

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DATE: 2/17/2000

(Filing No. S-493)

BANKING AND INSURANCE

Reported by:

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 865, L.D. 2263, Bill, "An Act to Amend the State's Fair Debt Collection Practices Laws and to Provide for Nonprofit Debt Management Services"

Amend the bill by striking out the title and substituting the following:

'An Act to Regulate Nonprofit Debt Management Service Providers'

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, debt management and budget planning service providers may currently be soliciting business in this State in violation of Maine law; and

Whereas, the regulation of debt management service providers is needed for the protection of Maine consumers; and

Whereas, this Act permits only nonprofit debt management service providers to legally operate in this State for the further protection of Maine consumers; and

Whereas, this Act provides additional enforcement measures against for-profit debt management service providers; and

COMMITTEE AMENDMENT

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 17 MRSA §701, as amended by PL 1971, c. 424, §8, is repealed and the following enacted in its place:

§701. Business prohibited

1. Budget planning prohibited. Except as provided in subsection 2, a person, firm, association or corporation may not engage in the business of budget planning on behalf of a consumer.

2. Exceptions. This chapter does not apply to:

A. A person admitted to the practice of law in this State as of the effective date of this section, except to the extent that budget planning or debt management services constitute the exclusive activity of that attorney;

B. A supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A;

C. A supervised lender as defined in Title 9-A, section 1-301, subsection 39; or

D. Any organization that is registered with the State as a debt management service provider under Title 32, chapter 80-A.

Sec. 2. 17 MRSA §702 is amended to read:

§702. Budget planning, defined

"Budget planning" means the making of a contract with a particular debtor, whereby when the debtor agrees to pay a certain amount periodically to the person engaged in the budget planning, who shall distribute the same to a certain specified creditor or among certain specified creditors in accordance with a plan agreed upon by the debtor.

Sec. 3. 32 MRSA c. 80-A is enacted to read:

CHAPTER 80-A

NONPROFIT DEBT MANAGEMENT SERVICES

2 **§6171. Short title**

4 This chapter may be known and cited as the "Nonprofit Debt
6 Management Services Act."

8 **§6172. Definitions**

10 As used in this chapter, unless the context otherwise
12 indicates, the following terms have the following meanings.

14 **1. Administrator.** "Administrator" means the Director of
16 the Office of Consumer Credit Regulation within the Department of
18 Professional and Financial Regulation.

20 **2. Debt management service.** "Debt management service"
22 means the receiving of money from a consumer for the purpose of
24 distributing that money to or among one or more creditors of the
26 consumer in full or partial payment of the consumer's obligation.

28 **3. Debt management service provider.** "Debt management
30 service provider" means a person that provides or offers to
32 provide to a consumer in this State any debt management services,
34 in return for a fee or other consideration. "Debt management
36 service provider" does not include:

38 **A. A supervised financial organization;**

40 **B. A supervised lender; or**

42 **C. A person admitted to the practice of law in this State**
44 **as of the effective date of this chapter, except to the**
46 **extent that debt management services constitute the**
48 **exclusive activity of that attorney.**

50 **4. Person.** "Person" means an individual or an organization.

52 **5. Supervised financial organization.** "Supervised
54 financial organization" has the same meaning as in Title 9-A,
56 section 1-301, subsection 38-A.

58 **6. Supervised lender.** "Supervised lender" has the same
60 meaning as defined in Title 9-A, section 1-301, subsection 39.

62 **§6173. Registration and annual reregistration**

64 **1. Nonprofit organizations.** Only a nonprofit organization
66 that is exempt from taxation under the United States Internal
68 Revenue Code, Section 501(c)(3) may register under this chapter
70 to act as a debt management service provider with respect to
72 consumers who are residents of this State.

10/15

2 2. Registration and reregistration. A nonprofit
3 organization that is exempt from taxation under the United States
4 Internal Revenue Code, Section 501(c)(3) desiring to act, or
5 continue to act, with respect to consumers in this State as a
6 debt management service provider shall apply to the administrator
7 for registration or reregistration in accordance with this
8 chapter. The application must be in a form prescribed by the
9 administrator. The administrator may refuse the application if
10 it contains erroneous or incomplete information. A registration
11 may not be issued unless the administrator, upon investigation,
12 finds that the financial soundness and responsibility, insurance
13 coverage, consumer education programs and services component,
14 character and fitness of the applicant and, when applicable, its
15 partners, officers or directors, warrant belief that the business
16 will be operated honestly and fairly within the purposes of this
17 chapter. The initial application for registration may be filed
18 at any time and must include a fee of \$500. A registration or
19 reregistration under this chapter expires on December 31st of the
20 year approved. An annual reregistration application must be
21 filed by December 1st of each year for the following year and
22 must include a fee of \$250.

24 3. Action on registration application. The administrator
25 shall take action on an application within 30 days after the
26 administrator has accepted the application as complete. Upon
27 written request, the applicant is entitled to a hearing on the
28 question of the applicant's qualifications for registration if
29 the administrator has notified the applicant in writing that the
30 application has been denied or the administrator has not issued a
31 registration within 30 days after the application for the
32 registration was accepted as complete by the administrator. A
33 request for a hearing may not be made more than 60 days after the
34 application was accepted as complete or the administrator has
35 mailed a written notice to the applicant stating that the
36 application has been denied and stating the reasons for the
37 denial of the application.

