may not knowingly permit, encourage or assist a consumer to submit false information on any application for credit, nor may a loan broker or mortgage loan originator of a loan broker knowingly falsify such information on a consumer's application. [2011, c. 427, Pt. B, §17 (AMD).]

### SECTION HISTORY

2007, c. 273, Pt. A, §32 (NEW). 2007, c. 273, Pt. A, §41 (AFF). 2011, c. 427, Pt. B, §17 (AMD).

### §10-309. RATE LOCKS

If a loan broker collects a fee from a consumer to lock in a certain interest rate for a certain length of time, that loan broker shall: [2007, c. 273, Pt. A, §33 (NEW); 2007, c. 273, Pt. A, §41 (AFF).]

1. Take steps that are necessary to actually secure or guarantee the specified rate for the appropriate length of time;

[ 2007, c. 273, Pt. A, §33 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

2. Select a time period within which the loan can reasonably be expected to close; and

[ 2007, c. 273, Pt. A, §33 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

3. Use good faith efforts to close the loan within the rate lock period.

[ 2007, c. 273, Pt. A, §33 (NEW); 2007, c. 273, Pt. A, §41 (AFF) .]

#### SECTION HISTORY

2007, c. 273, Pt. A, §33 (NEW). 2007, c. 273, Pt. A, §41 (AFF).

### §10-310. REQUIREMENTS RELATED TO REFUND ANTICIPATION LOAN AND REFUND ANTICIPATION CHECK

1. A facilitator of a refund anticipation loan or refund anticipation check shall make the following disclosures in accordance with this section.

A. A facilitator of a refund anticipation loan or refund anticipation check shall prominently display a schedule showing the current fees for a refund anticipation loan or refund anticipation check at its place of business. Each fee schedule must include at least 5 examples of refund anticipation loans in different amounts ranging from \$300 to \$5,000. [2009, c. 248, §9 (NEW).]

B. A facilitator of a refund anticipation loan or refund anticipation check shall post the following notice to consumers: "When you take out a refund anticipation loan, you are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. You can get your refund in 8 to 15 days without paying any extra fees and taking out a refund anticipation loan. You can have your tax return filed electronically and your refund deposited directly into your own bank account without obtaining a refund anticipation loan or paying fees for an extra product." [2009, c. 248, §9 (NEW).]

C. At the time a person applies for a refund anticipation loan or refund anticipation check, the facilitator of a refund anticipation loan or refund anticipation check shall disclose, on a form separate from the application, the refund anticipation loan fee or refund anticipation check fee; the fee for tax preparation or any other fee; the time within which the proceeds of the refund anticipation loan or refund anticipation check will be paid if the loan or check is approved; and, in the case of a refund anticipation loan, if it is the practice of the facilitator to demand repayment upon delivery of the refund, the annual percentage rate based on the facilitator's reasonable estimate of the time the refund will be delivered. [2011, c. 427, Pt. D, §14 (AMD).]

D. Prior to the consummation of the refund anticipation loan or refund anticipation check transaction, the facilitator of a refund anticipation loan or refund anticipation check shall also provide a copy of the completed loan or check application and agreement and, for a refund anticipation loan, the disclosures required by Article 8-A. [2011, c. 427, Pt. D, §14 (AMD).]

E. If a person applies for a refund anticipation loan, the facilitator of a refund anticipation loan or refund anticipation check shall orally inform the applicant that the product is a loan that lasts only one to 2 weeks, that the applicant is liable for the full amount of the loan if the anticipated tax refund is less than expected, the amount of any loan fees and the interest rate for the loan. If a person applies for a refund anticipation check, the facilitator of a refund anticipation loan or refund anticipation check shall orally inform the applicant of any check fee and that the applicant can receive a refund without a loan or extra fees if the refund is filed electronically and the applicant chooses direct deposit to the applicant's own bank account. [2009, c. 248, §9 (NEW).]

[ 2011, c. 427, Pt. D, §14 (AMD) . ]

2. A facilitator of a refund anticipation loan or refund anticipation check is prohibited from engaging in any of the following activities.

A. A facilitator of a refund anticipation loan or refund anticipation check may not assess or impose any fee, charge or other consideration in the making of a refund anticipation loan or refund anticipation check unless that fee, charge or other consideration is included in the disclosed refund anticipation loan fee and the refund anticipation loan interest rate charged by the creditor or bank that provides the loan or check. In addition, any such fee, charge or other consideration, from whatever source, must be disclosed on the written agreement required by section 10-302. A facilitator of a refund anticipation loan or refund anticipation check may charge a fee for tax preparation if the same fee in the same amount is charged to customers who do not receive a refund anticipation loan, refund anticipation check or any other tax-related financial product. [2009, c. 248, §9 (NEW).]

B. A facilitator of a refund anticipation loan or refund anticipation check may not engage in unfair or deceptive acts or practices in the facilitating of a refund anticipation loan or refund anticipation check, including making any oral statements contradicting any of the information required to be disclosed under this Article. [2009, c. 248, §9 (NEW).]

C. A facilitator of a refund anticipation loan or refund anticipation check may not threaten to take any action prohibited by this Article in facilitating a refund anticipation loan or refund anticipation check. [2009, c. 248, §9 (NEW).]

D. A facilitator of a refund anticipation loan or refund anticipation check may not directly or indirectly arrange for any 3rd party to charge any interest, fee or charge related to a refund anticipation loan or refund anticipation check, including but not limited to charges for insurance, check cashing or attorney's fees or other collection costs. [2009, c. 248, §9 (NEW).]

E. A facilitator of a refund anticipation loan or refund anticipation check may not include any of the following provisions in a refund anticipation loan application or agreement:

- (1) A hold-harmless clause;
- (2) A confession-of-judgment clause;
- (3) A waiver of the right to a jury trial in any action;
- (4) Any assignment of or order for payment of wages or other compensation for services;
- (5) An agreement that the consumer will not assert any claim or defense arising out of the contract or seek any remedies pursuant to this Title;
- (6) A waiver of any requirement of this Article;
- (7) A waiver of the right to injunctive, declaratory or other equitable relief or relief on a classwide basis; or

(8) A requirement that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential. [2009, c. 248, §9 (NEW).]

F. A facilitator of a refund anticipation loan or refund anticipation check may not take or arrange for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of a refund anticipation loan. [2009, c. 248, §9 (NEW).]

G. A facilitator of a refund anticipation loan or refund anticipation check may not directly or indirectly engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee. [2009, c. 248, §9 (NEW).]

H. A facilitator of a refund anticipation loan or refund anticipation check may not refer, facilitate or solicit consumers on behalf of a 3rd party engaged in check cashing for a fee or permit 3rd-party check cashing for a fee in any place of business in which refund anticipation loans or refund anticipation checks are facilitated. [2009, c. 248, §9 (NEW).]

I. A facilitator of a refund anticipation loan or refund anticipation check may not facilitate any refund anticipation loan that is secured by or that the creditor arranges to be repaid directly from the proceeds of the consumer's state tax refund. [2009, c. 248, §9 (NEW).]

J. A facilitator of a refund anticipation loan or refund anticipation check may not make a misrepresentation of fact in obtaining or attempting to obtain a registration as a facilitator. [2009, c. 248, §9 (NEW).]

K. A facilitator of a refund anticipation loan or refund anticipation check may not advertise or market a refund anticipation loan without including in the advertising or marketing materials a disclosure that the product is a loan and that tax refunds can be obtained without a loan or extra fees if tax returns are electronically filed with direct deposit. [2009, c. 248, §9 (NEW).]

L. A facilitator of a refund anticipation loan or refund anticipation check may not advertise or market a refund anticipation check without including in the advertising or marketing materials a disclosure that there is a fee associated with the check and that tax refunds can be obtained without a loan or extra fees if tax returns are electronically filed with direct deposit. [2009, c. 248, §9 (NEW).]

[ 2009, c. 248, §9 (NEW) .]

#### SECTION HISTORY

2009, c. 248, §9 (NEW). 2011, c. 427, Pt. D, §14 (AMD).

## Part 4: REMEDIES AND PENALTIES

### §10-401. EFFECTS OF VIOLATIONS ON RIGHTS OF PARTIES

Any loan broker or mortgage loan originators of any loan broker that violate any provision of this Title or any rule issued by the administrator, or that through any unfair, unconscionable or deceptive practice cause actual damage to a consumer, are subject to the following: [2011, c. 427, Pt. B, §18 (AMD).]

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

[ 1989, c. 70, §3 (NEW) .]

2. After notice and hearing, forfeiture of such portion of the required bond as proportionately may make aggrieved parties whole;

[ 1989, c. 70, §3 (NEW) .]

3. A civil action, by the administrator through the Attorney General, after which a court may assess a civil penalty of not more than \$5,000;

[ 1993, c. 495, §5 (AMD) .]

