

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND TWELFTH LEGISLATURE

**SECOND REGULAR SESSION**  
January 8, 1986 to April 16, 1986

**SECOND SPECIAL SESSION**  
May 28, 1986 to May 30, 1986

AND AT THE

**THIRD SPECIAL SESSION**  
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Co., Inc.  
Augusta, Maine

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND TWELFTH LEGISLATURE  
1985

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with mail copies to the persons giving the security if their addresses are known.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 16, 1986.

## CHAPTER 702

S.P. 834 - L.D. 2116

### AN ACT to Adopt the Maine Fair Debt Collection Practices Act.

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

Sec. 1. 32 MRSA c. 10, as amended, is repealed.

Sec. 2. 32 MRSA c. 111 is enacted to read:

#### CHAPTER 111

#### MAINE FAIR DEBT COLLECTION PRACTICES ACT

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### §11001. Short title

This chapter shall be known and may be cited as the "Maine Fair Debt Collection Practices Act."

#### §11002. Definitions

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

1. Communication. "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium.

2. Conducting business in this State. "Conducting business in this State" means the collection or attempted collection of a debt due another by a debt

collector located in this State or the face-to-face solicitation of creditors in this State as clients, and the collection or attempted collection of their debts, by a debt collector, wherever located.

3. Consumer. "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

4. Creditor. "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but that term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt for another.

5. Debt. "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not the obligation has been reduced to judgment.

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. The term includes persons who furnish collection systems carrying a name which 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 11004, subsection 7, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a 3rd person is collecting or attempting to collect these debts. The term also includes any person in any business the principal purpose of which is the enforcement of security interests.

7. Location information. "Location information" means a consumer's place of abode and his telephone number at that place or his place of employment.

8. Person. "Person" means any natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal entity.

9. Superintendent. "Superintendent" means the Superintendent of Consumer Credit Protection.

§11003. Exclusions

The term debt collector does not include:

1. Officers or employees of a creditor. Any officer or employee of a creditor while, in the name of the creditor, collecting debts for that creditor;

2. Persons related by common ownership or affiliated by corporate control. Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of that person is not the collection of debts;

3. Officers or employees of the United States or any state. Any officer or employee of the United States or any state or agencies or instrumentalities of the State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

4. Persons serving legal process. Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

5. Nonprofit organizations performing consumer credit counseling. Any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from those consumers and distributing those amounts to creditors;

6. Attorneys-at-law collecting debts on behalf of a client. Any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client;

7. Persons collecting debts owed or due to another. Any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due, to another to the extent that the activity:

A. Is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

B. Concerns a debt which was originated by that person;

C. Concerns a debt which was not in default at the time it was obtained by that person; or

D. Concerns a debt obtained by that person as a secured party in a commercial credit transaction involving the creditor; and

8. Collection activities related to the operation of a business. Any person whose collection activities are confined to and directly related to the operation of a business other than that of a debt collector, such as, but not limited to, financial institutions regulated under Title 9-B.

## SUBCHAPTER II

### DEBT COLLECTION ACTIVITIES

#### §11011. Acquisition of location information

1. Communication with person other than consumer. Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

A. Identify himself; state that he is confirming or correcting location information concerning the consumer; and, only if expressly requested, identify his employer;

B. Not state that the consumer owes any debt;

C. Not communicate with any such person more than once, unless requested to do so by that person or unless the debt collector reasonably believes that the earlier response of that person is erroneous or incomplete and that the person now has correct or complete location information;

D. Not communicate by postcard;

E. Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

F. After the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, that attorney's name and address, not communicate with any person other than that at-

torney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

§11012. Communication in connection with debt collection

1. Communication with the consumer generally. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt:

A. At any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m., local time at the consumer's location;

B. If the debt collector knows that the consumer is represented by an attorney with respect to that debt and has knowledge of, or can readily ascertain, that attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

C. At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving a communication.

2. Communication with 3rd parties. Except as provided in section 11011, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy, a debt collector shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor or the attorney of the debt collector.

3. Ceasing communication. If a consumer notifies a debt collector in writing that the consumer



refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to that debt, except:

A. To advise the consumer that the debt collector's further efforts are being terminated;

B. To notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by the debt collector or creditor; or

C. Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If the notice from the consumer is made by mail, notification shall be complete upon receipt.

4. Consumer defined. For the purpose of this section, the term consumer includes the consumer's spouse; parent, if the consumer is a minor; guardian; executor; or administrator.

#### §11013. Prohibited practices

1. Harassment or abuse. A debt collector may not engage in any conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person;

B. The use of obscene or profane language, or language the natural consequence of which is to abuse the hearer or reader;

C. The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Title 10, chapter 210;

D. The advertisement for sale of any debt to coerce payment of the debt;

E. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or

continuously with intent to annoy, abuse or harass any person at the called number;

F. Except as provided in section 11011, the placement of telephone calls without meaningful disclosure of the caller's identity; and

G. The use of "shame cards," "shame automobiles" or similar devices.

2. False or misleading representations. A debt collector may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The false representation or implication that the debt collector is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform, seal, insignia or facsimile;

B. The false representation of:

(1) The character, amount or legal status of any debt; or

(2) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

C. The false representation or implication that any individual is an attorney or that any communication is from an attorney;

D. The representation or implication that non-payment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment or sale of any property or wages of any person, unless that action is lawful and the debt collector or creditor intends to take that action;

