

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2116

7 S.P. 834

In Senate, February 28, 1986

8 Submitted by the Department of Business, Occupational and Professional
9 Regulation pursuant to Joint Rule 24.

10 Reference to the Committee on Business and Commerce suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Bustin of Kennebec.

11 Cosponsored by Representative Aliberti of Lewiston, Representative
Simpson of Casco and Representative Mills of Bethel.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Adopt the Maine Fair Debt
18 Collection Practices Act.
19

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

22 Sec. 1. 32 MRSA c. 10, as amended, is repealed.

23 Sec. 2. 32 MRSA c. 111 is enacted to read:

24 CHAPTER 111

25 MAINE FAIR DEBT COLLECTION PRACTICES ACT

26 SUBCHAPTER I

27 GENERAL PROVISIONS

28 §11001. Short title

29 This chapter shall be known and may be cited as
30 the "Maine Fair Debt Collection Practices Act."

1 §11002. Definitions

2 As used in this chapter, unless the context oth-
3 erwise indicates, the following terms have the fol-
4 lowing meanings.

5 1. Communication. "Communication" means the
6 conveyance or receipt of information regarding or fa-
7 cilitating the collection of a debt, directly or in-
8 directly, to or from any person through any medium.

9 2. Conducting business in this State. "Conduct-
10 ing business in this State" means the collection or
11 attempted collection of a debt due another by a debt
12 collector located in this State or the direct solici-
13 tation of creditors in this State as clients, and the
14 collection or attempted collection of their debts, by
15 a debt collector, wherever located.

16 3. Consumer. "Consumer" means any natural per-
17 son obligated or allegedly obligated to pay any debt.

18 4. Creditor. "Creditor" means any person who
19 offers or extends credit creating a debt or to whom a
20 debt is owed, but that term does not include any per-
21 son to the extent that he receives an assignment or
22 transfer of a debt in default solely for the purpose
23 of facilitating collection of that debt for another.

24 5. Debt. "Debt" means any obligation or alleged
25 obligation of a consumer to pay money arising out of
26 a transaction in which the money, property, insurance
27 or services which are the subject of the transaction
28 are primarily for personal, family or household pur-
29 poses, whether or not the obligation has been reduced
30 to judgment.

31 6. Debt collector. "Debt collector" means any
32 person conducting business in this State, the princi-
33 pal purpose of which is the collection of any debts,
34 or who regularly collects or attempts to collect, di-
35 rectly or indirectly, debts owed or due or asserted
36 to be owed or due another. The term includes persons
37 who furnish collection systems carrying a name which
38 simulates the name of a debt collector and who supply
39 forms or form letters to be used by the creditor even
40 though the forms direct the debtor to make payments

1 directly to the creditor. Notwithstanding the exclu-
2 sion provided by section 11004, subsection 7, the
3 term includes any creditor who, in the process of
4 collecting his own debts, uses any name other than
5 his own which would indicate that a 3rd person is
6 collecting or attempting to collect these debts. The
7 term also includes any person in any business the
8 principal purpose of which is the enforcement of se-
9 curity interests.

10 7. Location information. "Location information"
11 means a consumer's place of abode and his telephone
12 number at that place or his place of employment.

13 8. Person. "Person" means any natural person,
14 corporation, trust, partnership, incorporated or un-
15 incorporated association and any other legal entity.

16 9. Superintendent. "Superintendent" means the
17 Superintendent of Consumer Credit Protection.

18 §11003. Exclusions

19 The term debt collector does not include:

20 1. Officers or employees of a creditor. Any of-
21 ficer or employee of a creditor while, in the name of
22 the creditor, collecting debts for that creditor;

23 2. Persons related by common ownership or affil-
24 iated by corporate control. Any person while acting
25 as a debt collector for another person, both of whom
26 are related by common ownership or affiliated by cor-
27 porate control, if the person acting as a debt col-
28 lector does so only for persons to whom it is so re-
29 lated or affiliated and if the principal business of
30 that person is not the collection of debts;

31 3. Officers or employees of the United States or
32 any state. Any officer or employee of the United
33 States or any state to the extent that collecting or
34 attempting to collect any debt is in the performance
35 of his official duties;

36 4. Persons serving legal process. Any person
37 while serving or attempting to serve legal process on
38 any other person in connection with the judicial en-
39 forcement of any debt;

1 5. Nonprofit organizations performing consumer
2 credit counseling. Any nonprofit organization which,
3 at the request of consumers, performs bona fide con-
4 sumer credit counseling and assists consumers in the
5 liquidation of their debts by receiving payments from
6 those consumers and distributing those amounts to
7 creditors;

