

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1682

H. P. 1345

House of Representatives, April 13, 1977

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Tarbell of Bangor.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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AN ACT Against Unfair, Deceptive or Unreasonable Debt Collection Practices.

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

10 MRSA c. 212 is enacted to read:

CHAPTER 212

UNFAIR, DECEPTIVE OR UNREASONABLE  
COLLECTION PRACTICES

§ 1361. Definitions

As used in this chapter, unless the context clearly indicates otherwise, the following words shall have the following meanings.

1. Consumer. "Consumer" means a natural person who seeks or acquires, or is offered property, services or credit for personal, family or household purposes.

2. Consumer credit transaction. "Consumer credit transaction" means a transaction between a creditor and a consumer in which real or personal property, services, money or a form of money is acquired on credit and the consumer's obligation is payable in 4 or more installments or for which credit a finance charge is or may be imposed. The term includes consumer credit sales, consumer loans, consumer leases of personal property and transactions pursuant to a seller or lender credit card, but shall not include leases of real property.

3. **Consumer transaction.** "Consumer transaction" means a transaction between a consumer and a person who sells, leases or provides property, services or credit to consumers. The term shall not include leases of real property.

4. **Creditor.** "Creditor" means a person who in the ordinary course of business engages in consumer credit transactions with consumers.

5. **Credit.** "Credit" means the right granted by a person to a consumer to defer payment of a debt, to incur debt and defer its payment, or purchase property or services and defer payment therefor.

6. **Debt.** "Debt" means any obligation or alleged obligation arising out of a consumer transaction.

7. **Debtor.** "Debtor" means a person who owes or allegedly owes an obligation arising out of a consumer transaction.

8. **Debt collector.** "Debt collector" means:

A. Any person who by any direct or indirect action, conduct or practice enforces or attempts to enforce an obligation that is owed or due, or alleged to be owed or due, by a consumer as a result of a consumer credit transaction;

B. Any person who, for any fee, commission or charge other than wages or salary, engages in any direct or indirect action, conduct or practice to enforce or attempt to enforce an obligation that is owed or due, or alleged to be owed or due, by a consumer as a result of a consumer transaction; or

C. Any person who, pursuant to an assignment, sale or transfer of a claim against a consumer, engages in any direct or indirect action, conduct or practice to enforce an obligation that is owed or due, or alleged to be owed or due, by a consumer as a result of a consumer transaction.

9. **Finance charge.** "Finance charge" means a charge such as interest, fees, service charges, discounts and other charges associated with the extension of credit.

10. **Person.** "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association or any other legal entity.

#### § 1362. General prohibition

No debt collector shall collect or attempt to collect a debt in an unfair, deceptive or unreasonable manner as defined in this chapter.

#### § 1363. Prohibited acts

For the purposes of this chapter, any debt collection or attempt to collect a debt shall be deemed unfair, deceptive or unreasonable if the debt collector:

1. **Communications.** Communicates or attempts to communicate with the debtor, orally or in writing;

A. By causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously or at unusual times or at times known to be inconvenient with the intent to abuse, oppress or harass any person at the called number ;

B. By use of profane, obscene or vulgar language that is intended to abuse the hearer or reader ; or

C. At the debtor's place of employment if said place is other than the debtor's residence, provided that :

(1) A debt collector may send a single letter to the debtor at his place of employment if he has otherwise been unable to locate the debtor ; and

(2) A debt collector may phone the debtor at his place of employment if he is unable to contact the debtor at his residence, provided that :

(a) The debtor does not inform the debt collector that he does not wish the debt collector to communicate or attempt to communicate with him at his place of employment ;

(b) The debt collector shall not inform the employer of the nature of the call unless asked by the employer ; and

(c) In no event shall the debt collector make more than one phone call per month to the debtor at his place of employment unless the debtor affirmatively indicates in writing that he desires the debt collector to call him at his place of employment. For the purposes of this subparagraph, any language in any instrument creating the debt which purports to authorize phone calls at the debtor's place of employment shall not be considered an affirmative indication that the debtor desires the debt collector to call him at his place of employment ; or

D. Using any written communication which fails to clearly identify the name of the debt collector, the name of the person for whom the debt collector is attempting to collect the debt, and the debt collector's business address. The foregoing shall not require the name or address of the debt collector or the person for whom the debt collector is attempting to collect the debt to be printed on any envelope containing a communication ;

E. By placement of phone calls without disclosure of the name of the individual making the call and the name of the person for whom the debt collector is attempting to collect the debt, or by using a fictitious name while engaging in the collection of debts ;

F. By causing any expense to the debtor in the form of long distance telephone calls, telegram fees or other charges incurred by a medium of communication, by concealment of the true purpose of the communication ; or

2. Threats of violence. Uses or threatens the use of force or violence ; or

3. Threats of unlawful action. Threatens to take any unlawful action or action which the debt collector in the regular course of business does not take; or