4. A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the loan broker or its mortgage loan originators in an amount determined by the court, plus costs of the action together with reasonable attorney's fees; and

[ 2011, c. 427, Pt. B, §19 (AMD) .]

5. Revocation, suspension or nonrenewal of its license.

[ 2005, c. 274, §14 (AMD) .]

#### SECTION HISTORY

1989, c. 70, §3 (NEW). 1993, c. 495, §5 (AMD). 2005, c. 164, §§10,11 (AMD). 2005, c. 274, §14 (AMD). 2005, c. 683, §§B5,6 (AMD). 2011, c. 427, Pt. B, §§18, 19 (AMD).

## Article 11: RENTAL-PURCHASE PRACTICES

### §11-101. SHORT TITLE

This Article may be known and cited as the "Maine Consumer Credit Code - Rental-purchase Agreements." [1991, c. 787, (NEW).]

#### SECTION HISTORY

1991, c. 787, (NEW).

### §11-102. PURPOSE; RULES OF CONSTRUCTION

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

[ 1991, c. 787, (NEW) .]

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

A. Simplify, clarify and modernize the law governing rental-purchase agreements; [1991, c. 787, (NEW) .]

B. Provide certain disclosures to consumers who enter into rental-purchase agreements and to promote consumer understanding of the terms of rental-purchase agreements; [1991, c. 787, (NEW) .]

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 [1991, c. 787, (NEW) .]

D. Permit and encourage the development of fair and economically sound rental-purchase practices. [1991, c. 787, (NEW) .]

[ 1991, c. 787, (NEW) .]

#### SECTION HISTORY

1991, c. 787, (NEW).

### §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. [1991, c. 787, (NEW) .]

#### SECTION HISTORY

1991, c. 787, (NEW).

### §11-104. APPLICATION

This Article applies to rental-purchase agreements or acts, practices or conduct related to a rental-purchase agreement if: [1991, c. 787, (NEW) .]

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

[ 1991, c. 787, (NEW) .]

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 in this State, 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.

[ 2001, c. 287, §1 (AMD) . ]

#### SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §1 (AMD).

## §11-105. DEFINITIONS

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 787, (NEW).]

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

[ 1991, c. 787, (NEW) . ]

2. "Advertisement" means a commercial message in any medium that directly or indirectly aids, promotes or assists a rental-purchase agreement, but does not include in-store merchandising aids such as window signs and ceiling banners.

[ 2001, c. 287, §2 (AMD) . ]

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. The cash price of new merchandise is reasonably related to fair market value if it is equal to or less than the amounts determined under the formula set forth in paragraph A.

A. The cash price of new merchandise may not exceed the amount produced by multiplying the merchant cost by the applicable factor set forth below. For purposes of this paragraph, "merchant cost" means the bona fide actual cost, including freight charges, of the rental property paid by the merchant to a wholesaler, distributor, manufacturer or other provider, net of volume rebates, discounts or other incentives received by the merchant at the time the merchant purchased the item. The maximum cash price must be computed as follows:

- (1) For appliances, the applicable factor is 1.75;
- (2) For electronics having merchant cost less than \$150, the applicable factor is 1.75;
- (3) For electronics having merchant cost greater than or equal to \$150, the applicable factor is 2.00;
- (4) For furniture and jewelry, the applicable factor is 2.50; and
- (5) For items not listed in subparagraphs (1) to (4), the applicable factor is 2.00. [ 2001, c. 287, §2 (NEW) . ]

B. The cash price of used merchandise offered for rental may not exceed the maximum permitted cash price of the property when new and must be adjusted for other relevant factors. Other relevant factors include:

- (1) The duration of prior rentals and whether the item has been repaired one or more times;
- (2) Whether the consumer price of the general class of items to which the item belongs has decreased or increased since the merchant originally purchased it; and

(3) The condition of the item. [ 2001, c. 287, §2 (NEW) . ]

[ 2001, c. 287, §2 (AMD) . ]

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

[ 1991, c. 787, (NEW) . ]

**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.

[ 1991, c. 787, (NEW) . ]

**5-A.** "Debt" means an obligation or alleged obligation of a consumer to surrender or return rental property or pay money arising out of a rental-purchase agreement.

[ 2001, c. 287, §3 (NEW) . ]

**5-B.** "Location information" means a consumer's place of residence and the consumer's telephone numbers at that location and at the consumer's place of employment.

[ 2001, c. 287, §3 (NEW) . ]

**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.

[ 1991, c. 787, (NEW) . ]

**6-A.** "Periodic payment" means the total payment the consumer will make for a specific rental period, including the rental payment, any administrative fees or delivery charges, taxes and fees or charges for optional products and services.

[ 2001, c. 287, §3 (NEW) . ]

**6-B.** "Rental payment" means a payment to be made by a consumer for the right of possession and use of rental property for a specific rental period, but does not include taxes imposed on such payment.

[ 2001, c. 287, §3 (NEW) . ]

**6-C.** "Rental period" means a week, month or other specific period of time during which the consumer has a right to possess and use the property after making the rental payment and applicable tax payment for such period.

[ 2001, c. 287, §3 (NEW) . ]

**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.

[ 1991, c. 787, (NEW) . ]

8. "Rental-purchase cost" means the total of charges payable by the consumer and imposed by the merchant as a condition of entering into and acquiring ownership of property under a rental-purchase agreement. "Rental-purchase cost" includes rental payments and any initial administrative fees, but does not include taxes, delivery charges, late charges, payment pick-up fees or any optional charges or fees that meet the requirements of section 11-111, subsection 4.

[ 2001, c. 287, §3 (NEW) . ]

9. "Total of payments to acquire ownership" means the total of all charges payable by the consumer to acquire ownership of the rental property. "Total of payments to acquire ownership" includes any initial administrative fee, the total of all rental payments and taxes, but does not include delivery charges, late charges, payment pick-up fees or any optional charges or fees that meet the requirements of section 11-111, subsection 4.

[ 2001, c. 287, §3 (NEW) . ]

#### SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §§2,3 (AMD).

### §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; [1991, c. 787, (NEW) . ]

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; Article 8-A requirements related to model forms; and Federal Truth in Lending Act, 15 United States Code, Section 1666a requirements related to credit reports; [2011, c. 427, Pt. D, §15 (AMD) . ]

C. A "consumer lease" as defined in section 1-301, subsection 13; [1991, c. 787, (NEW) . ]

D. A "sale of goods" as defined in section 1-301, subsection 33; or [1991, c. 787, (NEW) . ]

E. A "security interest" as defined in Title 11, section 1-201, subsection (37). [1991, c. 787, (NEW) . ]

[ 2011, c. 427, Pt. D, §15 (AMD) . ]

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; [1991, c. 787, (NEW).]
- B. A lease of a safe-deposit box; [1991, c. 787, (NEW).]
- 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; [1991, c. 787, (NEW).]
- D. A lease of an automobile; or [1991, c. 787, (NEW).]
- E. A lease of real estate. [1991, c. 787, (NEW).]

[ 1991, c. 787, (NEW) .]

#### SECTION HISTORY

1991, c. 787, (NEW). 2011, c. 427, Pt. D, §15 (AMD).

### §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.

[ 1991, c. 787, (NEW) .]

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

[ 1991, c. 787, (NEW) .]

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 above the line for the consumer's signature. If disclosures are made on more than one page, the contract complies with this subsection if the consumer signs each page of the contract.

[ 2001, c. 287, §4 (AMD) .]

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.

[ 1991, c. 787, (NEW) .]

5. A merchant may disclose information that is not required by this Article if the additional information is not stated, used or placed in a manner that contradicts, obscures or distracts attention from the required information.

[ 2001, c. 287, §5 (NEW) .]

#### SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §§4,5 (AMD).

## §11-108. DISCLOSURE

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

A. [2001, c. 287, §6 (RP).]

B. [2001, c. 287, §6 (RP).]

C. A statement that the consumer is responsible for the fair market value, remaining rent, early purchase option amount or cost of repair of the property, whichever is least, if, and as of the time, it is lost, stolen, damaged or destroyed; [2001, c. 287, §7 (AMD).]

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; [1991, c. 787, (NEW).]

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; [1991, c. 787, (NEW).]

F. [2001, c. 287, §8 (RP).]

G. A statement that the total of payments to acquire ownership does not include other charges the consumer may incur, such as late-payment, payment pick-up fees and charges or fees for optional products or services. Late-payment, payment pick-up fees and charges or fees for optional products or services must be separately disclosed in the agreement; [2001, c. 287, §9 (AMD).]

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; [1991, c. 787, (NEW).]

I. A description of any damage to the property; [1991, c. 787, (NEW).]

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; [1991, c. 787, (NEW).]

K. The date of the transaction and the identities of the merchant and the consumer; [1991, c. 787, (NEW).]

L. A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property to the merchant in good repair on or before the expiration of any rental period along with any past due rental payments; [2001, c. 287, §9 (AMD).]