8 6. Attorneys-at-law collecting debts on behalf
9 of a client. Any attorney-at-law collecting a debt
10 as an attorney on behalf of and in the name of a cli-
11 ent;

12 7. Persons collecting debts owed or due to an-
13 other. Any person collecting or attempting to col-
14 lect any debt owed or due, or asserted to be owed or
15 due, to another to the extent that the activity:

16 A. Is incidental to a bona fide fiduciary obli-
17 gation or a bona fide escrow arrangement;

18 B. Concerns a debt which was originated by that
19 person;

20 C. Concerns a debt which was not in default at
21 the time it was obtained by that person; or

22 D. Concerns a debt obtained by that person as a
23 secured party in a commercial credit transaction
24 involving the creditor; and

25 8. Collection activities related to the opera-
26 tion of a business. Any person whose collection ac-
27 tivities are confined to and directly related to the
28 operation of a business other than that of a debt
29 collector, such as, but not limited to, financial in-
30 stitutions regulated under Title 9-B.

31 SUBCHAPTER II

32 DEBT COLLECTION ACTIVITIES

33 §11011. Acquisition of location information

34 1. Communication with person other than consum-
35 er. Any debt collector communicating with any person
36 other than the consumer for the purpose of acquiring
37 location information about the consumer shall:

1 A. Identify himself; state that he is confirming
2 or correcting location information concerning the
3 consumer; and, only if expressly requested, iden-
4 tify his employer;

5 B. Not state that the consumer owes any debt;

6 C. Not communicate with any such person more
7 than once, unless requested to do so by that per-
8 son or unless the debt collector reasonably be-
9 lieves that the earlier response of that person
10 is erroneous or incomplete and that the person
11 now has correct or complete location information;

12 D. Not communicate by postcard;

13 E. Not use any language or symbol on any enve-
14 lope or in the contents of any communication ef-
15 fectuated by the mails or telegram that indicates
16 that the debt collector is in the debt collection
17 business or that the communication relates to the
18 collection of a debt; and

19 F. After the debt collector knows the consumer
20 is represented by an attorney with regard to the
21 subject debt and has knowledge of, or can readily
22 ascertain, that attorney's name and address, not
23 communicate with any person other than that at-
24 torney, unless the attorney fails to respond
25 within a reasonable period of time to communica-
26 tion from the debt collector.

27 §11012. Communication in connection with debt col-
28 lection

29 1. Communication with the consumer generally.
30 Without the prior consent of the consumer given di-
31 rectly to the debt collector or the express permis-
32 sion of a court or competent jurisdiction, a debt
33 collector may not communicate with a consumer in con-
34 nection with the collection of any debt:

35 A. At any unusual time or place or a time or
36 place known or which should be known to be incon-
37 venient to the consumer. In the absence of
38 knowledge of circumstances to the contrary, a
39 debt collector shall assume that the convenient

1 time for communicating with a consumer is after 8
2 a.m. and before 9 p.m., local time at the consum-
3 er's location;

4 B. If the debt collector knows that the consumer
5 is represented by an attorney with respect to
6 that debt and has knowledge of, or can readily
7 ascertain, that attorney's name and address, un-
8 less the attorney fails to respond within a rea-
9 sonable period of time to a communication from
10 the debt collector or unless the attorney con-
11 sents to direct communication with the consumer;
12 or

13 C. At the consumer's place of employment if the
14 debt collector knows or has reason to know that
15 the consumer's employer prohibits the consumer
16 from receiving a communication.

17 2. Communication with 3rd parties. Except as
18 provided in section 11011, without the prior consent
19 of the consumer given directly to the debt collector,
20 or the express permission of a court of competent ju-
21 risdiction, or as reasonably necessary to effectuate
22 a post-judgment judicial remedy, a debt collector
23 shall not communicate, in connection with the collec-
24 tion of any debt, with any person other than the con-
25 sumer, his attorney, a consumer reporting agency if
26 otherwise permitted by law, the creditor, the attor-
27 ney of the creditor or the attorney of the debt col-
28 lector.

29 3. Ceasing communication. If a consumer noti-
30 fies a debt collector in writing that the consumer
31 refuses to pay a debt or that the consumer wishes the
32 debt collector to cease further communication with
33 the consumer, the debt collector shall not communi-
34 cate further with the consumer with respect to that
35 debt, except:

36 A. To advise the consumer that the debt collec-
37 tor's further efforts are being terminated;

38 B. To notify the consumer that the debt collec-
39 tor or creditor may invoke specified remedies
40 which are ordinarily invoked by the debt collec-
41 tor or creditor; or

1 C. Where applicable, to notify the consumer that
2 the debt collector or creditor intends to invoke
3 a specified remedy.

