

MAINE STATE LEGISLATURE

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Date: 6/8/17

INSURANCE AND FINANCIAL SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 836, L.D. 1199, Bill, "An Act To Promote Fiscal Responsibility in the Purchasing of Debt"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 16 MRSA §355, as amended by PL 1981, c. 470, Pt. A, §34, is further amended to read:

§355. Affidavit of plaintiff as prima facie evidence; exception

In all actions brought on an itemized account annexed to the complaint, including an action brought in small claims court pursuant to Title 14, chapter 738, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the action with all proper credits given and that the prices or items charged therein are just and reasonable ~~shall be~~ is prima facie evidence of the truth of the statement made in such affidavit and ~~shall entitle~~ entitles the plaintiff to the judgment unless rebutted by competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may be made by its president, vice-president, secretary, treasurer or other person authorized by the corporation. If the plaintiff is a debt buyer within the meaning of the Maine Fair Debt Collection Practices Act, the affidavit must also conform to the requirements of Title 32, section 11019.

Sec. 2. 32 MRSA §11002, sub-§1-B is enacted to read:

1-B. Charge-off. "Charge-off" means the act of a creditor removing an account from its books as an asset and treating it as a loss or expense because payment is unlikely.

Sec. 3. 32 MRSA §11002, sub-§5-A is enacted to read:

5-A. Debt buyer. "Debt buyer" means a person that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether the person collects the debt or hires a 3rd party, which may include an attorney-at-law, in order to collect the debt. "Debt buyer" does not include a supervised financial

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1 organization as defined in Title 9-A, section 1-301, subsection 38-A or a person that
2 acquires charged-off consumer debt incidental to the purchase of a portfolio
3 predominantly consisting of consumer debt that has not been charged off. A debt buyer is
4 considered a debt collector for all purposes under this chapter.

5 **Sec. 4. 32 MRSA §11002, sub-§8-C** is enacted to read:

6 **8-C. Resolved debt.** "Resolved debt" means a debt that has been paid, settled or
7 discharged in bankruptcy.

8 **Sec. 5. 32 MRSA §11013, sub-§§9 and 10** are enacted to read:

9 **9. Required information.** A debt buyer may not collect or attempt to collect a debt
10 unless the debt buyer possesses the following:

11 A. The name of the owner of the debt;

12 B. The original creditor's name at the time of the charge-off;

13 C. The original creditor's account number used to identify the debt at the time of the
14 charge-off, if the original creditor used an account number to identify the debt at the
15 time of charge-off;

16 D. The principal amount due at charge-off;

17 E. An itemization of interest and fees, if any, incurred after charge-off claimed to be
18 owed and whether those were imposed by the original creditor or any subsequent
19 owners of the debt;

20 F. If the debt is not from a revolving credit account, the date that the debt was
21 incurred or the date of the last charge billed to the consumer's account for goods or
22 services received. In the case of debt from a revolving credit account, the debt buyer
23 must possess the date of the last extension of credit for the purchase of goods or
24 services, for the lease of goods or as a loan of money;

25 G. The date and amount of the last payment, if applicable;

26 H. The names of all persons or entities that owned the debt after the time of the
27 charge-off, if applicable, and the date of each sale or transfer;

28 I. Documentation establishing that the debt buyer is the owner of the specific debt at
29 issue. If the debt was assigned more than once, the debt buyer must possess each
30 assignment or other writing evidencing the transfer of ownership to establish an
31 unbroken chain of ownership, beginning with the original creditor to the first debt
32 buyer and each subsequent debt buyer; and

33 J. A copy of the contract, application or other documents evidencing the consumer's
34 liability for the debt. If a signed writing evidencing the original debt does not exist,
35 the debt buyer must possess a copy of a document provided to the consumer before
36 charge-off demonstrating that the debt was incurred by the consumer or, for a
37 revolving credit account, the most recent monthly statement recording the extension
38 of credit for the purchase of goods or services, for the lease of goods or as a loan of
39 money.