38 **§6174. Bond required**

40 Each application must be accompanied by evidence of a surety
41 bond in a form approved by the administrator in the aggregate
42 amount of \$50,000 to run to the administrator for use by the
43 administrator and any person or persons who may have a cause of
44 action against a debt management service provider. The terms of
45 the bond must run concurrently with the period of time during
46 which the registration is in effect.

48 **§6175. Handling of consumer funds**

50

1 1. Funds deposited in trust account. The debt management
2 service provider shall deposit, within 2 business days of
3 receipt, all funds received from or on behalf of a consumer for
4 payment to a creditor or creditors in a federally insured trust
5 account for the benefit of the consumer in a supervised financial
6 organization. Any trust account established to receive consumer
7 funds is free from trustee process and unavailable to creditors
8 of the debt management service provider.

10 2. Requirements for handling of funds. The debt management
11 service provider shall:

12 A. Maintain separate records of account for each consumer
13 receiving debt management services;

14 B. Remit funds received from or on behalf of a consumer to
15 the consumer's creditor or creditors within 15 business days
16 of receipt of the funds; and

17 C. Correct or remedy any misdirected payments resulting
18 from an error by the debt management service provider and
19 reimburse the consumer for any actual costs or fees imposed
20 by a creditor as a result of such misdirection.

21 3. Commingling of funds. The debt management service
22 provider may not commingle trust accounts established for the
23 benefit of consumers with any operating accounts of the debt
24 management service provider.

25 **§6176. Requirement for written agreement**

26 1. Written agreement. A debt management service provider
27 may not perform debt management services for a consumer unless
28 the consumer and the debt management service provider have first
29 executed a written agreement with regard to the debt management
30 services to be provided. A copy of the completed agreement must
31 be given to the consumer.

32 2. Required provisions. Each agreement between a consumer
33 and a debt management service provider must be dated and signed
34 by the consumer and must include the following:

35 A. The name and address of the consumer and the debt
36 management service provider and the state registration
37 number of the debt management service provider;

38 B. A full description of the services to be performed for
39 the consumer, any fees to be charged to the consumer for
40 such services and any contributions, fees or charges the

R.S.

2 consumer has agreed to make or pay to the debt management
service provider;

4 C. Disclosure of the existence of the surety bond on file
with the State pursuant to section 6174 and a notice that
6 the consumer may contact the Office of Consumer Credit
Regulation with any questions or complaints regarding the
8 debt management service provider;

10 D. The identification of the supervised financial
organization where funds remitted by a consumer for payment
12 to one or more creditors will be held;

14 E. The right of a party to cancel the agreement by
providing a written notice of cancellation to the other
16 party;

18 F. A complete list of the consumer's obligations that are
subject to the agreement and the names and addresses of the
20 creditors holding those obligations;

22 G. A full description and schedule of the periodic amounts
to be remitted to the debt management service provider for
24 payment to the consumer's creditor or creditors and the
amounts to be remitted to each creditor;
26

28 H. A notice to the consumer that by executing the agreement
the consumer authorizes the supervised financial
organization to disclose financial records relating to the
30 trust account in which the consumer's funds are held
pursuant to section 6175 to the administrator during the
32 course of any examination of the debt management service
provider by the administrator; and
34

36 I. The following notice:

38 NOTICE TO CONSUMER: Do not sign this agreement before
you read it. You must be given a copy of this
40 agreement.

42 **§6177. Reports and records**

44 1. Written reports to consumers. A debt management service
provider shall provide to each consumer receiving debt management
46 services periodic written reports accounting for funds received
from the consumer for payment to the consumer's creditor or
48 creditors whose obligations are listed in the consumer's
agreement with the debt management service provider and
disbursements made to each such creditor on the consumer's behalf
50 since the last report. The debt management service provider

shall provide such reports to the consumer not less than once
each calendar quarter.

2. Maintenance of records. A debt management service provider shall maintain books and records for each consumer for whom it provides debt management services for 6 years following the final transaction with the consumer.

§6178. Powers and functions of administrator

The administrator may exercise the following powers and functions.

1. Complaint investigation. The administrator may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases, including cases involving violations under section 6173 or 6175 or Title 17, section 701, to the Attorney General, who shall appear for and represent the administrator in court.

2. Rules. The administrator may adopt rules to carry out the requirements of this chapter in accordance with Title 5, chapter 375. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

3. Examinations. The administrator may examine the books, accounts and records of any debt management service provider, make an investigation to determine compliance with this chapter and charge the reasonable expenses necessarily incurred to conduct the examinations to the debt management service provider.

4. Appropriation of funds. The administrator may appropriate for the use of the administrator the aggregate of fees, examination expense reimbursement or other payments made to the administrator pursuant to this chapter and carry forward any balance of funds from a fiscal year to be expended for the same purpose in the following fiscal year.