M. Notice of the right to reinstate an agreement as provided in this Article; [1991, c. 787, (NEW).]

N. A description of what conditions constitute default by the consumer; and [1991, c. 787, (NEW).]

O. A notice to the consumer pursuant to section 3-202. [1991, c. 787, (NEW).]

[ 2001, c. 287, §§6 - 9 (AMD) .]

2. To the extent applicable, the following information must be disclosed and grouped together in each rental-purchase agreement:

A. The amount of the payment required at or before consummation of the agreement or delivery of the property, whichever is later, using the term "initial payment." The merchant shall itemize each component of the initial payment by type and amount, including any initial administrative fee, delivery charge, rental payment, taxes and charges or fees for optional products or services; [2001, c. 287, §10 (NEW).]

B. The amount of the "regular periodic payment," using that term. The merchant shall itemize each component of the regular periodic payment by type and amount, including the rental payment, taxes and charges or fees for optional products or services. If the final periodic payment is less than or equal to the regular periodic payment, the components of the final periodic payment need not be itemized; [2001, c. 287, §10 (NEW).]

C. The "total of payments to acquire ownership," using that term and a brief description, such as "the total amount you will have paid, including any initial administrative fee, the total of all rental payments and taxes, if you acquire ownership of the property by making all scheduled payments, but not including late charges or payment pick-up fees you may incur or charges or fees for optional products or services you may elect to purchase"; [2001, c. 287, §10 (NEW).]

D. A statement in substantially the following form in no less than 8-point boldface type: "YOU WILL BE RENTING THE PROPERTY. YOU WILL NOT ACQUIRE EQUITY OR OWNERSHIP RIGHTS IN THE PROPERTY UNLESS YOU MAKE ALL PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP."; [2001, c. 287, §10 (NEW).]

E. The following statement: "Other important terms. See your rental-purchase agreement for additional important information on termination, purchase option, reinstatement rights, warranties, maintenance responsibilities, late charges and payment pick-up fees and your liability for loss, theft, damage or destruction of the property."; and [2001, c. 287, §10 (NEW).]

F. The "payment schedule," using that term, and a description of the number, amount and due dates or periods of payments scheduled under the agreement. A merchant may also disclose alternative periodic payments and payment schedules. [2001, c. 287, §10 (NEW).]

[2001, c. 287, §10 (NEW).]

#### SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §§6-10 (AMD). 2001, c. 287, §9 (AMD).

### §11-109. PROHIBITED PRACTICES

A rental-purchase agreement may not contain: [1991, c. 787, (NEW).]

1. A confession of judgment;

[1991, c. 787, (NEW).]

2. A negotiable instrument;

[1991, c. 787, (NEW).]

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;

[1991, c. 787, (NEW).]

4. A wage assignment;

[1991, c. 787, (NEW).]

5. A waiver by the consumer of claims or defenses;

[ 1991, c. 787, (NEW) . ]

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;

[ 1991, c. 787, (NEW) . ]

7. A provision requiring the purchase from the merchant of a liability damage waiver or insurance for the merchandise;

[ 1991, c. 787, (NEW) . ]

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;

[ 1991, c. 787, (NEW) . ]

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;

[ 1991, c. 787, (NEW) . ]

10. A penalty for early termination of a rental-purchase agreement or for the return of an item at any time;

[ 1991, c. 787, (NEW) . ]

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

[ 1991, c. 787, (NEW) . ]

12. An offer of insurance from the merchant to the consumer.

[ 1991, c. 787, (NEW) . ]

#### SECTION HISTORY

1991, c. 787, (NEW).

## §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 \$3. Only one late charge may be assessed on any delinquent payment, regardless of how long the payment remains unpaid. [2001, c. 287, §11 (AMD).]

#### SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §11 (AMD).

**§11-111. ALLOWABLE CHARGES**

In addition to rental payments, a merchant may contract for and receive the following charges or fees.  
[ 2001, c. 287, §12 (AMD) . ]

1. An initial administrative fee not to exceed \$15 may be assessed but the fee must be refunded to the consumer if the rental agreement is not consummated. If a consumer enters into more than one rental-purchase agreement with a merchant on the same day, only one initial administrative fee may be assessed.

[ 2001, c. 287, §12 (AMD) . ]

2. An optional delivery charge may not exceed \$30 for 3 or fewer items actually delivered or \$60 for 4 or more items actually delivered.

[ 2001, c. 287, §12 (AMD) . ]

3. An optional payment pick-up fee may not exceed \$7.50 and may be assessed only once per payment.

[ 2001, c. 287, §12 (AMD) . ]

4. A liability damage waiver fee may be contracted for and received pursuant to section 11-115.

[ 1991, c. 787, (NEW) . ]

## SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §12 (AMD).

**§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.

[ 1991, c. 787, (NEW) . ]

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.

[ 1991, c. 787, (NEW) . ]

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:

(date due)	(amount)
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).	

[ 1991, c. 787, (NEW) . ]

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.

[ 1991, c. 787, (NEW) . ]

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.

[ 1991, c. 787, (NEW) . ]

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.

[ 1991, c. 787, (NEW) . ]

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

[ 1991, c. 787, (NEW) . ]

#### SECTION HISTORY

1991, c. 787, (NEW) .

**§11-113. REINSTATEMENT**

1. A consumer who fails to make a timely rental payment but has returned or surrendered the rental property to the merchant within 7 days after missing a payment or within 2 business days of the merchant's request, whichever comes later, 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 [1991, c. 787, (NEW).]

B. Other charges expressly provided in this Article, except any initial administrative fee. [2001, c. 287, §13 (AMD).]

[ 2001, c. 287, §13 (AMD) .]

2.

[ 2001, c. 287, §13 (RP) .]

3.

[ 2001, c. 287, §13 (RP) .]

4. A consumer who has returned or surrendered the rental property within the reinstatement period set forth in subsection 1 may reinstate the agreement during a period of not less than 180 days after the date of the missed payment.

[ 2001, c. 287, §13 (AMD) .]

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.

[ 1991, c. 787, (NEW) .]

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

[ 1991, c. 787, (NEW) .]

## SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §13 (AMD).

**§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.

[ 1991, c. 787, (NEW) .]

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.

[ 1991, c. 787, (NEW) . ]

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.

[ 1991, c. 787, (NEW) . ]

#### SECTION HISTORY

1991, c. 787, (NEW) .

### **§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 \$3 in the case of any rental-purchase agreement with renewal periods more frequent than monthly or the greater of 5% of any periodic rental payment due or \$7.50 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. [2001, c. 287, §14 (AMD) . ]

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.

[ 1991, c. 787, (NEW) . ]

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.

[ 1991, c. 787, (NEW) . ]

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 or a notice in a substantially similar form:

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.

[ 2001, c. 287, §15 (AMD) . ]

4. A liability damage waiver may not be a factor in the approval by the merchant of the rental-purchase transaction and the contract may take effect only after the consumer has signed or initialed an affirmative request to purchase the liability damage waiver after written disclosure of the cost of the liability damage waiver.

[ 2001, c. 287, §16 (NEW) .]

#### SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §§14-16 (AMD).

### §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. [1991, c. 787, (NEW) .]

#### SECTION HISTORY

1991, c. 787, (NEW) .

### §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; [1991, c. 787, (NEW) .]
- B. A deferral or extension of one or more periodic payments or portions of a periodic payment; [1991, c. 787, (NEW) .]
- C. A reduction in charges in the agreement; and [1991, c. 787, (NEW) .]
- D. An agreement involved in a court proceeding. [1991, c. 787, (NEW) .]

[ 1991, c. 787, (NEW) .]

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

[ 1991, c. 787, (NEW) .]

#### SECTION HISTORY

1991, c. 787, (NEW) .

### §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 for a specific item must state clearly and conspicuously:

- A. That the transaction advertised is a rental-purchase agreement; [1991, c. 787, (NEW) .]
- B. The rental-purchase cost; and [2001, c. 287, §17 (AMD) .]

C. That the consumer does not acquire ownership rights until the total of payments to acquire ownership is paid. [2001, c. 287, §17 (AMD).]

[ 2001, c. 287, §17 (AMD) .]

2. For any item of property displayed or offered for rental-purchase, the merchant shall display a point-of-rental placard. The point-of-rental placard must disclose the rental payment amount and, in numerals and lettering at least as prominent as the rental payment amount, the following:

A. The number of rental payments necessary to acquire ownership of the item and the rental period; [2001, c. 287, §17 (AMD).]

B. The rental-purchase cost of the item; and [2001, c. 287, §17 (AMD).]

C. Whether the item is new or used. [2001, c. 287, §17 (NEW).]

Labeling a new item as used is not a violation of this Article.

[ 2001, c. 287, §17 (AMD) .]

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.

[ 1991, c. 787, (NEW) .]

4. A merchant may make the disclosures required by subsection 2 in the form of a list or catalog that is readily available to the consumer if the property is not displayed in the merchant's showroom or if displaying a point-of-rental placard would be impractical due to the size of the property.

