

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1561

S.P. 503

In Senate, April 22, 2021

An Act To Amend the Maine Fair Debt Collection Practices Act

Received by the Secretary of the Senate on April 20, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink that reads "DAREK M. GRANT".

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SANBORN of Cumberland.

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

2 **Sec. 1. 32 MRSA §11013, sub-§11** is enacted to read:

3 **11. Collection action prohibited on debt from medical expenses if eligible for**
4 **charity care.** A debt collector may not collect or attempt to collect a debt from medical
5 expenses against a consumer who has been determined to be qualified for charity care under
6 guidelines adopted pursuant to Title 22, section 1716 or against a consumer who would
7 have been determined to be qualified for charity care under guidelines adopted pursuant to
8 Title 22, section 1716 but did not apply for good cause.

9 **Sec. 2. 32 MRSA §11019**, as enacted by PL 2017, c. 216, §6, is amended to read:

10 **§11019. Collection action by debt buyer**

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

- 14 A. The information described in section 11013, subsection 9, including that the debt
15 buyer possesses the documentation described in section 11013, subsection 9;
- 16 B. The basis for any interest and fees described in section 11013, subsection 9;
- 17 C. The basis for the request for attorney's fees, if applicable;
- 18 D. That the debt buyer is the current owner of the debt; and
- 19 E. That the cause of action is filed within the applicable statute of limitations period.

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

- 22 A. A copy of the contract, application or other document evidencing the consumer's
23 agreement to the debt. If a signed writing evidencing the original debt does not exist,
24 the debt buyer shall attach a copy of a document provided to the consumer before
25 charge-off demonstrating that the debt was incurred by the consumer or, for a revolving
26 credit account, the most recent monthly statement recording the extension of credit for
27 the purchase of goods or services, for the lease of goods or as a loan of money or the
28 last payment or balance transfer; and
- 29 B. A copy of the bill of sale or other writing establishing that the debt buyer is the
30 owner of the debt. If the debt was assigned more than once, the debt buyer shall attach
31 each assignment or other writing evidencing the transfer of ownership to establish an
32 unbroken chain of ownership, beginning with the original creditor to the first debt
33 buyer and each subsequent debt buyer.

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

- 38 A. A copy, admissible under the Maine Rules of Evidence the evidentiary standard set
39 forth in subsection 4, of the contract, application or other writing establishing the
40 consumer's agreement to the debt and any contract interest or fees alleged to be owed.
41 If a signed writing evidencing the original debt does not exist, the debt buyer must file

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

6 B. Business records or other evidence admissible under ~~the Maine Rules of Evidence~~
7 ~~the evidentiary standard set forth in subsection 4~~ to establish the amount due at charge-
8 off;

9 C. A copy, admissible under ~~the Maine Rules of Evidence~~ ~~the evidentiary standard set~~
10 ~~forth in subsection 4~~, of each bill of sale or other writing establishing transfer of
11 ownership of the debt from the original creditor to the debt buyer. If the debt was
12 assigned more than once, the debt buyer must file each assignment or other writing
13 evidencing the transfer of ownership to establish an unbroken chain of ownership,
14 beginning with the original creditor to the first debt buyer and each subsequent debt
15 buyer; and

16 D. Notwithstanding any ~~other~~ law ~~to the contrary~~, if attorney's fees are sought under
17 contract, a copy, admissible under ~~the Maine Rules of Evidence~~ ~~the evidentiary~~
18 ~~standard set forth in subsection 4~~, of the contract evidencing entitlement to attorney's
19 fees.

20 **4. Evidentiary standard.** In order to introduce business records into evidence
21 sufficient to obtain a judgment, a debt buyer shall authenticate those business records
22 through the testimony of a witness who demonstrates personal knowledge of the business
23 practices:

24 A. For creating, maintaining and transmitting the records at issue of each entity that
25 owned the debt; and

26 B. In obtaining and integrating the records at issue into its own business records of
27 each entity that purchased the debt.

28 **Sec. 3. 32 MRSA §11020** is enacted to read:

29 **§11020. Collection action to collect credit card and student loan debts; additional**
30 **requirements for collection action**

31 **1. Applicability.** This section applies to any collection action against a consumer to
32 collect a credit card or student loan debt initiated by a debt collector.

33 **2. Commencement of collection action.** A collection action under this section may
34 not be commenced in small claims court pursuant to Title 14, chapter 738. A collection
35 action is commenced upon the filing or serving of a complaint that provides notice of the
36 complaint in the same manner as other civil complaints and satisfies the requirements of
37 this section.

38 **3. Notice of complaint.** In a collection action subject to this section, the debt collector
39 shall attach to the front of the complaint a one-page form notice to the consumer as
40 developed by the Department of Professional and Financial Regulation, Bureau of
41 Consumer Credit Protection. The form notice must be written in language that is plain and
42 readily understandable by the general public and, at a minimum, must contain the
43 following:

A. A statement that failure to answer the complaint may result in an entry of judgment in the amount demanded by the debt collector; and

B. A sample answer and an explanation that the consumer may fill out the form and return it to the court as the answer to the complaint.

If the consumer returns the form to the court, the consumer does not need to file a more formal answer or responsive pleading.

4. Entry of judgment. A court may not enter a judgment unless it specifically finds that all the requirements of this section and all other applicable requirements of this chapter are met, including, but not limited to, that the plaintiff has produced evidence that is admissible pursuant to the evidentiary standard set forth in section 11019, subsection 4 and the Maine Rules of Evidence.

5. Default judgment. If the defendant has failed to plead or otherwise defend, the plaintiff may apply for entry of default and a default judgment. The court is responsible for entering a default and a default judgment, not the clerk of the court. Regardless of whether the defendant appears in the action or the judgment is based on a proposed order concerning a settlement, the court may not enter judgment in favor of the plaintiff unless the court determines that all the requirements of this section and all other applicable requirements of this chapter are met, including, but not limited to, that the plaintiff has produced evidence admissible pursuant to the evidentiary standard set forth in section 11019, subsection 4 and the Maine Rules of Evidence on all required elements of the plaintiff's claim.

6. Exclusion. This section does not apply to any collection action brought by a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A.

7. Rules. The court may adopt rules necessary to implement the provisions of this section.

SUMMARY

This bill makes the following changes to the Maine Fair Debt Collection Practices Act.

1. It prohibits a debt collector from collecting or attempting to collect a debt from medical expenses against a consumer who has been determined to be qualified for charity care or who would have been determined to be qualified but did not apply for good cause.

2. It specifies the evidentiary standard that applies in the case of a debt buyer in a collection action against a consumer.

3. It sets standards for collection actions initiated by a debt collector against a consumer to collect a credit card or student loan debt.