4 If the notice from the consumer is made by mail, no-
5 tification shall be complete upon receipt.

6 4. Consumer defined. For the purpose of this
7 section, the term consumer includes the consumer's
8 spouse; parent, if the consumer is a minor; guardian;
9 executor; or administrator.

10 §11013. Prohibited practices

11 1. Harassment or abuse. A debt collector may
12 not engage in any conduct, the natural consequence of
13 which is to harass, oppress or abuse any person in
14 connection with the collection of a debt. Without
15 limiting the general application of this subsection,
16 the following conduct is a violation of this section:

17 A. The use or threat of use of violence or other
18 criminal means to harm the physical person, repu-
19 tation or property of any person;

20 B. The use of obscene or profane language, or
21 language the natural consequence of which is to
22 abuse the hearer or reader;

23 C. The publication of a list of consumers who
24 allegedly refuse to pay debts, except to a con-
25 sumer reporting agency or to persons meeting the
26 requirements of Title 10, chapter 210;

27 D. The advertisement for sale of any debt to co-
28 erce payment of the debt;

29 E. Causing a telephone to ring or engaging any
30 person in telephone conversation repeatedly or
31 continuously with intent to annoy, abuse or
32 harass any person at the called number;

33 F. Except as provided in section 11011, the
34 placement of telephone calls without meaningful
35 disclosure of the caller's identity; and

36 G. The use of "shame cards," "shame automobiles"
37 or similar devices.

1 2. False or misleading representations. A debt
2 collector may not use any false, deceptive or mis-
3 leading representation or means in connection with
4 the collection of any debt. Without limiting the
5 general application of this subsection, the following
6 conduct is a violation of this section:

7 A. The false representation or implication that
8 the debt collector is vouched for, bonded by or
9 affiliated with the United States or any state,
10 including the use of any badge, uniform, seal,
11 insignia or facsimile;

12 B. The false representation of:

13 (1) The character, amount or legal status
14 of any debt; or

15 (2) Any services rendered or compensation
16 which may be lawfully received by any debt
17 collector for the collection of a debt;

18 C. The false representation or implication that
19 any individual is an attorney or that any commu-
20 nication is from an attorney;

21 D. The representation or implication that non-
22 payment of any debt will result in the arrest or
23 imprisonment of any person or the seizure, gar-
24 nishment, attachment or sale of any property or
25 wages of any person, unless that action is lawful
26 and the debt collector or creditor intends to
27 take that action;

28 E. The threat to take any action that may not
29 legally be taken or that is not intended to be
30 taken;

31 F. The false representation or implication that
32 a sale, referral or other transfer of any inter-
33 est in a debt shall cause the consumer to:

34 (1) Lose any claim or defense to payment of
35 the debt; or

36 (2) Become subject to any practice prohib-
37 ited by this Act or the Maine Consumer Cred-
38 it Code, Title 9-A;

1 G. The false representation or implication that
2 the consumer committed any crime or other conduct
3 in order to disgrace the consumer;

4 H. Communicating or threatening to communicate
5 to any person credit information which is known
6 or which should be known to be false, including
7 the failure to communicate that a disputed debt
8 is disputed;

9 I. The use or distribution of any written commu-
10 nication which simulates or is falsely repre-
11 sented to be a document authorized, issued or ap-
12 proved by any court, official or agency of the
13 United States or any state, or which creates a
14 false impression as to its source, authorization
15 or approval;

16 J. The use of any false representation or decep-
17 tive means to collect or attempt to collect any
18 debt or to obtain information concerning a con-
19 sumer;

20 K. Except as otherwise provided for communica-
21 tions to acquire location information under sec-
22 tion 11011, the failure to disclose clearly in
23 all communications made to collect a debt, or to
24 obtain information about a consumer, that the
25 debt collector is attempting to collect a debt
26 and that any information obtained will be used
27 for that purpose;

28 L. The false representation or implication that
29 accounts have been turned over to innocent pur-
30 chasers for value;

31 M. The false representation or implication that
32 documents are legal process;

33 N. The use of any business, company or organiza-
34 tion name other than the true name of the debt
35 collector's business, company or organization;

36 O. The false representation or implication that
37 documents are not legal process forms or do not
38 require action by the consumer; or

1 P. The false representation or implication that
2 a debt collector operates or is employed by a
3 consumer reporting agency, as defined by Title
4 10, section 1312, subsection 4.

