

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1242

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H.P. 865

House of Representatives, March 30, 2017

### **An Act To Prevent Abusive Debt Collection Tactics by Debt Buyers**

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative COOPER of Yarmouth.

Cosponsored by Representative: RYKERSON of Kittery, Senator: MIRAMANT of Knox.

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

2 **Sec. 1. 32 MRSA §11002, sub-§§1-B, 1-C, 5-A, 7-A, 7-B and 8-C** are  
3 enacted to read:

4 **1-B. Charge-off.** "Charge-off" means the act of a creditor removing an account  
5 from its books as an asset and treating it as a loss or expense because payment is unlikely.

6 **1-C. Charged-off debt.** "Charged-off debt" means a debt that has been removed  
7 from a creditor's books as an asset and treated as a loss or expense because payment is  
8 unlikely.

9 **5-A. Debt buyer.** "Debt buyer" means a person that is engaged in the business of  
10 purchasing charged-off debt or other delinquent debt for collection purposes, whether it  
11 collects the debt itself or hires a 3rd party, which may include an attorney-at-law, in order  
12 to collect such debt. A debt buyer is considered a debt collector for all purposes.

13 **7-A. Original creditor.** "Original creditor" means a person that extended credit to a  
14 consumer for the purchase of goods or services, for the lease of goods or as a loan of  
15 money. The original creditor's name is the name it uses in dealings with a consumer.

16 **7-B. Principal.** "Principal" means the unpaid balance of the funds borrowed, the  
17 credit used, the sales price of goods or services obtained or the capital sum of any other  
18 debt or obligation arising out of a transaction if the money, property, insurance or  
19 services that are the subject of the transaction are primarily for personal, family or  
20 household purposes. "Principal" does not include interest, fees or charges added to the  
21 obligation or alleged obligation by the original creditor or any subsequent assignees or  
22 purchasers of the debt.

23 **8-C. Resolved debt.** "Resolved debt" means a debt that has been paid, settled or  
24 discharged in bankruptcy; a debt for which the statute of limitations under section 11013,  
25 subsection 8 has expired; a debt that may not be collected pursuant to section 11054,  
26 subsection 6 due to a violation of this Act by a debt buyer; or a debt for which the  
27 consumer is no longer liable due to any other reason.

28 **Sec. 2. 32 MRSA §11013, sub-§§9 and 10** are enacted to read:

29 **9. Required information to pursue collection activities.** A debt buyer may not  
30 collect or attempt to collect a debt unless the debt buyer possesses the following:

31 **A.** The name of the current creditor or owner of the debt;

32 **B.** The original creditor's name at the time of the charge-off, if different from the  
33 current owner of the debt;

34 **C.** The original creditor's account number for the debt at the time of the charge-off;

35 **D.** The principal amount due at charge-off;

36 **E.** An itemization of pre-charge-off interest, fees and charges, if any, claimed to be  
37 owed;

1 F. An itemization of post-charge-off interest, fees and charges, if any, claimed to be  
2 owed and whether those were imposed by the original creditor or any subsequent  
3 owners of the debt;

4 G. The date that the debt was incurred. In the case of a revolving credit account, the  
5 date that the debt was incurred is the last extension of credit made for the purchase of  
6 goods or services, for the lease of goods or as a loan of money;

7 H. The date and amount of the last payment, if applicable;

8 I. The names of all persons that owned the debt after the original creditor, if  
9 applicable, and the date of each sale or transfer;

10 J. Documentation establishing that the debt buyer is the owner of the specific debt at  
11 issue; and

12 K. A copy of the contract, application or other documents evidencing the consumer's  
13 liability for the debt, which must contain the consumer's signature.

14 **10. Transfer of ownership of debt.** A debt buyer may not sell or otherwise transfer  
15 ownership of:

16 A. A debt without the information and documentation required in this section; or

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

19 **Sec. 3. 32 MRSA §11014, sub-§1, ¶B,** as enacted by PL 1985, c. 702, §2, is  
20 amended to read:

21 B. The name of the current owner or creditor to whom the debt is owed;

22 **Sec. 4. 32 MRSA §11014, sub-§1, ¶¶B-1 to B-4** are enacted to read:

23 B-1. The name of the original creditor, if different from the current owner of the  
24 debt;

25 B-2. An itemization of the debt, including:

26 (1) The principal amount at charge-off;

27 (2) An itemization of the pre-charge-off interest, fees and charges, if any,  
28 claimed to be owed;

29 (3) An itemization of the post-charge-off interest, fees and charges, if any,  
30 claimed to be owed;

31 (4) The name of the creditor or debt collector that levied each interest, fee or  
32 charge; and

33 (5) The date and amount of the last payment, if applicable;

34 B-3. The names of all persons that owned the debt after the original creditor, if  
35 applicable, and the date of each sale or transfer;

36 B-4. The types of income that are exempt from being taken to satisfy a judgment  
37 under state and federal law;

1           **Sec. 5. 32 MRSA §11019** is enacted to read:

2           **§11019. Collection action by debt buyer to collect debt**

3           **1. Debt buyer collection action; required allegations.** In a collection action  
4 initiated by a debt buyer, the debt buyer shall allege all of the following information:

5           A. A short and plain statement of the type of debt;

6           B. The information described in section 11013, subsection 9;

7           C. The basis for any interest, fees and charges described in section 11013, subsection  
8 9;

9           D. The basis for the request for attorney's fees, if applicable;

10           E. That the debt buyer is the current owner of the debt and a chronological listing of  
11 the names of all prior owners of the debt and the date of each transfer of ownership,  
12 beginning with the original creditor; and

13           F. That the collection action is filed within the applicable statute of limitations  
14 period.

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

17           A. Documentation to establish the information required in section 11013, subsection  
18 9;

19           B. A copy of the contract, application or other document evidencing the consumer's  
20 agreement to the debt, which must contain the consumer's signature. If the debt arises  
21 from a credit card and no such signed document evidencing the debt ever existed, the  
22 debt buyer shall provide copies of the most recent monthly statement recording a  
23 purchase transaction, service billed, last payment or balance transfer and monthly  
24 statements from the 11 months immediately preceding the most recent statement if  
25 applicable; and

26           C. A copy of the bill of sale or other writing establishing that the debt buyer is the  
27 owner of the debt. If ownership of the debt has transferred more than once, a copy of  
28 each bill of sale or other writing establishing transfer of ownership of the debt must  
29 be attached. Each bill of sale or other writing evidencing transfer of ownership must  
30 contain the original creditor's account number of the debt purchased and must clearly  
31 show the consumer's name associated with that account number.

32           **3. Consumer appearance.** If the consumer appears for trial on the scheduled trial  
33 date and the debt buyer either fails to appear or is not prepared to proceed to trial and the  
34 court does not find good cause for continuance, the court shall enter judgment for the  
35 consumer dismissing the action with prejudice. Notwithstanding any other law, the court  
36 may award the consumer's costs of preparing for trial, including, but not limited to, lost  
37 wages, transportation expenses and attorney's fees.

38           **4. Requirements for judgment.** In a collection action initiated by a debt buyer,  
39 prior to entry of a judgment or order against a consumer, the debt buyer shall file:



1           This bill establishes an annual rate of 6% as the maximum post-judgment interest rate  
2 applicable to a judgment obtained by a debt buyer.

3           The bill further provides that a debt may not be collected if a debt buyer violates the  
4 Maine Fair Debt Collection Practices Act.