

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." [PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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. [RR 2013, c. 2, §9 (COR).]

SECTION HISTORY

PL 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.

[PL 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.

[PL 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.

[PL 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.

[PL 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 [PL 1973, c. 762, §1 (NEW).]

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

[PL 1975, c. 288, §3 (AMD).]

6.

[PL 1997, c. 727, Pt. B, §18 (RP).]

SECTION HISTORY

PL 1973, c. 762, §1 (NEW). PL 1975, c. 288, §3 (AMD). PL 1985, c. 763, §A41 (AMD). PL 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. [PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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 [PL 1973, c. 762, §1 (NEW).]

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

[PL 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 [PL 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)(1) of the Fair Labor Standards Act of 1938, 29 United States Code, Section 206(a)(1), 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. [PL 2007, c. 7, §1 (RPR).]

C. [PL 2007, c. 7, §1 (RP).]

[PL 2007, c. 7, §1 (RPR).]

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

[PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 1973, c. 762, §1 (NEW). PL 1995, c. 614, §A5 (AMD). PL 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. [PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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.

[PL 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.

[PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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 [PL 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. [PL 1973, c. 762, §1 (NEW).]

[PL 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.

[PL 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.

[PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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: [PL 1973, c. 762, §1 (NEW).]

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

[PL 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; [PL 1973, c. 762, §1 (NEW).]

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

C. Sale or prior encumbrance of the collateral; [PL 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 [PL 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. [PL 1987, c. 129, §64 (NEW).]
[PL 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.
[PL 1979, c. 486 (NEW).]

SECTION HISTORY

PL 1973, c. 762, §1 (NEW). PL 1975, c. 250 (AMD). PL 1979, c. 486 (AMD). PL 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 [PL 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. [PL 1979, c. 417, §2 (NEW).]

[PL 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.

[PL 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.

[PL 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; [PL 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 [PL 1975, c. 429, §2 (RPR).]

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

[PL 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 [PL 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. [PL 1985, c. 336, §10 (AMD).]

[PL 1985, c. 336, §10 (AMD).]

5.

[PL 1981, c. 618, §8 (RP).]

SECTION HISTORY

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

[PL 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.

[PL 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.

[PL 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.

[PL 1985, c. 763, Pt. A, §45 (AMD).]

5.

[PL 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.

[PL 2009, c. 476, Pt. A, §1 (NEW).]

SECTION HISTORY

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

SECTION HISTORY

PL 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. [PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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. [PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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. [PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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; [PL 1973, c. 762, §1 (NEW).]

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

[PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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. [PL 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. [PL 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. [PL 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.

[PL 2009, c. 526, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 526, §1 (NEW).

§5-117. Prohibited practices

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

1. Misrepresentations. Misrepresent any material fact relating to the terms or conditions of sale; [PL 1991, c. 524, §1 (NEW).]

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

[PL 1991, c. 524, §1 (NEW).]

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

[PL 1991, c. 524, §1 (NEW).]

SECTION HISTORY

PL 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. [PL 2013, c. 480, §1 (NEW).]

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

[PL 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.

[PL 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.

[PL 2013, c. 480, §1 (NEW).]

SECTION HISTORY

PL 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.

[PL 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 the loan. If the debtor has paid any part 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.

[PL 2021, c. 297, §2 (AMD).]

2-A. If a lender has violated the provisions of this Act applying to authority to make supervised loans as set forth in section 2-301, the lender:

A. May not furnish information concerning a debt associated with that violation to a consumer reporting agency, as defined in Title 10, section 1308, subsection 3; and [PL 2021, c. 297, §3 (NEW).]

B. May not refer a debt associated with that violation to a debt collector, as defined in Title 32, section 11002, subsection 6. [PL 2021, c. 297, §3 (NEW).]
[PL 2021, c. 297, §3 (NEW).]

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.

[PL 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.

[PL 1987, c. 129, §65 (AMD).]

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

[PL 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.

[PL 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.

[PL 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.

[PL 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.

[PL 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.

[PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 1973, c. 762, §1 (NEW). PL 1975, c. 134, §2 (AMD). PL 1979, c. 660, §9 (AMD). PL 1985, c. 763, §§A46,47 (AMD). PL 1987, c. 129, §65 (AMD). PL 1993, c. 496, §§1,2 (AMD). PL 2021, c. 297, §§2, 3 (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. [PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 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. [PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 1973, c. 762, §1 (NEW).

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