1 **10. Transfer of ownership of certain debts.** A debt buyer may not sell or
2 otherwise transfer ownership of:

3 A. A debt without the information and documentation required pursuant to
4 subsection 9; or

5 B. A resolved debt, an interest in a resolved debt or any financial information
6 relating to a resolved debt.

7 **Sec. 6. 32 MRSA §11019** is enacted to read:

8 **§11019. Collection action by debt buyer**

9 **1. Complaint; required allegations.** A debt buyer may not initiate a collection
10 action against a consumer, including an action brought in small claims court pursuant to
11 Title 14, chapter 738, unless the debt buyer alleges all of the following information in the
12 complaint:

13 A. The information described in section 11013, subsection 9, including that the debt
14 buyer possesses the documentation described in section 11013, subsection 9;

15 B. The basis for any interest and fees described in section 11013, subsection 9;

16 C. The basis for the request for attorney's fees, if applicable;

17 D. That the debt buyer is the current owner of the debt; and

18 E. That the cause of action is filed within the applicable statute of limitations period.

19 **2. Debt collection complaint; attachments.** In a collection action initiated by a
20 debt buyer, the debt buyer shall attach all of the following materials to the complaint:

21 A. A copy of the contract, application or other document evidencing the consumer's
22 agreement to the debt. If a signed writing evidencing the original debt does not exist,
23 the debt buyer shall attach a copy of a document provided to the consumer before
24 charge-off demonstrating that the debt was incurred by the consumer or, for a
25 revolving credit account, the most recent monthly statement recording the extension
26 of credit for the purchase of goods or services, for the lease of goods or as a loan of
27 money or the last payment or balance transfer; and

28 B. A copy of the bill of sale or other writing establishing that the debt buyer is the
29 owner of the debt. If the debt was assigned more than once, the debt buyer shall
30 attach each assignment or other writing evidencing the transfer of ownership to
31 establish an unbroken chain of ownership, beginning with the original creditor to the
32 first debt buyer and each subsequent debt buyer.

33 **3. Requirements for judgment.** Regardless of whether the consumer appears in the
34 action, the court may not enter a judgment in favor of a debt buyer in a collection action
35 against a consumer, including an action brought in small claims court pursuant to Title
36 14, chapter 738, unless the debt buyer files with the court:

37 A. A copy admissible under the Maine Rules of Evidence of the contract, application
38 or other writing establishing the consumer's agreement to the debt and any contract
39 interest or fees alleged to be owed. If a signed writing evidencing the original debt
40 does not exist, the debt buyer must file a copy of a document provided to the

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1 consumer before charge-off demonstrating that the debt was incurred by the
2 consumer or, for a revolving credit account, the most recent monthly statement
3 recording the extension of credit for the purchase of goods or services, for the lease
4 of goods or as a loan of money or the last payment or balance transfer;

5 B. Business records or other evidence admissible under the Maine Rules of Evidence
6 to establish the amount due at charge-off;

7 C. A copy admissible under the Maine Rules of Evidence of each bill of sale or other
8 writing establishing transfer of ownership of the debt from the original creditor to the
9 debt buyer. If the debt was assigned more than once, the debt buyer must file each
10 assignment or other writing evidencing the transfer of ownership to establish an
11 unbroken chain of ownership, beginning with the original creditor to the first debt
12 buyer and each subsequent debt buyer; and

13 D. Notwithstanding any other law, if attorney's fees are sought under contract, a copy
14 admissible under the Maine Rules of Evidence of the contract evidencing entitlement
15 to attorney's fees.

16 **Sec. 7. 32 MRSA §11031, sub-§3, ¶A,** as enacted by PL 1985, c. 702, §2, is
17 amended to read:

18 A. The superintendent may require such financial statements and references of all
19 applicants for a license as ~~he~~ the superintendent deems necessary; and may make or
20 cause to be made an independent investigation concerning the applicant's reputation,
21 integrity, competence and net worth. The investigation may cover all managerial
22 personnel employed by or associated with the applicant. If the applicant is a debt
23 buyer, the superintendent shall require documentation that the debt buyer has
24 conducted a criminal background check prior to employment on every officer or
25 employee of the debt buyer who engages in the active collection of debt for the debt
26 buyer or has access to consumer credit information.

27 **Sec. 8. 32 MRSA §11053,** as enacted by PL 1985, c. 702, §2, is amended to read:

28 **§11053. Civil penalty**

29 ~~The~~ Except for a civil action against a debt buyer, the superintendent may, through
30 the Attorney General, bring a civil action for a penalty not to exceed \$5,000 against any
31 person who willfully violates this chapter. The superintendent may, through the Attorney
32 General, bring a civil action for a penalty not to exceed \$10,000 against a debt buyer who
33 willfully violates this chapter. No civil penalty pursuant to this section may be imposed
34 for violations of this chapter occurring more than 2 years before the civil action is
35 brought.