4. Communication of fact of debt. Communicates or threatens to communicate, except by proper judicial process, the fact of such debt to a person other than the person who might reasonably be expected to be liable therefor, provided that the provisions of this paragraph shall not prohibit a debt collector from:

A. Communicating information relating to a debt to a person residing with the debtor and reasonably believed to be a relative or family member over the age of 18, or to an attorney, financial counseling organization or other person who has notified the debt collector that he is representing the debtor;

B. From leaving a message at the residence of the debtor containing no information other than a request that the debtor contact the debt collector about the debt; or

C. Communicating information relating to the debt to the debtor's spouse or, if the debtor is a minor, to the parents or guardians of the debtor where the purpose of the communication is solely to locate the debtor; provided that:

(1) The debt collector has been unable to locate the debtor by other means for a period of 30 days; and

(2) The debt collector, having once communicated with any of the persons, shall not again attempt to locate the debtor by communicating with the person; or

D. Reporting, or notifying a debtor that the debt collector may report a debt to:

(1) A consumer reporting agency defined in RSA 359-B: 3, VI, or any lending institution, provided that if the debt collector knows the debt to be disputed he shall notify the consumer reporting agency or lending institution that the debt is disputed; or

(2) To an agent or attorney engaged for the purpose of collecting the debt. For the purposes of this section the use of language on envelopes other than the debt collector's name, address or telephone number, indicating that the communication related to the collection of a debt shall be deemed a communication of the debt; or

5. Communication directly with debtor. Communicates directly with the debtor, except through proper legal action, after notification from an attorney, financial counseling organization or other person representing the debtor that all further communication relative to the debt should be addressed to the attorney, organization or other person unless the attorney, organization or other person fails to answer correspondence, return phone calls or discuss the debt within 10 days or prior approval is obtained from the attorney,

organization or other person or the communication is a response in the ordinary course of business to the debtor's inquiry; or

6. Communication through use of forms. Communicates with the debtor through the use of forms or instruments which simulate the form and appearance of judicial process or which give the appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law when they are not; or

7. Material false representation. Makes any material false representation or implication of the character, extent or amount of the debt, or of its status in any legal proceeding; or

8. Fees or charges added to obligation. Makes any representation that an existing obligation may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not be legally added to the existing obligation; or

9. Discretionary fees. Makes any representation that an existing obligation will definitely be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when the award of such fee or charge is discretionary by a court of law; or

10. Collection of interest or fees. Collects or attempts to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the debtor; provided that the foregoing shall not prohibit a debt collector from attempting to collect court costs in a judicial proceeding; or

11. Threats of arrest or seizure of property. Threatens that nonpayment of a debt will result in the arrest of any person or the seizure, garnishment, attachment or sale of any property or wages without indicating, when a court order is a legal prerequisite to any such action; that

A. There must be a court order in effect permitting such action; and, where applicable;

B. That the debtor will have an opportunity to appear in court to contest such action prior to any such court order being effective; or

12. Threats to sell or assign claim. Threatens to assign or sell to another the account of or claim against the debtor with an attending representation or implication that the result of any such sale or assignment would be that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection attempts.

#### § 1364. Remedies

1. Collector; liability. Any debt collector who violates the provisions of this chapter shall be liable in any court of competent jurisdiction to the debtor for one of the following, whichever is greater:

**A. In an action brought by and on behalf of an individual debtor only, the sum of \$200 plus costs and reasonable attorney's fees for each violation; or**

**B. For all damages proximately caused by the violation.**

**2. Exceptions. Notwithstanding the foregoing, a debt collector shall not be held liable in any action brought under this chapter for a violation if the debt collector shows by a preponderance of the evidence that:**

**A. The violation was a result of a computation error in billing and within 15 days of notification or discovery of the error the debt collector notified the debtor of such error and corrected such error; or**

**B. The violation was not intentional and resulted from a bona fide error or mistake notwithstanding the maintenance of procedures reasonably adapted to avoid any such error or mistake.**

**3. Counterclaim. In any suit to collect a debt the debtor may raise, by way of counterclaim, set-off or recoupment, a violation of this chapter, and upon proof of a violation by a preponderance of the evidence, the court shall award damages to the defendant pursuant to this section and shall set such damages off against any recovery by the plaintiff.**

**4. Persons who may bring suit. Any debtor aggrieved by a debt collector's practices in violation of this chapter may bring an action individually or on behalf of others similarly situated in the superior court of the county in which he resides to restrain such practices by temporary or permanent injunction. If the debtor prevails in an action authorized by this section he shall be entitled to his costs and reasonable attorney's fees.**

**5. Frivolous actions. If the court finds that an action initiated under this chapter was frivolous and brought to harass the debt collector, the debtor shall pay to the debt collector the costs of the action plus reasonable attorney fees.**

#### STATEMENT OF FACT

The purpose of this bill is to prevent unfair, deceptive or unreasonable debt collection practices.