5 3. Unfair practices. A debt collector may not
6 use unfair or unconscionable means to collect or at-
7 tempt to collect any debt. Without limiting the gen-
8 eral application of this subsection, the following
9 conduct is a violation of this section:

10 A. The collection of any amount, including any
11 interest, fee, charge or expense incidental to
12 the principal obligation, unless the amount is
13 expressly authorized by the agreement creating
14 the debt or permitted by law;

15 B. The acceptance by a debt collector from any
16 person of a check or other payment instrument
17 postdated by more than 5 days, unless that person
18 is notified in writing of the debt collector's
19 intent to deposit that check or instrument not
20 more than 10 nor less than 3 business days prior
21 to the deposit;

22 C. The solicitation by a debt collector of any
23 postdated check or other postdated payment in-
24 strument for the purpose of threatening or insti-
25 tuting criminal prosecution;

26 D. Depositing or threatening to deposit any
27 postdated check or other postdated payment in-
28 strument prior to the date on the check or in-
29 strument;

30 E. Causing charges to be made to any person for
31 communications by concealment of the true purpose
32 of the communication. These charges include, but
33 are not limited to, collect telephone calls and
34 telegram fees;

35 F. Taking or threatening to take any nonjudicial
36 action to effect dispossession or disablement of
37 property if:

38 (1) There is no present right to possession
39 of the property claimed as collateral
40 through an enforceable security interest;

1 (2) There is no present intention to take
2 possession of the property; or

3 (3) The property is exempt by law from the
4 dispossession or disablement;

5 G. Communicating with a consumer regarding a
6 debt by postcard;

7 H. Using any language or symbol, other than the
8 debt collector's address, on any envelope when
9 communicating with a consumer by use of the mails
10 or by telegram, except that a debt collector may
11 use his business name if that name does not indi-
12 cate that he is in the debt collection business;

13 I. Using or employing notaries public, consta-
14 bles, sheriffs or any other officer authorized to
15 serve legal papers in the collection of a claim;

16 J. Exercising authority on behalf of a creditor
17 to employ the services of lawyers, unless the
18 creditor has specifically authorized the agency
19 in writing to do so and the debt collector's
20 course of conduct is at all times consistent with
21 the true relationship of attorney and client be-
22 tween the lawyer and the creditor, such that the
23 debt collector will not demand or obtain in any
24 manner a share of the compensation for services
25 performed by a lawyer in collecting a claim;

26 K. Failing to return any claim or claims upon
27 written request of the creditor, claimant or for-
28 warder after the tender of such amounts, if any,
29 as may be due and owing to the debt collector, or
30 refusing or intentionally failing to account to
31 its clients for all money collected within 30
32 days from the last day of the month in which the
33 money is collected or refusing, or intentionally
34 failing, to return to the creditor all valuable
35 papers deposited with a claim when that claim is
36 returned;

37 L. Commingling money collected for a creditor
38 with the debt collector's own funds or using any
39 part of a creditor's money in the conduct of the
40 debt collector's business;

1 M. Engaging in the business of lending money to
2 any person or contacting any person for the pur-
3 pose of securing a loan for any person with which
4 to pay any claim left with it for collection, or
5 recommending any person or persons as a source of
6 funds to pay any such claim;

7 N. Threatening to bring legal action in its own
8 name or instituting suits on behalf of others or
9 furnishing legal advice;

10 O. Sharing quarters or office space or having a
11 common waiting room with a practicing lawyer; or

12 P. Purchasing, receiving or soliciting assign-
13 ment of claims for the purpose of collection.

14 §11014. Validation of debts

15 1. Written notice. Within 5 days after the ini-
16 tial communication with a consumer in connection with
17 the collection of any debt, a debt collector shall,
18 unless the following information is contained in the
19 initial communication or the consumer has paid the
20 debt, send the consumer a written notice containing:

21 A. The amount of the debt;

22 B. The name of the creditor to whom the debt is
23 owed;

24 C. A statement that unless the consumer, within
25 30 days after receipt of the notice, disputes the
26 validity of the debt or any portion of the debt,
27 the debt will be assumed to be valid by the debt
28 collector;

29 D. A statement that if the consumer notified the
30 debt collector in writing within the 30-day peri-
31 od that the debt, or any portion of the debt, is
32 disputed, the debt collector will obtain verifi-
33 cation of the debt or a copy of a judgment
34 against the consumer and a copy of the verifica-
35 tion or judgment will be mailed to the consumer
36 by the debt collector; and

1 E. A statement that, upon the consumer's written
2 request within the 30-day period, the debt col-
3 lector will provide the consumer with the name
4 and address of the original creditor, if differ-
5 ent from the current creditor.

