

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1999

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Legislative Document

No. 2263

S.P. 865

Received by the Secretary, December 7, 1999

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**An Act to Amend the State's Fair Debt Collection Practices Laws and to  
Provide for Nonprofit Debt Management Services.**

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Received by the Secretary of the Senate on December 7, 1999. Referred to the Committee on Banking and Insurance and ordered printed pursuant to Joint Rule 308.2.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.

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

4 **Sec. 1. 9-A MRSA Art. XII is enacted to read:**

6 **Article XII**  
**Nonprofit Debt Management Services**

8 **PART 1**  
**GENERAL PROVISIONS**

10 **§12-101. Short title**

12 This Article is known and may be cited as the "Maine  
14 Consumer Credit Code--Nonprofit Debt Management Services."

16 **§12-102. Definitions**

18 As used in this Article, unless the context otherwise  
20 indicates, the following terms have the following meanings.

22 1. "Administrator" means the Director of the Office of  
Consumer Credit Regulation within the Department of Professional  
24 and Financial Regulation.

26 2. "Debt management" means, in return for fee or other  
valuable consideration from the consumer, receiving money from a  
28 consumer for the purpose of distributing such money among  
creditors of the consumer in full or partial payment of the  
30 consumer's obligations.

32 3. "Debt management service" is defined as follows.

34 A. "Debt management service" means any person that provides  
or offers to provide to a consumer in this State any debt  
36 management services.

38 B. "Debt management service" does not include:

40 (1) A supervised financial organization as defined in  
section 1-301, subsection 38-A;

42 (2) A supervised lender as defined in section 1-301,  
44 subsection 39;

46 (3) A person currently admitted to the practice of law  
in this State; or

48 (4) A person exempt from the provisions of Title 17,  
50 chapter 29.

**PART 2**  
**REGISTRATION AND BONDING**

**§12-201. Registration and annual reregistration**

1. Only a nonprofit organization that is exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) may register under this Article to act as a debt management service in this State.

2. A nonprofit organization that is exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) desiring to act, or continue to act, in this State as a debt management service shall apply to the administrator for registration or reregistration under this Article. The application must be in a form prescribed by the administrator. The administrator may refuse the application if it contains erroneous or incomplete information. A registration may not be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant and, when applicable, its partners, officers or directors warrant belief that the business will be operated honestly and fairly within the purposes of this Title. The initial application for registration may be filed at any time and must include a fee of \$500. A registration or reregistration under this Article expires on December 31st of the year approved. An annual reregistration application must be filed by December 1st of each year and must include a fee of \$250.

3. A nonprofit organization's application for registration or reregistration as a debt management service is considered effective and accepted by the State 30 days following the submission of the registration or reregistration to the State unless the administrator notifies the applicant in writing of any errors in the application requiring correction or additional information required to complete the application within such 30-day period or, after such notice and an opportunity to cure, determines that the application is denied.

**§12-202. Bond**

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

**PART 3**

REGULATION OF PRACTICES

2  
4 §12-301. Funds held in separate bank account

6 The debt management service shall deposit all funds received  
8 from or on behalf of a consumer for payment to a creditor in  
10 trust for the benefit of the consumer in a bank account that is  
12 separate from any operating accounts of the debt management  
14 service. Such separate bank account may be maintained outside  
16 the State as long as the account is with a federally chartered  
18 financial institution or national bank and is available to the  
administrator for audit and examination purposes. The debt  
management service shall deposit all funds remitted by a consumer  
for payment to a creditor into such separate bank account within  
2 business days of receipt by the debt management service, and  
the debt management service shall remit such funds to the  
consumer's creditor within 15 business days of receipt of the  
funds.

20 §12-302. Requirement for written agreement

22 A debt management service may not perform debt management  
24 services for a consumer unless the consumer and the debt  
26 management service have executed a written agreement with regard  
28 to the debt management services to be provided. Each agreement  
between a consumer and a debt management service must be in  
writing, dated and signed by the consumer and must include the  
following:

30 1. The name and address of the consumer and the debt  
32 management service, and the state registration number of the debt  
management service;

34 2. A full description of the services to be performed for  
36 the consumer, any fees charged to the consumer for such services  
38 and any contributions the consumer has agreed to make to the debt  
management service;

40 3. The existence of the surety bond on file with the State,  
and the procedure for instituting an action against that bond;

42 4. The identification of the financial institution and  
44 account where funds remitted by a consumer for payment to a  
creditor are held;

46 5. The right of a party to cancel the agreement by  
48 providing a written notice of cancellation to the other party;

2 6. A complete list of the consumer's obligations that are  
3 subject to the agreement and the names of the creditors holding  
4 such obligations; and

6 7. The following notice:

8 NOTICE TO CONSUMER: Do not sign this agreement before you  
9 read it. You are entitled to a copy of this agreement.

10 **§12-303. Reports and records**

12 1. A debt management service shall provide to each consumer  
13 receiving debt management services periodic written reports  
14 accounting for funds received from the consumer for payment to  
15 the consumer's creditors whose obligations are listed in the  
16 consumer's agreement with the debt management service and  
17 disbursements made to each such creditor on such consumer's  
18 behalf by the debt management service since the last report. The  
19 debt management service shall provide such reports to the  
20 consumer not less than once each calendar quarter.