§6179. Prohibited acts

A debt management service provider may not:

1. Purchase debt. Purchase any debt or obligation of a consumer;

2. Lend money. Lend money or provide credit to any consumer;

3. Mortgage interest. Obtain a mortgage or other security interest in property of a consumer;

R. O. S.

2 4. Debt collector. Operate as a debt collector in this
3 State, as defined in section 11002, subsection 6; or

4
5 5. Negative amortization. Structure an agreement for the
6 consumer that, at the conclusion of the projected term for the
7 consumer's participation in the debt management service
8 agreement, would result in negative amortization of any of the
9 consumer's obligations to creditors.

10 **§6180. Advertising**

11
12 1. False advertising. A debt management service provider
13 may not engage in this State in false or misleading advertising
14 concerning the terms and conditions of any services or assistance
15 offered.

16
17 2. Dissemination; no liability. This section does not
18 impose liability on the owner or personnel of any medium in which
19 an advertisement appears or through which an advertisement is
20 disseminated.

21 **§6181. Effects of violations on rights of parties**

22
23 1. Violations; unfair, unconscionable or deceptive
24 practices. A debt management service provider that violates any
25 provision of this chapter or any rule adopted by the
26 administrator or that through any unfair, unconscionable or
27 deceptive practice causes actual damage to a consumer is subject
28 to enforcement action pursuant to subsection 2.

29
30 2. Enforcement actions. The following enforcement actions
31 may be taken by the administrator or an aggrieved consumer
32 against a debt management service provider for violations of any
33 provision of this chapter or any rule adopted pursuant to this
34 chapter or for unfair, unconscionable or deceptive practices that
35 cause actual damage to a consumer:

36
37 A. After notice and hearing, a cease and desist order from
38 the administrator;

39
40 B. When in the opinion of the administrator immediate
41 action is required to protect the public interest, a cease
42 and desist order without prior notice and hearing after
43 which the administrator shall afford an opportunity for a
44 hearing, the results of which are subject to review under
45 Title 5, chapter 375, subchapter VII;

46
47
48

P. 45

2 C. After notice and hearing, forfeiture of such portion of
3 the required bond as proportionately may make aggrieved
4 parties whole;

6 D. A civil action by the administrator through the Attorney
7 General, after which a court may assess a civil penalty
8 payable to the State of not more than \$5,000;

10 E. A civil action by an aggrieved consumer in which that
11 consumer has the right to recover actual damages from the
12 debt management service provider in an amount determined by
13 the court plus costs of the action together with reasonable
14 attorney's fees; or

16 F. Revocation, suspension or nonrenewal of the debt
17 management service provider's registration pursuant to
18 section 6182.

20 **§6182. Suspension or revocation of registration**

22 1. Suspension or revocation. After notice and hearing, the
23 administrator may suspend or revoke a debt management service
24 provider's registration if the administrator finds that one of
25 the conditions of subsection 2 is met.

26 2. Conditions for suspension or revocation. The following
27 conditions are grounds for suspension or revocation of a
28 registration:

30 A. A fact or condition exists that, if it had existed at
31 the time when the registrant applied for registration, would
32 have been grounds for denying the application;

34 B. The registrant knowingly violates a material provision
35 of this chapter or rule or order validly adopted by the
36 administrator under authority of this chapter;

38 C. The registrant is insolvent;

40 D. The registrant refuses to permit the administrator to
41 make an examination authorized by this chapter; or

42 E. The registrant fails to respond within a reasonable
43 time and in an appropriate manner to communications from the
44 administrator.

46 Emergency clause. In view of the emergency cited in the
47 preamble, this Act takes effect when approved.'
48

P. 45

COMMITTEE AMENDMENT "A" to S.P. 865, L.D. 2263

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

2000-01

REVENUES

Other Funds \$2,500

The Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation will incur some minor additional costs to enforce a statute regulating nonprofit debt management services. These costs can be absorbed within the Department of Professional and Financial Regulation's existing budgeted resources.

Requiring a nonprofit debt management service provider to register with the Office of Consumer Credit Regulation will increase dedicated revenue to the Department of Professional and Financial Regulation from registration fees and compliance examination reimbursement by approximately \$2,500 annually beginning in fiscal year 2000-01.

The additional costs associated with the regulation of nonprofit debt management service providers can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

SUMMARY

This amendment replaces the bill and enacts a new chapter providing for the registration and regulation of nonprofit debt management service providers. Such organizations assist consumers in restructuring their consumer credit obligations and revising their terms of repayment on a voluntary basis, generally by also securing debt restructuring agreements with creditors. Payments made by a consumer do not become the property of the organization and must be deposited in a trust account and paid over to the creditors within 15 days, according to the terms of a

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to S.P. 865, L.D. 2263

2 written agreement with the consumer. The Office of Consumer
Credit Regulation is given regulatory authority over nonprofit
4 debt management service providers.

6 The amendment also adds an emergency preamble, an emergency
clause and a fiscal note to the bill.

COMMITTEE AMENDMENT