6 2. Cease collection. If the consumer notified
7 the debt collector in writing within the 30-day peri-
8 od described in subsection 1 that the debt, or any
9 portion of the debt, is disputed or that the consumer
10 requests the name and address of the original credi-
11 tor, the debt collector shall cease collection of the
12 debt or any disputed portion of the debt, until the
13 debt collector obtains verification of the debt or a
14 copy of the judgment, or the name and address of the
15 original creditor and a copy of the verification or
16 judgment, or name and address of the original credi-
17 tor, is mailed to the consumer by the debt collector.

18 3. Liability. The failure of a consumer to dis-
19 pute the validity of a debt under this section may
20 not be construed by any court as an admission of lia-
21 bility by the consumer.

22 §11015. Multiple debts

23 If any consumer owes multiple debts and makes any
24 single payment to any debt collector with respect to
25 the debts, the debt collector may not apply that pay-
26 ment to any debt which is disputed by the consumer
27 and, where applicable, shall apply that payment in
28 accordance with the consumer's directions.

29 §11016. Furnishing certain deceptive forms

30 1. Unlawful activity. It is unlawful to design,
31 compile and furnish any form knowing that the form
32 would be used to create the false belief in a consum-
33 er that a person other than the creditor of the con-
34 sumer is participating in the collection of or in an
35 attempt to collect a debt the consumer allegedly owed
36 the creditor, when in fact that person is not so par-
37 ticipating.

38 2. Extent of liability. Any person who violates
39 this section shall be liable to the same extent and
40 in the same manner as a debt collector is liable un-

1 der section 11054 for failure to comply with a provi-
2 sion of this Act.

3 SUBCHAPTER III

4 LICENSING AND ADMINISTRATION

5 §11031. Licenses

6 1. Licenses required. Except as provided in
7 this subchapter, no person may conduct the business
8 of a debt collector in this State without a valid li-
9 cence issued by the Superintendent of Consumer Credit
10 Protection.

11 2. Licenses. Licenses granted by the superin-
12 tendent under this section shall be for a period of 2
13 years and shall expire on July 31st or at such other
14 times as the superintendent may designate. Each li-
15 cence may be renewed biennially so long as the super-
16 intendent regards the business as responsible and
17 safe, but in all cases to terminate unless renewed by
18 the expiration date. Each license shall plainly
19 state the name and business address of the licensee
20 and shall be posted in a conspicuous place in the of-
21 fice where the business is transacted. The fee for
22 each biennial license is \$400. When the unexpired
23 license term of an applicant is or will be less than
24 one year at a time of licensure, the license fee
25 shall not exceed 1/2 the biennial license fee. If
26 the licensee desires to carry on business in more
27 than one place within the State, he shall procure a
28 license for each place where the business is to be
29 conducted.

30 3. Applications. Applications for a license
31 shall comply with the following requirements.

32 A. The superintendent may require such financial
33 statements and references of all applicants for a
34 license as he deems necessary; and may make or
35 cause to be made an independent investigation
36 concerning the applicant's reputation, integrity,
37 competence and net worth. The investigation may
38 cover all managerial personnel employed by or as-
39 sociated with the applicant.

1 B. Every application for a license shall be
2 acted upon promptly by the superintendent. If
3 the application complies in form and substance
4 with this Act and the rules promulgated under
5 this Act and the superintendent finds that the
6 applicant is qualified under this Act, the super-
7 intendent shall issue a license forthwith. If
8 the application is not sufficient in form or sub-
9 stance, the superintendent shall reject it and
10 notify the applicant of the manner in which it is
11 deficient. The rejection shall be without preju-
12 dice to the filing of a new application. If the
13 superintendent finds that the applicant is not
14 qualified under this Act, he shall reject the ap-
15 plication and shall give the applicant written
16 notice of the rejection and the reasons for the
17 rejection. In addition, any foreign business,
18 incorporated or unincorporated, before obtaining
19 a license in order to conduct the business of a
20 debt collector within the State shall furnish the
21 superintendent with:

22 (1) A certified copy of its charter and by-
23 laws; and

24 (2) A power of attorney appointing the su-
25 perintendent to be the true and lawful at-
26 torney of the business in and for this
27 State, upon whom all lawful process in an
28 action or proceeding against the business
29 may be served with the same effect as if the
30 business existed in this State. The power
31 of attorney shall stipulate and agree on the
32 part of the business that any lawful process
33 against the company which is served on the
34 attorney shall be the same in legal force
35 and validity as if served on the business
36 itself, and that the authority shall contin-
37 ue in force irrevocable so long as any lia-
38 bility remains outstanding against the busi-
39 ness in this State. A certificate of the
40 appointment, duly certified and authenti-
41 cated shall be filed in the office of the
42 superintendent and a copy certified by him
43 shall be received in evidence in all courts
44 of this State.