[ 2001, c. 287, §17 (NEW) .]

This section does not apply to an advertisement that does not refer to or state the amount of any payment. [1991, c. 787, (NEW).]

#### SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §17 (AMD).

## §11-119. COLLECTION ACTIVITY

The following provisions govern the debt collection practices of merchants under this Article. [2001, c. 287, §18 (RPR).]

1. A merchant communicating with any person other than the consumer for the purpose of acquiring location information about the consumer may:

A. Identify the merchant and state that the merchant is confirming or correcting location information concerning the consumer; [2001, c. 287, §18 (NEW).]

B. Not state that the consumer owes any debt; [2001, c. 287, §18 (NEW).]

C. Not communicate with any such person more than once, unless requested to do so by that person or unless the merchant reasonably believes that the earlier response of that person was erroneous or incomplete and that the person now has correct or complete location information; [2001, c. 287, §18 (NEW).]

D. Not communicate by postcard; [2001, c. 287, §18 (NEW).]

E. Not use language or a symbol on an envelope or in the contents of a communication effected by the mails or by telegram that indicates that the communication relates to the collection of a debt; and [2001, c. 287, §18 (NEW).]

F. After the merchant knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, that attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the merchant. [2001, c. 287, §18 (NEW).]

[ 2001, c. 287, §18 (NEW) .]

2. Without the prior consent of the consumer given directly to the merchant or the express permission of a court of competent jurisdiction, a merchant may not communicate with a consumer in connection with the collection of any debt:

A. At an unusual time or place or a time or place known or that should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a merchant shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location; [2001, c. 287, §18 (NEW).]

B. If the merchant knows that the consumer is represented by an attorney with respect to that debt and has knowledge of, or can readily ascertain, that attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the merchant or unless the attorney consents to direct communication with the consumer; or [2001, c. 287, §18 (NEW).]

C. At the consumer's place of employment if the merchant knows or has reason to know that the consumer's employer prohibits the consumer from receiving a communication. [2001, c. 287, §18 (NEW).]

[ 2001, c. 287, §18 (NEW) .]

3. Except as provided in subsection 1, without the prior consent of the consumer given directly to the merchant or the express permission of a court of competent jurisdiction, or except as reasonably necessary to effectuate a post-judgment judicial remedy, a merchant may not communicate, in connection with the collection of a debt, with a person other than the consumer, the consumer's attorney, a consumer reporting agency if otherwise permitted by law or the attorney of the merchant.

[ 2001, c. 287, §18 (NEW) .]

4. A merchant may not engage in conduct the natural consequence of which is to harass, oppress or abuse a person in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of a person; [2001, c. 287, §18 (NEW).]

B. The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader; [2001, c. 287, §18 (NEW).]

C. The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Title 10, chapter 209-B; [2013, c. 588, Pt. C, §3 (AMD).]

D. The advertisement for sale of a debt to coerce payment of the debt; [2001, c. 287, §18 (NEW).]

E. Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass a person at the called number; [2001, c. 287, §18 (NEW).]

F. Except as provided in subsection 1, the placement of telephone calls without meaningful disclosure of the caller's identity; and [2001, c. 287, §18 (NEW).]

G. The use of "shame cards," "shame automobiles" or similar devices, except that delivery vehicles used by the merchant in the ordinary course of business may not be considered "shame automobiles." [2001, c. 287, §18 (NEW).]

[ 2013, c. 588, Pt. C, §3 (AMD) .]

5. A merchant may not use a false, deceptive or misleading representation or means in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The false representation or implication that the merchant is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform, seal, insignia or facsimile; [2001, c. 287, §18 (NEW).]

B. The false representation of the character, amount or legal status of a debt; [2001, c. 287, §18 (NEW).]

C. The false representation or implication that an individual is an attorney or that a communication is from an attorney; [2001, c. 287, §18 (NEW).]

D. The representation or implication that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, attachment or sale of property or wages of a person, unless that action is lawful and the merchant intends to take that action; [2001, c. 287, §18 (NEW).]

E. The threat to take an action that may not legally be taken or that is not intended to be taken; [2001, c. 287, §18 (NEW).]

F. The false representation or implication that a sale, referral or other transfer of any interest in a debt will cause the consumer to:

(1) Lose a claim or defense to payment of the debt; or

(2) Become subject to a practice prohibited by this Article; [2001, c. 287, §18 (NEW).]

G. The false representation or implication that the consumer committed a crime or other conduct in order to disgrace the consumer; [2001, c. 287, §18 (NEW).]

H. Communicating or threatening to communicate to any person credit information that is known or that should be known to be false, including the failure to communicate that a disputed debt is disputed; [2001, c. 287, §18 (NEW).]

I. The use or distribution of a written communication that simulates or is falsely represented to be a document authorized, issued or approved by a court, official or agency of the United States or any state, or that creates a false impression as to its source, authorization or approval; [2001, c. 287, §18 (RPR).]

J. The use of a false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer; [2001, c. 287, §18 (NEW).]

K. The false representation or implication that accounts have been turned over to innocent purchasers for value; [2001, c. 287, §18 (NEW).]

L. The false representation or implication that documents are legal process; [2001, c. 287, §18 (NEW).]

M. The use of a business, company or organization name other than the true name of the merchant's business, company or organization; [2001, c. 287, §18 (NEW).]

N. The false representation or implication that documents are not legal process forms or do not require action by the consumer; or [2001, c. 287, §18 (NEW).]

O. The false representation or implication that a merchant operates or is employed by a consumer reporting agency, as defined by Title 10, section 1308, subsection 3. [2013, c. 588, Pt. C, §4 (AMD).]

[ 2013, c. 588, Pt. C, §4 (AMD) .]

**6.** A merchant may not use unfair or unconscionable means to collect or attempt to collect a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The collection of an amount, including any interest, fee, charge or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law; [2001, c. 287, §18 (NEW).]

B. The solicitation by a merchant of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution; [2001, c. 287, §18 (NEW).]

C. Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument; [2001, c. 287, §18 (NEW).]

D. Causing charges to be made to a person for communications by concealment of the true purpose of the communication. These charges include, but are not limited to, collect telephone calls and telegram fees; [2001, c. 287, §18 (NEW).]

E. Communicating with a consumer regarding a debt by postcard; [2001, c. 287, §18 (NEW).]

F. Using language or a symbol, other than the merchant's address and business name, on an envelope when communicating with a consumer in connection with a debt; or [2001, c. 287, §18 (NEW).]

G. Using or employing notaries public, constables, sheriffs or any other officer authorized to serve legal papers in the collection of a debt. [2001, c. 287, §18 (NEW).]

[ 2001, c. 287, §18 (NEW) .]

#### SECTION HISTORY

1991, c. 787, (NEW). 2001, c. 287, §18 (RPR). 2013, c. 588, Pt. C, §§3, 4 (AMD).

## §11-120. ENFORCEMENT; PENALTIES

A merchant who violates this Article or any rule issued by the administrator is subject to the following: [1991, c. 787, (NEW).]

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

[ 1991, c. 787, (NEW) .]

**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

[ 1991, c. 787, (NEW) .]

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.

[ 1991, c. 787, (NEW) . ]

SECTION HISTORY

1991, c. 787, (NEW) .

### §11-121. EFFECTIVE DATE

This Article takes effect January 1, 1993. [1991, c. 787, (NEW) . ]

SECTION HISTORY

1991, c. 787, (NEW) .

### §11-122. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A merchant who enters into a rental-purchase agreement with a consumer shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the merchant is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. This section does not apply to a supervised financial organization. [2001, c. 262, Pt. A, §4 (NEW) . ]

SECTION HISTORY

2001, c. 262, §A4 (NEW) .

## Article 12: LEGAL FUNDING PRACTICES

### §12-101. SHORT TITLE

This article may be known and cited as "the Maine Consumer Credit Code Legal Funding Practices."  
[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF). ]

#### SECTION HISTORY

2007, c. 394, §1 (NEW). 2007, c. 394, §3 (AFF).

### §12-102. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF). ]

1. "Consumer" means a person or entity residing or domiciled in this State with a pending civil claim or action and represented by an attorney.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

2. "Legal funding" means a transaction in which a company makes a cash payment to a consumer in exchange for the right to receive an amount out of the potential proceeds of any realized settlement, judgment, award or verdict the consumer may receive in a civil claim or action. If no proceeds in the civil claim or action are received, the consumer is not required to pay the company.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

3. "Litigation funding provider" means a person or entity, wherever located, that provides legal funding to a consumer.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

#### SECTION HISTORY

2007, c. 394, §1 (NEW). 2007, c. 394, §3 (AFF).