36 **Sec. 9. 32 MRSA §11054, sub-§1-A** is enacted to read:

37 **1-A. Failure to comply with this Act by a debt buyer.** Except as otherwise
38 provided by this section, any debt buyer who fails to comply with any provisions of this
39 Act with respect to any person is liable to that person in an amount equal to the sum of:

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

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1 B. In the case of any action by an individual, such additional damages as the court
2 may allow, but not exceeding \$2,000;

3 C. In the case of a class action:

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

6 (2) Such amount as the court may allow for all other class members, without
7 regard to a minimum individual recovery, not to exceed the lesser of \$500,000
8 and 1% of the net worth of the debt buyer; and

9 D. In the case of any successful action to enforce the liability set out in this
10 subsection, the costs of the action, together with a reasonable attorney's fee as
11 determined by the court. On a finding by the court that an action under this section
12 was brought in bad faith and for the purpose of harassment, the court may award to
13 the defendant attorney's fees reasonable in relation to the work expended and costs.

14 **Sec. 10. 32 MRSA §11054, sub-§§2 and 3**, as enacted by PL 1985, c. 702, §2,
15 are amended to read:

16 **2. Considerations affecting liability.** In determining the amount of liability in any
17 action under subsection 1 or 1-A, the court shall consider, among other relevant factors:

18 A. In any individual action, the frequency and persistence of noncompliance by the
19 debt collector or debt buyer, the nature of that noncompliance and the extent to which
20 that noncompliance was intentional; or

21 B. In any class action, the frequency and persistence of noncompliance by the debt
22 collector or debt buyer, the nature of that noncompliance, the resources of the debt
23 collector or debt buyer, the number of persons adversely affected and the extent to
24 which the debt collector's or debt buyer's noncompliance was intentional.

25 **3. Defenses.** A debt collector or debt buyer may not be held liable in any action
26 brought under this chapter if the debt collector or debt buyer shows, by a preponderance
27 of evidence, that the violation was not intentional and resulted from a bona fide error,
28 notwithstanding the maintenance of procedures reasonably adapted to avoid any such
29 error.

30 **Sec. 11. Application.** This Act applies to a debt buyer, as defined in the Maine
31 Revised Statutes, Title 32, section 11002, subsection 5-A, with respect to all debt sold to
32 that debt buyer on or after January 1, 2018. This Act does not affect the validity of any
33 collection actions taken, civil actions or arbitration actions commenced or judgments
34 entered into prior to January 1, 2018.'

SUMMARY

35 This amendment makes the following changes to the bill.

36 1. It clarifies that the definition of "debt buyer" does not apply to a supervised
37 financial organization or a person that acquires charged-off consumer debt incidental to
38 the purchase of a portfolio predominantly consisting of consumer debt that has not been
39 charged off.
40

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COMMITTEE AMENDMENT "A" to H.P. 836, L.D. 1199

- 1 2. It clarifies that debt buyers must conduct criminal background checks on their
- 2 officers and employees who are actively engaged in the collection of debt. The bill
- 3 proposes to require all officers and employees of debt buyers to be licensed as debt
- 4 buyers.
- 5 3. It removes provisions in the bill relating to garnishment of wages.
- 6 4. It modifies the specific documentation that a creditor or debt collector must have
- 7 when collecting or attempting to collect a debt.
- 8 5. It increases the maximum penalties that may be assessed against a debt buyer that
- 9 has violated a provision of the Maine Fair Debt Collection Practices Act.
- 10 6. It specifies that the provisions of the bill apply to a debt buyer with respect to
- 11 debts sold on or after January 1, 2018.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



Approved: 06/02/17 *MAC*

128th MAINE LEGISLATURE

LD 1199

LR 1330(02)

An Act To Promote Fiscal Responsibility in the Purchasing of Debt

Fiscal Note for Bill as Amended by Committee Amendment *A. (H-468)*

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor savings - General Fund
Minor revenue decrease - General Fund
Minor cost increase - Other Special Revenue Funds
Minor revenue increase - Other Special Revenue Funds

Correctional and Judicial Impact Statements

Decreases the number of civil suits.

A reduction in filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Professional and Financial Regulation to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources. Additionally, individual employees of debt buying companies will be required to obtain debt collector licenses, leading to an increase in the licensing revenue that is expected to be minimal.