1 4. Change in ownership or management. A change
2 of 25% or more in ownership or management of any cor-
3 porate licensee, or of the partners in any partner-
4 ship licensee, shall require the filing of a new ap-
5 plication under this section.

6 §11032. Bond

7 The superintendent shall require each licensee to
8 file and maintain in force a surety bond, in a form
9 prescribed by the superintendent and acceptable to
10 him, and in such sum as he may deem reasonably neces-
11 sary, to safeguard the interests of the public. The
12 bond may be cancelled by the surety on the bond by
13 giving 30 days' notice to the superintendent, but the
14 cancellation shall not in any manner affect the lia-
15 bility of the surety as to anything occurring prior
16 to the cancellation.

17 §11033. Prior convictions as disqualifications

18 In evaluating a license application, the superin-
19 tendent shall consider the criminal record of any in-
20 dividual applicant of any partner, if the applicant
21 is a partnership, of any officer or director, if the
22 applicant is a corporation, or of any employee of the
23 foregoing, in accordance with Title 5, chapter 341.
24 No license may be granted to any lawyer, whose li-
25 cence to practice law has been suspended or revoked,
26 during the effective period of that suspension or
27 revocation.

28 §11034. Rulemaking

29 The superintendent may make such reasonable
30 rules, not inconsistent with this chapter, pertaining
31 to the operation of the business of licensees as he
32 deems necessary to safeguard the interest of the pub-
33 lic. The rules shall be adopted in the manner pre-
34 scribed in the Maine Administrative Procedure Act,
35 Title 5, chapter 375, subchapter II.

36 §11035. Advisory rulings

37 The superintendent may issue advisory rulings
38 pertaining to the applicability of any statutory pro-
39 vision or any rule adopted under this chapter and

1 shall provide by rule for the filing and prompt dis-
2 position of requests for advisory rulings.

3 §11036. Reports and records

4 1. Financial statements. The superintendent may
5 at any time require a licensee to submit to the bu-
6 reau a verified financial statement for examination
7 by the superintendent so that he may determine wheth-
8 er or not the licensee is financially responsible to
9 carry on a debt collector's business.

10 2. Books and records. The superintendent shall
11 require the licensee to keep such books and records
12 in this State as will enable the superintendent to
13 determine whether the provisions of this chapter are
14 being complied with. At the superintendent's option,
15 a licensee may keep the books and records in a loca-
16 tion outside this State, provided that the licensee
17 agrees to produce the books and records in this State
18 upon demand. Every licensee shall preserve the
19 records of final entry used in that business for a
20 period of 2 years after final remittance is made on
21 any account placed with the licensee for collection
22 or after any account has been returned to the claim-
23 ant on which one or more payments have been made.

24 §11037. Voluntary termination of business

25 1. Procedures prior to termination. Prior to
26 voluntarily ceasing business as a debt collector, a
27 licensee shall:

28 A. Notify the superintendent of the proposed
29 termination at least 30 days prior to its effec-
30 tive date;

31 B. Notify all creditor clients in writing of the
32 proposed termination at least 30 days prior to
33 its effective date;

34 C. Provide all creditor clients with detailed
35 final accountings of all debt accounts;

36 D. Remit all money held in the agency trust ac-
37 count to each respective creditor client;

1 E. Return all papers, documents and other prop-
2 erty of creditor clients provided to the licensee
3 in connection with its collection efforts to
4 those clients; and

5 F. Return its license to the superintendent for
6 cancellation.

7 2. Transfer of accounts. No licensee, when ter-
8 minating its business, may transfer an account to an-
9 other debt collector without first securing the writ-
10 ten permission of the client.

11 §11038. Insolvency and liquidation

12 1. Insolvency. If the superintendent determines
13 that a licensee located in this State is insolvent or
14 that he has collected accounts but has failed to re-
15 mit money due to any claimant or forwarder within 30
16 days from the end of the month in which collection
17 was made or, when the license of a debt collector has
18 expired or terminated for any reason whatsoever, the
19 superintendent, if he determines that action neces-
20 sary to protect the public interest, may apply to the
21 Superior Court of the county in which the main office
22 of the debt collector is located, authorizing him to
23 take possession of the assets and the books and
24 records of the licensee for the purpose of liquidat-
25 ing its business and for such other relief as the na-
26 ture of the case and the interest of the claimants or
27 forwarders may require. The court, after citing the
28 licensee to show cause why the superintendent should
29 not be authorized to take possession of the assets
30 and books of accounts and records for the purpose of
31 liquidating the business of the licensee, and, after
32 hearing the allegations and proofs of the parties and
33 determining the facts, may upon the merits dismiss
34 the application or, if it finds that action necessary
35 for the protection of the public, issue its order au-
36 thorizing the superintendent to take possession of
37 the books and records and to liquidate the business
38 and granting such other relief as it deems necessary
39 under the circumstances.