### §12-103. APPLICATION OF LAW

1. This article does not apply to an advance made by a consumer's attorney to pay for expenses related to preparation for trial.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

2. Legal funding that is made pursuant to this article is not a consumer credit transaction as defined in section 1-301, subsection 12.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

3. An advance made to a consumer other than pursuant to the terms of this article is a supervised loan as defined in section 1-301, subsection 40.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

#### SECTION HISTORY

2007, c. 394, §1 (NEW). 2007, c. 394, §3 (AFF).

**§12-104. REQUIREMENTS FOR LEGAL FUNDING CONTRACTS**

The following provisions govern the legal funding contracts used by a litigation funding provider. [ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

1. All contracts must be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who makes a reasonable effort under ordinary circumstances to read and understand the terms of the legal funding contract without having to obtain the assistance of a professional. The contract must have a meaningful arrangement that is appropriately divided and captioned by its various sections.

This subsection applies to any agreement signed by the consumer in connection with a legal funding contract entered into in this State. This subsection does not apply to any acknowledgment or representation signed by an attorney. This subsection does not apply to legal funding contracts when an organization is the plaintiff; to language or arrangements that are specifically required by federal or state law, regulation or official agency interpretation; or to agreements, the form or any part of which is required by a governmental instrumentality as a condition of the assignability of the agreement.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

2. All contracts must be completely filled in and must contain a disclosure form on the front page in at least 12-point bold type, in the following format:

**DISCLOSURE STATEMENT**

1. Total amount of legal funding received by consumer under this contract:	\$ _____
2. Itemized fees:	\$ _____
Application	\$ _____
Processing	\$ _____
Attorney review	\$ _____
Broker	\$ _____
Other ( )	\$ _____
Total fees:	\$ _____
3. Annual percentage fee (rate of return) on advance, compounded semiannually:	_____ %
4. Total amount to be repaid by consumer	
if at 6 months:	\$ _____
if at 12 months:	\$ _____
if at 18 months:	\$ _____
if at 24 months:	\$ _____
if at 30 months:	\$ _____
if at 36 months:	\$ _____
if at 42 months:	\$ _____

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

3. All contracts must provide that the consumer may cancel the contract within 5 business days following the consumer's receipt of funds without penalty or further obligation. The contract must contain the following notice written in a clear and conspicuous manner: "MAINE CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM [insert name of litigation funding provider]." The contract must also specify that in order for the cancellation to be effective, the consumer must either return the full amount of disbursed funds to the company by delivering the litigation funding provider's uncashed check to the provider's offices in person within 5 business days of the disbursement of funds or mail a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the provider's check, or a registered or certified check

or money order, by insured, registered or certified United States mail postmarked within 5 business days of receiving funds from the litigation funding provider, at the address specified for such cancellation in the contract.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

**4.** The consumer shall initial each page of the contract.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

**5.** All contracts must contain a legend above the consumer's signature in at least 12-point bold type to read:

"NOTICE: LEGAL FUNDING PROVIDERS MUST REGISTER WITH MAINE REGULATORS. GO TO [www.maine.gov/pfr/consumercredit](http://www.maine.gov/pfr/consumercredit) AND SELECT THE "ROSTERS" LINK TO VERIFY A LITIGATION FUNDING PROVIDER'S REGISTRATION OR TO CONTACT PROVIDERS TO OBTAIN COMPARATIVE RATE QUOTES."

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

**6.** All contracts must contain a legend immediately above the consumer's signature in at least 12-point bold type to read:

"DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS CONTRACT."

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

**7.** All contracts for legal funding must contain the following in at least 12-point bold type to read:

"THE LITIGATION FUNDING PROVIDER AGREES THAT IT HAS NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE SUCH DECISIONS REMAINS SOLELY WITH THE CONSUMER AND THE CONSUMER'S ATTORNEY."

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

**8.** A contract may not require mandatory arbitration to resolve disputes under the contract.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

**9.** All contracts for legal funding must contain a written acknowledgment by an attorney that states that:

A. The attorney has reviewed the contract and all costs and fees have been disclosed, including the amount to be paid by the consumer; [2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

B. The attorney is being paid per a written fee agreement; [2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

C. All proceeds of the civil claim or action will be disbursed via the attorney's trust account; and [2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

D. The attorney is following written instructions of the consumer with regard to the legal funding.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF). ]

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

**10.** For English-speaking, French-speaking and Spanish-speaking consumers, contracts must be written in the same language in which the oral negotiations are conducted between the company and the consumer. For consumers whose primary language is neither English, French nor Spanish, the principal terms of the contract must be translated by a certified translator in the consumer's native language and the translator must sign a notarized affirmation confirming that the principal terms have been presented to the consumer in the consumer's native language and acknowledged by the consumer in writing. Principal terms must include all of the items required to be disclosed by this section.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

**11.** To the extent the contract provides for attorney's fees and costs in addition to the amount due and owing under the contract, the contract must provide that in case of a breach of the contract by either party attorney's fees and costs may be recoverable by the prevailing party and must be reasonable. Any contractual cap on such attorney's fees and costs must apply equally to both parties.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

#### SECTION HISTORY

2007, c. 394, §1 (NEW). 2007, c. 394, §3 (AFF).

## §12-105. FEE REQUIREMENTS

**1.** A litigation funding provider may not assess fees for any period exceeding 42 months from the date of the contract with the civil litigant.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

**2.** Fees assessed by a litigation funding provider may compound semiannually but may not compound based on any lesser time period.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

**3.** In calculating the annual percentage fee or rate of return, a litigation funding provider must include all charges payable directly or indirectly by the consumer, and must compute the rate based only on amounts actually received and retained by a consumer.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

#### SECTION HISTORY

2007, c. 394, §1 (NEW). 2007, c. 394, §3 (AFF).

## §12-106. REGISTRATION OF LITIGATION FUNDING PROVIDER; FEES

**1.** Unless a litigation funding provider has first registered pursuant to this article, the litigation funding provider may not engage in the business of legal funding.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) . ]

2. Registration must be filed in the manner prescribed by the administrator and must contain the information the administrator requires to make an evaluation of the character, fitness and financial responsibility of the applicant. The initial application must be accompanied by a \$500 fee. A renewal registration must include a \$200 fee. A registration must be renewed every 2 years and expires on September 30th.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

3. Registration may not be issued unless the administrator, upon investigation, finds that the character and fitness of the applicant, and of the members thereof if the applicant is a copartnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

4. For purposes of this section, an applicant demonstrates financial responsibility if:

A. The applicant has available for the operation of the registered business net assets of at least \$25,000; and [2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF).]

B. Following the issuance of a registration under this section, the registrant maintains net assets of at least \$25,000 that are either used or readily available for use in the conduct of the business of each office of the registrant in which a legal funding is made. [2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF).]

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

5. Every applicant shall also, at the time of filing such an application, file with the administrator, if the administrator so requires, a bond satisfactory to the administrator in an amount not to exceed \$50,000. In lieu of the bond at the option of the registrant, the registrant may post an irrevocable letter of credit. The terms of the bond must run concurrent with the period of time during which the registration will be in effect. The bond must run to the State for the use of the State and of any person who may have a cause of action against the registrant under this article. The bond must be conditional that the registrant will faithfully conform to this article and to all rules made by the administrator under this article and will pay to the State and to any person all money that may become due or owing to the State or to such a person from the registrant under and by virtue of this article during the period for which the bond is given.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

6. A separate registration is required for each place of business. A registration fee of \$200 may be imposed for any registration issued for a place of business other than that of the first registered location of the registrant.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

7. A registrant may conduct the business of legal funding only at or from any place of business for which the registrant holds a license, including the names of other "doing business as" entities listed on the registration, and not under any other name than that on the registration.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

8. Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for a registration if:

A. The administrator has notified the applicant in writing that the application has been denied; or [2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF).]

B. The administrator has not issued a registration within 60 days after the application for the registration was filed. [2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF).]

A request for a hearing may not be made more than 15 days after the administrator has mailed a written notice to the applicant that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

#### SECTION HISTORY

2007, c. 394, §1 (NEW). 2007, c. 394, §3 (AFF).

## §12-107. POWERS AND FUNCTIONS OF THE ADMINISTRATOR

1. The powers and functions of the administrator are as set forth in Article 6, except that references to "consumer credit transactions" in Article 6 are considered to be references to advances made pursuant to legal funding.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

2. The administrator shall maintain a list of all registered companies and make that list available to consumers, attorneys and others on a publicly accessible website.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

3. The administrator shall require a litigation funding provider registered pursuant to section 12-106 to annually submit certain data, in a form and manner acceptable to the administrator, regarding the number of legal fundings, the amount of legal fundings, the number of legal fundings required to be repaid by the consumer and the amount charged to the consumer, including but not limited to the annual percentage fee charged to the consumer and the itemized fees charged to the consumer.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

4. Beginning March 1, 2009 and annually thereafter, the administrator shall prepare and submit a report on the status of legal funding activities in the State. The report must include aggregate information reported by litigation funding providers pursuant to subsection 3. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.