22 2. A debt management service shall maintain books and  
23 records for each consumer for whom it provides debt management  
24 services for 3 years following the final transaction with the  
25 consumer.

26 **§12-304. Prohibited acts**

28 A debt management service registered with the State may not:

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

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

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

38 4. Operate as a debt collector in the State, as defined in  
39 Title 32, section 11002, subsection 6.

40 **§12-305. Advertising**

42 1. A debt management service may not engage in this State  
43 in false or misleading advertising concerning the terms and  
44 conditions of any services or assistance offered.

46 2. This section imposes no liability on the owner or  
47 personnel of any medium in which an advertisement appears or  
48 through which it is disseminated.

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2 **§12-306. Powers and functions of administrator**

4 Article VI, Part I applies to debt management services.

6 **§12-307. Rulemaking**

8 The administrator may adopt rules pursuant to Title 5,  
10 chapter 375 and in accordance with this Article. Rules adopted  
12 pursuant to this section are routine technical rules pursuant to  
14 Title 5, chapter 375, subchapter II-A.

12 **PART 4**  
14 **REMEDIES AND PENALTIES**

16 **§12-401. Effects of violations on rights of parties**

18 Any debt management service that violates any provision of  
20 this Title or any rule issued by the administrator or that  
22 through any unfair, unconscionable or deceptive practice causes  
24 actual damage to a consumer is subject to the following:

26 1. After notice and hearing, a cease and desist order from  
28 the administrator;

30 2. After notice and hearing, forfeiture of such portion of  
32 the required bond as proportionately may make aggrieved parties  
34 whole;

36 3. A civil action by the administrator through the Attorney  
38 General, after which a court may assess a civil penalty of not  
40 more than \$5,000;

42 4. A civil action by an aggrieved consumer in which that  
44 consumer has the right to recover actual damages from the debt  
46 management service in an amount determined by the court plus  
48 costs of the action together with reasonable attorney's fees; and

50 5. Revocation, suspension or nonrenewal of the debt  
management service's registration pursuant to section 2-303.

Sec. 2. 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. Except as provided in subsection 2, a  
person, firm, association or corporation may not engage in the  
business of budget planning.

2. Prohibition. This chapter does not apply to:

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A. Those admitted to the practice of law;

B. Any bank, trust company, savings and loan association or credit union; or

C. Any organization that is registered with the State as a debt management service under Title 9-A, Article XII.

**Sec. 3. 32 MRSA §11002, sub-§6**, as amended by PL 1999, c. 184, §20, is further amended to read:

**6. Debt collector.** "Debt collector" means any person conducting business in this State, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. "Debt collector" includes persons who furnish collection systems carrying a name that simulates the name of a debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor. Notwithstanding the exclusion provided by section 11003, subsection 7, "debt collector" includes any creditor who, in the process of collecting the creditor's own debts, uses any name other than the creditor's that would indicate that a 3rd person is collecting or attempting to collect these debts. For purposes of subchapter II, "debt collector" includes any attorney-at-law whose principal activities include collecting debts as an attorney on behalf of and in the name of clients. "Debt collector" also includes any person regularly engaged in the enforcement of security interests securing debts. "Debt collector" does not include any person who retrieves collateral when a consumer has voluntarily surrendered possession. A person is regularly engaged in the enforcement of security interests if that person enforced security interests more than 5 times in the previous calendar year. If a person does not meet these numerical standards for the previous calendar year, the numerical standards must be applied to the current calendar year. "Debt collector" does not include the provision of debt management services by any nonprofit debt management service registered with the State pursuant to Title 9-A, Article XII.

### SUMMARY

This bill amends the Maine Consumer Credit Code by enacting a new article providing for the registration and regulation of nonprofit debt management service organizations. Such organizations assist consumers in restructuring their consumer credit obligations and revising their terms of repayment, on a



2 voluntary basis, generally by also securing debt restructuring  
3 agreements with creditors. Payments made by consumers do not  
4 become the property of the organization and are required to be  
5 deposited in a trust account and paid over to creditors within 15  
6 days, subject to a written agreement with the consumer. Credit  
7 counseling services may also be provided in conjunction with the  
8 service.