40 2. Powers and duties. In every case where the
41 court issues an order authorizing the superintendent
42 to take possession of the books and records and to

1 liquidate the business of a licensee, the superin-
2 tendent shall be vested with all of the powers, du-
3 ties, authority and responsibility of a receiver, and
4 without limiting the generality of this subsection
5 and subject to the approval of the court.

6 A. The liquidation of the business shall be made
7 by and under the supervision of the superintend-
8 ent, either in the name of the superintendent or
9 in the name of the licensee, and the superintend-
10 ent or his successor shall be vested with title
11 to all of the assets, including the proceeds of
12 the financial security which has been filed with
13 the superintendent and the proceeds of any and
14 all money paid directly to the claimant or for-
15 warder by any debtor prior to the date of the or-
16 der. Money paid to the licensee or to the super-
17 intendent after the date of the order shall be
18 disposed of by the superintendent.

19 B. The superintendent for the purpose of collec-
20 tion or liquidation may sell, assign, convey and
21 transfer or approve the sale, assignment, convey-
22 ance and transfer of the assets of the debt col-
23 lector under such terms and conditions as the su-
24 perintendent deems best for the best interests of
25 the claimants of the debt collector.

26 C. The superintendent shall cause notice to be
27 given by advertisement in such newspapers as he
28 may direct weekly for 4 consecutive weeks after
29 the issue of the order authorizing him to take
30 possession of the assets of the debt collector,
31 calling on all persons who may have claims
32 against the licensee to bring the claims to the
33 superintendent and make legal proof of the claims
34 at a place and time to be specified. The super-
35 intendent shall mail a similar notice to all per-
36 sons whose names appear as claimants or forward-
37 ers upon the books and records of the licensee or
38 as may appear in the records of the superintend-
39 ent. Any claimant or forwarder whose portion of
40 the collections has not been properly remitted
41 shall file a claim, which shall be allowed for
42 the amount actually due the claimant or forwarder
43 after deduction of a commission or fee that may
44 be due and owing the licensee. If the superin-

1 tendent doubts the justice and validity of any
2 claim, he may reject the claim and serve notice
3 of that rejection upon the claimant, either by
4 mail or personally. An affidavit of service of
5 notice, which shall be prima facie evidence of
6 service, shall be filed with the superintendent.
7 The claimant may, within 30 days after receipt of
8 notice of rejection, file a petition in the court
9 in which the proceedings are pending to establish
10 his claim or claims. Claims presented after the
11 expiration of the time fixed in the notice to the
12 claimants or forwarders shall be entitled to re-
13 ceive only liquidating dividends declared after
14 presentation, unless otherwise ordered by the
15 court. The court may fix a date after which all
16 claimants may be barred.

17 D. The assets of the licensee in liquidation,
18 exclusive of any bond proceeds, shall be dis-
19 bursed in the following order:

20 (1) Expenses of liquidation;

21 (2) The full amount of claims of each
22 claimant or forwarder of the licensee whose
23 claim against the licensee has been approved
24 by the superintendent;

25 (3) Reserves for unclaimed and unpaid col-
26 lections;

27 (4) General creditors; and

28 (5) Residue to licensee.

29 E. All accounts and valuable papers given to the
30 licensee by the claimant or forwarders in posses-
31 sion of the superintendent pertaining to accounts
32 placed with the licensee for collection shall be
33 returned to the claimant or forwarder by the su-
34 perintendent within 30 days after verification
35 has been made.

36 F. Nothing contained in this subsection may pre-
37 clude a creditor of a debt collector from prose-
38 cuting any and all legal actions and pursuing any
39 and all remedies afforded him by the laws of this

1 State for collection of debts until such time as
2 the superintendent takes possession of the debt
3 collector's agency under this section.

4 §11039. Fees

5 The aggregate of license fees provided for by
6 this chapter is appropriated for the use of the Bu-
7 reau of Consumer Credit Protection. Any balance of
8 these funds shall not lapse, but shall be carried
9 forward to be expended for the same purposes in the
10 following fiscal year.

11 §11040. Penalty

12 Any person who carries on business as a debt col-
13 lector without first obtaining a license pursuant to
14 this subchapter, or who carries on that business af-
15 ter the revocation, suspension or expiration of any
16 license, or who performs duties relating to the con-
17 duct of a debt collector on behalf of another person
18 as an officer, director, employee, agent or in any
19 other capacity, unless the other person has first ob-
20 tained a license which has not expired, but been re-
21 voked nor suspended is guilty of a Class E crime.