[ 2007, c. 394, §1 (NEW); 2007, c. 394, §3 (AFF) .]

#### SECTION HISTORY

2007, c. 394, §1 (NEW). 2007, c. 394, §3 (AFF).

## Article 13: MAINE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2009

### §13-101. SHORT TITLE

This Article may be known and cited as "the Maine Secure and Fair Enforcement for Mortgage Licensing Act of 2009." [2009, c. 362, Pt. B, §1 (NEW).]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

### §13-102. DEFINITIONS

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 362, Pt. B, §1 (NEW).]

**1. Clerical or support duties.** "Clerical or support duties" may include subsequent to the receipt of an application:

A. The receipt, collection, distribution and analysis of information common for the processing, underwriting or modification of a residential mortgage loan; and [2009, c. 362, Pt. B, §1 (NEW).]

B. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW).]

**1-A. Credit sale.** "Credit sale" means the sale of a dwelling or residential real estate purchased for a personal, family or household purpose in which credit is extended by the seller and either the debt is payable in installments or a finance charge is made.

[2011, c. 289, §1 (NEW); 2011, c. 289, §5 (AFF).]

**2. Depository institution.** "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

[2009, c. 362, Pt. B, §1 (NEW).]

**3. Dwelling.** "Dwelling" has the same meaning as in the federal Truth in Lending Act, Section 103(v).

[2009, c. 362, Pt. B, §1 (NEW).]

**4. Immediate family member.** "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. "Immediate family member" includes stepparents, stepchildren, stepsiblings and adoptive relationships.

[2009, c. 362, Pt. B, §1 (NEW).]

**5. Individual.** "Individual" means a natural person.

[2009, c. 362, Pt. B, §1 (NEW).]

**6. Loan processor or underwriter.** "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under the provisions of this Title. An individual engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**7. Mortgage loan originator.** "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

A. An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 13-103, subsection 3, paragraph A; [2009, c. 362, Pt. B, §1 (NEW). ]

B. A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with the laws of this State, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator; or [2009, c. 362, Pt. B, §1 (NEW). ]

C. A person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in Title 11 United States Code, Section 101(53D). [2009, c. 362, Pt. B, §1 (NEW) . ]

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**8. Nationwide mortgage licensing system and registry.** "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by a national organization dedicated to advancing the state banking system and a national association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**9. Nontraditional mortgage product.** "Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**10. Person.** "Person" means a natural person, corporation, company, limited liability company, partnership or association.

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**11. Real estate brokerage activity.** "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

A. Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property; [2009, c. 362, Pt. B, §1 (NEW). ]

B. Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property; [2009, c. 362, Pt. B, §1 (NEW). ]

C. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction; [2009, c. 362, Pt. B, §1 (NEW) . ]

D. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and [2009, c. 362, Pt. B, §1 (NEW).]

E. Offering to engage in any activity or act in any capacity, described in this subsection. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW) .]

**12. Registered mortgage loan originator.** "Registered mortgage loan originator" means an individual who:

A. Meets the definition of mortgage loan originator and is an employee of:

(1) A depository institution;

(2) A subsidiary that is:

(a) Owned and controlled by a depository institution; and

(b) Regulated by a federal banking agency; or

(3) An institution regulated by the federal Farm Credit Administration; and [2009, c. 362, Pt. B, §1 (NEW).]

B. Is registered with, and maintains a unique identifier through the nationwide mortgage licensing system and registry. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW) .]

**13. Residential mortgage loan.** "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling. "Residential mortgage loan" does not include a credit sale unless the credit sale is determined to be a residential mortgage loan by any rule, advisory ruling or interpretation issued by the administrator or by the United States Department of Housing and Urban Development or successor federal agency responsible for ensuring state compliance with the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 United States Code, Sections 5101 to 5113.

[2011, c. 289, §2 (AMD); 2011, c. 289, §5 (AFF) .]

**14. Residential real estate.** "Residential real estate" means any real property located in the State, upon which is constructed or intended to be constructed a dwelling.

[2009, c. 362, Pt. B, §1 (NEW) .]

**15. Unique identifier.** "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

[2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2011, c. 289, §§1, 2 (AMD). 2011, c. 289, §5 (AFF).

## §13-103. LICENSE AND REGISTRATION REQUIRED

**1. Requirement.** An individual, unless specifically exempted from this Article under subsection 2, may not engage in the business of a mortgage loan originator without obtaining and maintaining annually a license under this Article. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

As used in this subsection, "engaging in the business of a mortgage loan originator" means the individual, in a commercial context and habitually or repeatedly:

A. Takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain; or [ 2013, c. 295, §1 (NEW) . ]

B. Represents to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform the activities described in paragraph A. [ 2013, c. 295, §1 (NEW) . ]

An individual is considered to be acting habitually or repeatedly under this subsection if the individual takes a residential mortgage application and offers or negotiates terms of a residential mortgage loan for compensation or gain more than 3 times in a 12-month period. An exemption from the licensure requirements under this Article does not apply if the individual, alone or with others, is found by the administrator to have acted so as to intentionally circumvent or evade the provisions of this subsection.

[ 2013, c. 295, §1 (AMD) . ]

**2. Exemption.** The following persons are exempt from this Article.

A. Registered mortgage loan originators, when acting for a depository institution; a subsidiary that is owned and controlled by a depository institution and that is regulated by a federal banking agency; or an institution regulated by the federal Farm Credit Administration. [ 2009, c. 362, Pt. B, §1 (NEW) . ]

B. An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual. [ 2009, c. 362, Pt. B, §1 (NEW) . ]

C. An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence. [ 2009, c. 362, Pt. B, §1 (NEW) . ]

D. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator. [ 2009, c. 362, Pt. B, §1 (NEW) . ]

E. An employee of a nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) and engaged in the financing of housing for low-income people under a program designed specifically for that purpose, to the extent exempted by the administrator by rule, advisory ruling or interpretation, after taking into consideration any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development. [ 2009, c. 362, Pt. B, §1 (NEW) . ]

F. A retail seller of a manufactured home to the extent determined by any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development. [ 2009, c. 362, Pt. B, §1 (NEW) . ]

G. An individual who, during any calendar year or other 12-month period, takes applications for or offers or negotiates terms of not more than the maximum number of residential mortgage loans to qualify for exemption as determined by rule, advisory ruling or interpretation issued by the administrator or by the United States Department of Housing and Urban Development or successor federal agency

responsible for ensuring state compliance with the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 United States Code, Sections 5101 to 5113. [2011, c. 289, §3 (NEW); 2011, c. 289, §5 (AFF).]

H. An individual who acts as a mortgage loan originator in providing financing for the sale of a property owned by that individual as long as that individual does not habitually or repeatedly engage in that activity. [2013, c. 295, §2 (NEW).]

I. An individual who acts as a mortgage loan originator as long as the source of prospective financing does not provide mortgage financing or perform other mortgage loan origination activities habitually or repeatedly. [2013, c. 295, §2 (NEW).]

J. An employee of a government entity who acts as a mortgage loan originator pursuant to that employee's official duties as an employee of that government entity. [2013, c. 295, §2 (NEW).]

[2013, c. 295, §2 (AMD).]

**3. Loan processor or underwriter; license not required.** A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or by providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator is not required to obtain and maintain a license under subsection 1.

A. An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless that independent contractor obtains and maintains a license under subsection 1. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. [2009, c. 362, Pt. B, §1 (NEW).]

[2009, c. 362, Pt. B, §1 (NEW).]

**4. Rules; interim procedures and accept applications.** For the purposes of implementing an orderly and efficient licensing process, the administrator may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the administrator may establish expedited review and licensing procedures. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 362, Pt. B, §1 (NEW).]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2011, c. 289, §3 (AMD). 2011, c. 289, §5 (AFF). 2013, c. 295, §§1, 2 (AMD).

## §13-104. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE

**1. Application form.** An applicant for a license as a mortgage loan originator shall apply using a form prescribed by the administrator. The form must contain content as set forth by rule, instruction or procedure of the administrator and may be changed or updated as necessary by the administrator in order to carry out the purposes of this Article.

[2009, c. 362, Pt. B, §1 (NEW).]

**2. Relationships or contracts.** In order to fulfill the purposes of this Article, the administrator is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Article.

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**3. Waive or modify requirements.** For the purpose of participating in the nationwide mortgage licensing system and registry, the administrator is authorized to waive or modify, in whole or in part, by rule or order, any or all of the requirements of this Article and to establish new requirements as reasonably necessary to participate in the nationwide mortgage licensing system and registry.

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**4. Background checks.** In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including:

A. Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and [2009, c. 362, Pt. B, §1 (NEW).]

B. Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the administrator to obtain:

(1) An independent credit report from a consumer reporting agency described in the federal Fair Credit Reporting Act, Section 603(p) except that information on a credit report may not be used as the sole basis for the denial of a mortgage loan originator license pursuant to section 13-105; and

(2) Information related to any administrative, civil or criminal findings by any governmental jurisdiction. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**5. Agent for purposes of requesting and distributing criminal information.** For the purposes of this section and in order to reduce the points of contact that the administrator or the Federal Bureau of Investigation may have to maintain for purposes of subsection 4, the administrator may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency and from any source directed by the administrator.

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

## §13-105. ISSUANCE OF LICENSE

The administrator may not issue an applicant a mortgage loan originator license unless the applicant meets the following requirements. [2009, c. 362, Pt. B, §1 (NEW).]

**1. No license revocation.** The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction.

[ 2009, c. 362, Pt. B, §1 (NEW) . ]

**2. No felony conviction.** Except if the administrator determines that a conviction as described in paragraph A does not affect the applicant's demonstration of good character and fitness under subsection 3, the applicant has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic, foreign or military court:

A. During the 7-year period preceding the date of the application for licensing and registration; or [2009, c. 362, Pt. B, §1 (NEW).]

B. At any time preceding the date of application, if the felony involved an act of fraud, dishonesty or a breach of trust or money laundering. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**3. Character and fitness.** The applicant has demonstrated financial responsibility, good character and general fitness commanding the confidence of the community and warranting a determination that the mortgage loan originator will operate honestly, fairly and efficiently in accordance with this Article.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**4. Prelicensing education.** The applicant has completed the prelicensing education requirement described in section 13-106.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**5. Written test.** The applicant has passed a written test that meets the requirement described in section 13-107.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**6. Surety bond or minimum net worth requirement.** The applicant has met the surety bond requirement or the net worth requirement as required pursuant to section 13-113.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

## §13-106. PRELICENSING EDUCATION FOR MORTGAGE LOAN ORIGINATORS

**1. Minimum education requirements.** In order to meet the prelicensing education requirement set forth in section 13-105, subsection 4, a person must complete at least 20 hours of education approved in accordance with subsection 2.

A. [2013, c. 466, §8 (RP).]

B. [2013, c. 466, §8 (RP).]

C. [2013, c. 466, §8 (RP).]

[ 2013, c. 466, §8 (AMD) .]

**2. Approved education courses.** For purposes of subsection 1, preclicensing education courses must be reviewed and approved by the nationwide mortgage licensing system and registry based on reasonable standards. Review and approval of a preclicensing education course must include review and approval of the course provider.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**3. Approval of employer and affiliate education courses.** Nothing in this section precludes any preclicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**4. Venue of education.** Preclicensing education may be offered either in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**5. Reciprocity of education.** The completion of the preclicensing education requirements approved by the nationwide mortgage licensing system and registry under this section for any state must be accepted as credit towards completion of preclicensing education requirements in this State.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**6. Relicensing education requirements.** A person previously licensed under this Article who applies to be licensed again must prove that that person has completed all of the continuing education requirements for the year in which the license was last held.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2013, c. 466, §8 (AMD).

## §13-107. TESTING OF MORTGAGE LOAN ORIGINATORS

**1. Written test.** In order to meet the written test requirement required under section 13-105, subsection 5, an individual must pass, in accordance with the standards established under this section, a written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

[ 2013, c. 466, §9 (AMD) .]

### **2. Qualified test.**

[ 2013, c. 466, §9 (RP) .]

**3. Testing location.** Nothing in this section prohibits a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant, or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**4. Minimum competence.** An individual is not considered to have passed a written test unless the individual achieves a test score of not less than 75% correct answers to questions.

A. An individual may retake a test 3 consecutive times, undergoing each consecutive test at least 30 days after the preceding test. [2009, c. 362, Pt. B, §1 (NEW).]

B. After failing 3 consecutive tests, an individual must wait at least 6 months before taking the test again. [2009, c. 362, Pt. B, §1 (NEW).]

C. A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2013, c. 466, §9 (AMD) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2013, c. 466, §9 (AMD).

### §13-108. STANDARDS FOR LICENSE RENEWAL

**1. Minimum standards.** The minimum standards for license renewal for mortgage loan originators include the following:

A. The mortgage loan originator continues to meet the minimum standards for license issuance under section 13-105, subsections 1 to 5; [2009, c. 362, Pt. B, §1 (NEW).]

B. The mortgage loan originator has satisfied the annual continuing education requirements described in section 13-109; and [2009, c. 362, Pt. B, §1 (NEW).]

C. The mortgage loan originator has paid all required fees for renewal of the license. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**2. Failure to satisfy minimum standards of license renewal.** If a mortgage loan originator fails to satisfy the minimum standards for license renewal, that individual's license expires. The administrator may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

### §13-109. CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS

**1. Requirement.** In order to meet the annual continuing education requirements set forth in section 13-108, subsection 1, paragraph B, a licensed mortgage loan originator must complete at least 8 hours of education approved in accordance with subsection 2.

A. [2013, c. 466, §10 (RP).]

B. [2013, c. 466, §10 (RP).]

C. [2013, c. 466, §10 (RP).]

[ 2013, c. 466, §10 (AMD) .]

**2. Approved education courses.** For purposes of subsection 1, continuing education courses must be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course includes review and approval of the course provider.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**3. Approval of employer and affiliate education courses.** Nothing in this section precludes any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract or any subsidiary or affiliate of such employer or entity.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**4. Venue of education.** Continuing education may be offered either in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**5. Calculation of continuing education credits.** A licensed mortgage loan originator may:

A. Notwithstanding section 13-108, subsection 2, receive credit for a continuing education course only in the year in which the course is taken; and [2013, c. 466, §11 (AMD).]

B. Not repeat an approved course in the same or successive years to meet the annual requirements for continuing education. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2013, c. 466, §11 (AMD) .]

**6. Instructor credit.**

[ 2013, c. 466, §12 (RP) .]

**7. Reciprocity of education.** The completion of the education requirements approved by the nationwide mortgage licensing system and registry under this section for any state must be accepted as credit towards completion of continuing education requirements in this State.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**8. Lapse in license.** A person previously licensed under this Article as a licensed mortgage loan originator who subsequently becomes unlicensed must prove that the person has completed all of the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**9. Deficiency in continuing education.**

[ 2013, c. 466, §13 (RP) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2013, c. 466, §§10-13 (AMD).

## §13-110. AUTHORITY TO REQUIRE LICENSE

In addition to any other duties imposed upon the administrator by law, the administrator shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. In order to carry out this requirement, the administrator is authorized to participate in the nationwide mortgage licensing system and registry. For this purpose, the administrator may establish, by rule or order, requirements as necessary, including but not limited to: [2009, c. 362, Pt. B, §1 (NEW).]

### 1. Background checks.

Background checks for:

A. Criminal history through fingerprint or other databases; [2009, c. 362, Pt. B, §1 (NEW).]

B. Civil or administrative records; [2009, c. 362, Pt. B, §1 (NEW).]

C. Credit history; or [2009, c. 362, Pt. B, §1 (NEW).]

D. Any other information determined necessary by the nationwide mortgage licensing system and registry; [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**2. Fees.** The payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry, that fee being initially established in the amount of \$20 to the administrator at application and \$20 for renewal, subject to adjustment pursuant to rule or order as set forth under this section. Renewal applications received after the due date are subject to an additional fee of \$100;

[ 2013, c. 466, §14 (AMD) .]

### 3. Dates.

The setting or resetting as necessary of renewal or reporting dates; and

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**4. Other requirements.** Other requirements for amending or revoking a license or any other such activities as the administrator considers necessary for participation in the nationwide mortgage licensing system and registry.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2011, c. 427, Pt. B, §20 (AMD). 2013, c. 466, §14 (AMD).

## §13-111. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS

The administrator shall establish a process by which mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the administrator.

[2009, c. 362, Pt. B, §1 (NEW).]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

## §13-112. ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES

**1. Enforcement.** In order to ensure the effective supervision and enforcement of this Article, the administrator may, pursuant to this Title and the Maine Administrative Procedure Act:

A. Deny, suspend, revoke, condition or decline to renew a license for a violation of this Article or rules issued under this Article or an order or a directive entered under this Article; [ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

B. Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section 13-105 or section 13-108, or withholds information or makes a material misstatement in an application for a license or renewal of a license; [ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

C. Order restitution against persons subject to this Article for violations of this Article; [ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

D. Impose fines on persons subject to this Article pursuant to subsections 2 to 4; and [ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

E. Issue orders or directives under this Article as follows:

(1) Order or direct persons subject to this article to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(2) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to cease and desist;

(3) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under section 13-103, subsection 4 if the administrator determines that such a license was erroneously granted or the licensee is in violation of this Article; and

(4) Order or direct other affirmative action that the administrator considers necessary. [ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

[ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

**2. Penalty.** The administrator may impose a civil fine on a mortgage loan originator or person subject to this Article if the administrator finds on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this Article has violated or failed to comply with any requirement of this Article or any rule prescribed by the administrator under this Article or order issued under authority of this Article.

[ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

**3. Maximum fine.** A person who violates this section commits a civil violation for each act or omission described in subsection 2, a fine for which no more than \$25,000 must be adjudged.

[ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

**4. Separate violation.** Each violation or failure to comply with any directive or order of the administrator is a separate and distinct violation or failure.

[ 2009 , c. 362 , Pt. B , §1 (NEW) . ]

**5. Effect on mortgage loans.** This article may not be construed to provide that a mortgage loan originator's good faith failure to comply with the requirements of this article affects the validity or enforceability of the obligations under any residential mortgage loan resulting from a transaction in which the mortgage loan originator participated.

[ 2011 , c. 289 , §4 (NEW); 2011 , c. 289 , §5 (AFF) . ]

SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2011, c. 289, §4 (AMD). 2011, c. 289, §5 (AFF).

### §13-113. SURETY BOND OR MINIMUM NET WORTH REQUIREMENTS

Mortgage loan originators must comply with either subsection 1 or subsection 2. [2009, c. 362, Pt. B, §1 (NEW).]

**1. Surety bond.** Unless in compliance with subsection 2, a mortgage loan originator must be covered by a surety bond in accordance with this subsection.

A. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the surety bond of that person subject to this Article can be used in lieu of the mortgage loan originator's surety bond requirement.

(1) The surety bond must provide coverage for each mortgage loan originator in an amount prescribed in paragraph B.

(2) The surety bond must be in a form prescribed by the administrator.

(3) The administrator may adopt rules with respect to the requirements for surety bonds necessary to accomplish the purposes of this Article. [2009, c. 362, Pt. B, §1 (NEW).]

B. The penal sum of the surety bond must be maintained in an amount established by rule. [2009, c. 362, Pt. B, §1 (NEW).]

C. When an action is commenced on a licensee's bond, the administrator may require the filing of a new bond. [2009, c. 362, Pt. B, §1 (NEW).]

D. Immediately on recovery upon any action on the bond the licensee shall file a new bond. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**2. Minimum net worth.** Unless in compliance with subsection 1, a minimum net worth must be continuously maintained for mortgage loan originators in accordance with this subsection and section 13-105, subsection 6. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of that person subject to this Article can be used in lieu of the mortgage loan originator's minimum net worth requirement.

A. Minimum net worth must be maintained in an amount determined by the administrator. [2009, c. 362, Pt. B, §1 (NEW).]

B. The administrator may adopt rules with respect to the requirements for minimum net worth necessary to accomplish the purposes of this Article. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

### §13-114. CONFIDENTIALITY

**1. Protections.** Notwithstanding any provision of law to the contrary and except as otherwise provided in federal Public Law 110-289, Section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to that information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. That

information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**2. Agreements and sharing arrangements.** The administrator is authorized to enter agreements or sharing arrangements with other governmental agencies, a national organization dedicated to advancing the state banking system, a national association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the administrator.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**3. Nonapplicability of certain requirements.** Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:

A. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective state; or [2009, c. 362, Pt. B, §1 (NEW).]

B. Subpoena, discovery or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding that information or material, the person to whom such information or material pertains waives, in whole or in part, that privilege. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**4. Public access to information.** This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

## §13-115. INVESTIGATION AND EXAMINATION AUTHORITY

In addition to any authority allowed under this Article, the administrator may conduct an investigation and examination as follows. [2009, c. 362, Pt. B, §1 (NEW).]

**1. Authority to access information.** For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination or general or specific inquiry or investigation to determine compliance with this Article, the administrator may access, receive and use any books, accounts, records, files, documents, information or evidence, including but not limited to:

A. Criminal, civil and administrative information, including confidential criminal history record information as defined in Title 16, section 703, subsection 2; [2013, c. 267, Pt. B, §3 (AMD).]

B. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, Section 603(p); and [2009, c. 362, Pt. B, §1 (NEW).]

C. Any other documents, information or evidence the administrator determines relevant to the inquiry or investigation regardless of the location, possession, control or custody of those documents, information or evidence. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2013, c. 267, Pt. B, §3 (AMD) .]

**2. Investigation, examination and subpoena authority.** For the purposes of investigating violations or complaints arising under this Article or for the purposes of examination the administrator may review, investigate or examine any licensee, individual or person subject to this Article as often as necessary. The administrator may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of an examination or investigation and may direct, subpoena or order those persons to produce books, accounts, records, files and any other documents the administrator considers relevant to the inquiry.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**3. Availability of books and records.** Each licensee, individual or person subject to this Article shall make available to the administrator upon request the books and records relating to the operations of that licensee, individual or person. The administrator has access to such books and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents and customers of the licensee, individual or person concerning their business.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**4. Reports and other information as directed.** Each licensee, individual or person subject to this Article shall make or compile reports or prepare other information as directed by the administrator in order to carry out the purposes of this section, including but not limited to:

A. Accounting compilations; [2009, c. 362, Pt. B, §1 (NEW).]

B. Information lists and data concerning loan transactions in a format prescribed by the administrator; and [2009, c. 362, Pt. B, §1 (NEW).]

C. Other information considered necessary to carry out the purposes of this section. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**5. Control access to records.** In making any examination or investigation authorized by this Article, the administrator may control access to any documents and records of the licensee or person under examination or investigation. The administrator may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person may remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the administrator. Unless the administrator has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct ordinary business affairs.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**6. Additional authority.** In order to carry out the purposes of this section, the administrator may:

A. Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations; [2009, c. 362, Pt. B, §1 (NEW) .]

B. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained pursuant to this section; [2009, c. 362, Pt. B, §1 (NEW).]

C. Use, hire, contract or employ public analytic methods or privately available analytic methods or software to examine or investigate the licensee, individual or person subject to this Article; [2009, c. 362, Pt. B, §1 (NEW).]

D. Accept and rely on examination or investigation reports made by other government officials within or without this State; [2009, c. 362, Pt. B, §1 (NEW).]

E. Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the administrator; or [2009, c. 362, Pt. B, §1 (NEW).]

F. Assess the cost of the services described in paragraph A against the licensee, individual or person subject to this Article. [2009, c. 362, Pt. B, §1 (NEW).]

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**7. Effect of authority.** The authority of this section remains in effect, whether such a licensee, individual or person subject to this Article acts or claims to act under any licensing or registration law of this State or claims to act without such authority.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**8. Withhold records.** A licensee, individual or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2013, c. 267, Pt. B, §3 (AMD).

## §13-116. PROHIBITED ACTS AND PRACTICES

It is a violation of this Article for an individual or a person subject to this Article to: [2009, c. 362, Pt. B, §1 (NEW).]

**1. Defraud; mislead.** Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud a person;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**2. Unfair or deceptive practice.** Engage in any unfair or deceptive practice toward a person;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**3. Fraud; misrepresentation.** Obtain property by fraud or misrepresentation;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**4. Fee despite absence of loan obtained.** Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Article may earn a fee or commission through best efforts to obtain a loan even though a loan is not actually obtained for the borrower;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**5. Terms available.** Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**6. Valid license.** Conduct any business covered by this Article without holding a valid license as required under this Article or assist or aide and abet any person in the conduct of business under this Article without a valid license required under this Article;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**7. Disclosures.** Fail to make disclosures required by this Article and any other applicable state laws or rules or federal laws or regulations;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**8. Compliance.** Fail to comply with this Article or rules adopted under this Article or fail to comply with any other state or federal law, including the rules and regulations applicable to any business authorized or conducted under this Article;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**9. False or deceptive statement.** Make any false or deceptive statement or representation, including with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**10. False statement; material omission.** Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the administrator or another government agency;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**11. Improper influence.** Make any payment, threat or promise directly or indirectly to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise directly or indirectly to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**12. Prohibited fee.** Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Article;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**13. Excessive insurance.** Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**14. Account.** Fail to truthfully account for money belonging to a party to a residential mortgage loan transaction; or

[ 2009, c. 362, Pt. B, §1 (NEW) .]

**15. Good faith and fair dealing.** Fail to comply with the duties of good faith and fair dealing as required in section 10-303-A.

[ 2009, c. 362, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

### **§13-117. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY**

The administrator shall regularly report violations of this Article, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry. [ 2009, c. 362, Pt. B, §1 (NEW). ]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

### **§13-118. UNIQUE IDENTIFIER SHOWN**

The unique identifier of any person originating a residential mortgage loan must be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or publicly accessible websites and any other documents as established by rule or order of the administrator. [ 2009, c. 362, Pt. B, §1 (NEW). ]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

### **§13-119. RULEMAKING**

Rules adopted pursuant to this Article are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2009, c. 362, Pt. B, §1 (NEW). ]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW).

### **§13-120. EFFECTIVE DATE**

This Article takes effect January 1, 2011. [ 2009, c. 497, §1 (AMD). ]

#### SECTION HISTORY

2009, c. 362, Pt. B, §1 (NEW). 2009, c. 497, §1 (AMD).

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