22 SUBCHAPTER IV

23 ENFORCEMENT

24 §11051. Investigation, suspension and revocation of
25 licenses

26 The Bureau of Consumer Credit Protection may in-
27 vestigate the records and practices of a licensee in
28 accordance with Title 9-A, section 6-106, and may
29 charge for expenses incurred pursuant to Title 9-A,
30 section 6-203, subsection 4. The superintendent may
31 file a complaint with the Administrative Court to
32 suspend or revoke a license issued pursuant to this
33 chapter, if, after investigation or hearing, or both,
34 the superintendent has reason to believe that the li-
35 cencee has violated any provisions of this chapter or
36 any administrative rules issued pursuant to this
37 chapter, or has failed to maintain its financial con-
38 dition sufficient to qualify for a license on an
39 original application.

1 §11052. Appeals

2 Any appeal from the decision of the bureau may be
3 taken in accordance with Title 9-A, sections 6-410 to
4 6-414.

5 §11053. Civil penalty

6 The superintendent may, through the Attorney Gen-
7 eral, bring a civil action for a penalty not to ex-
8 ceed \$5,000 against any person who violates this
9 chapter. No civil penalty pursuant to this section
10 may be imposed for violations of this chapter occur-
11 ring more than 2 years before the civil action is
12 brought.

13 §11054. Civil liability

14 1. Failure to comply with this Act. Except as
15 otherwise provided by this section, any debt collec-
16 tor who fails to comply with any provisions of this
17 Act with respect to any person is liable to that per-
18 son in an amount equal to the sum of:

19 A. Any actual damage sustained by that person as
20 a result of such failure;

21 B. In the case of any action by an individual,
22 such additional damages as the court may allow,
23 but not exceeding \$1,000;

24 C. In the case of a class action:

25 (1) Such amount for each named plaintiff as
26 may be recovered under paragraph A; and

27 (2) Such amount as the court may allow for
28 all other class members, without regard to a
29 minimum individual recovery, not to exceed
30 the lesser of \$500,000 or 1% of the net
31 worth of the debt collector; and

32 D. In the case of any successful action to en-
33 force the liability set out in this subsection,
34 the costs of the action, together with a reason-
35 able attorney's fee as determined by the court.
36 On a finding by the court that an action under

1 this section was brought in bad faith and for the
2 purpose of harassment, the court may award to the
3 defendant attorney's fees, reasonable in relation
4 to the work expended and costs.

5 2. Considerations affecting liability. In de-
6 termining the amount of liability in any action under
7 subsection 1, the court shall consider, among other
8 relevant factors:

9 A. In any individual action, the frequency and
10 persistence of noncompliance by the debt collec-
11 tor, the nature of that noncompliance and the ex-
12 tent to which that noncompliance was intentional;
13 or

14 B. In any class action, the frequency and per-
15 sistence of noncompliance by the debt collector,
16 the nature of that noncompliance, the resources
17 of the debt collector, the number of persons ad-
18 versely affected and the extent to which the debt
19 collector's noncompliance was intentional.

20 3. Defenses. A debt collector may not be held
21 liable in any action brought under this section if
22 the debt collector shows, by a preponderance of evi-
23 dence, that the violation was not intentional and re-
24 sulted from a bona fide error, notwithstanding the
25 maintenance of procedures reasonably adapted to avoid
26 any such error.

27 4. Action to enforce liability. An action to
28 enforce liability under this section shall be brought
29 within one year from the date on which the violation
30 occurs.

31 5. Action in good faith. No provision of this
32 section imposing any liability may apply to any act
33 done or omitted in good faith in conformity with any
34 rule or advisory ruling of the superintendent, not-
35 withstanding that, after the act or omission has oc-
36 curred, the rule or advisory ruling is amended, re-
37 scinded, repealed or determined by judicial or other
38 authority to be invalid for any reason.

39 Sec. 3. Transition provisions. All licenses is-
40 sued under authority of the Maine Revised Statutes,

1 Title 32, chapter 10, and otherwise valid, shall re-
2 main in full force and effect and treated as if is-
3 sued under the Maine Revised Statutes, Title 32,
4 chapter 111, subchapter III, until their stated expi-
5 ration date.

6 STATEMENT OF FACT

7 This bill combines the provisions of the United
8 States Fair Debt Collection Practices Act with the
9 state collection agency licensing law. The 2 Acts
10 overlap, but overall the federal standards are more
11 protective of consumers. The enactment of this com-
12 prehensive regulatory scheme will prevent different
13 standards of review and consolidate consumer assist-
14 ance efforts.

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