E. The threat to take any action that may not legally be taken or that is not intended to be taken;

F. The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to:

(1) Lose any claim or defense to payment of the debt; or

(2) Become subject to any practice prohibited by this Act or the Maine Consumer Credit Code, Title 9-A;

G. The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer;

H. Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;

I. The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, official or agency of the United States or any state, or which creates a false impression as to its source, authorization or approval;

J. The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

K. Except as otherwise provided for communications to acquire location information under section 11011, the failure to disclose clearly in all communications made to collect a debt, or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

L. The false representation or implication that accounts have been turned over to innocent purchasers for value;

M. The false representation or implication that documents are legal process;

N. The use of any business, company or organization name other than the true name of the debt collector's business, company or organization;

O. The false representation or implication that documents are not legal process forms or do not require action by the consumer; or

P. The false representation or implication that a debt collector operates or is employed by a

consumer reporting agency, as defined by Title 10, section 1312, subsection 4.

3. Unfair practices. A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The collection of any amount, including any interest, fee, charge or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law;

B. The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than 5 days, unless that person is notified in writing of the debt collector's intent to deposit that check or instrument not more than 10 nor less than 3 business days prior to the deposit;

C. The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

D. Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument;

E. Causing charges to be made to any person for communications by concealment of the true purpose of the communication. These charges include, but are not limited to, collect telephone calls and telegram fees;

F. Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(1) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(2) There is no present intention to take possession of the property; or

(3) The property is exempt by law from the dispossession or disablement;

G. Communicating with a consumer regarding a debt by postcard;

H. Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if that name does not indicate that he is in the debt collection business;

I. Using or employing notaries public, constables, sheriffs or any other officer authorized to serve legal papers in the collection of a claim;

J. Exercising authority on behalf of a creditor to employ the services of lawyers, unless the creditor has specifically authorized the agency in writing to do so and the debt collector's course of conduct is at all times consistent with the true relationship of attorney and client between the lawyer and the creditor, such that the debt collector will not demand or obtain in any manner a share of the compensation for services performed by a lawyer in collecting a claim;

K. Failing to return any claim or claims upon written request of the creditor, claimant or forwarder after the tender of such amounts, if any, as may be due and owing to the debt collector, or refusing or intentionally failing to account to its clients for all money collected within 30 days from the last day of the month in which the money is collected or refusing, or intentionally failing, to return to the creditor all valuable papers deposited with a claim when that claim is returned;

L. Commingling money collected for a creditor with the debt collector's own funds or using any part of a creditor's money in the conduct of the debt collector's business;

M. Engaging in the business of lending money to any person or contacting any person for the purpose of securing a loan for any person with which to pay any claim left with it for collection, or recommending any person or persons as a source of funds to pay any such claim; or

N. Threatening to bring legal action in its own name or instituting suits on behalf of others or furnishing legal advice.

§11014. Validation of debts

1. Written notice. Within 5 days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing:

A. The amount of the debt;

B. The name of the creditor to whom the debt is owed;

C. A statement that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt or any portion of the debt, the debt will be assumed to be valid by the debt collector;

D. A statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion of the debt, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of the verification or judgment will be mailed to the consumer by the debt collector; and

E. A statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

2. Cease collection. If the consumer notifies the debt collector in writing within the 30-day period described in subsection 1 that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt or any disputed portion of the debt, until the debt collector obtains verification of the debt or a copy of the judgment, or the name and address of the original creditor, and a copy of the verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

3. Liability. The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

§11015. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to the debts, the debt collector may not apply that payment to any debt which is disputed by the consumer and, where applicable, shall apply that payment in accordance with the consumer's directions.

§11016. Furnishing certain deceptive forms

1. Unlawful activity. It is unlawful to design, compile and furnish any form knowing that the form would be used to create the false belief in a consumer that a person other than the creditor of the consumer is participating in the collection of or in an attempt to collect a debt the consumer allegedly owed the creditor, when in fact that person is not so participating.

2. Extent of liability. Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 11054 for failure to comply with a provision of this Act.

SUBCHAPTER III

LICENSING AND ADMINISTRATION

§11031. Licenses

1. Licenses required. Except as provided in this subchapter, no person may conduct the business of a debt collector in this State without a valid license issued by the superintendent.

2. Licenses. Licenses granted by the superintendent under this section shall be for a period of 2 years and shall expire on July 31st or at such other times as the superintendent may designate. Each license may be renewed biennially so long as the superintendent regards the business as responsible and safe, but in all cases to terminate unless renewed by the expiration date. Each license shall plainly state the name and business address of the licensee and shall be posted in a conspicuous place in the office where the business is transacted. The fee for each biennial license is \$400. When the unexpired license term of an applicant is or will be less than one year at a time of licensure, the license fee shall not exceed 1/2 the biennial license fee. If the licensee desires to carry on business in more

than one place within the State, he shall procure a license for each place where the business is to be conducted.

3. Applications. Applications for a license shall comply with the following requirements.

A. The superintendent may require such financial statements and references of all applicants for a license as he deems necessary; and may make or cause to be made an independent investigation concerning the applicant's reputation, integrity, competence and net worth. The investigation may cover all managerial personnel employed by or associated with the applicant.

B. Every application for a license shall be acted upon promptly by the superintendent. If the application complies in form and substance with this Act and the rules promulgated under this Act and the superintendent finds that the applicant is qualified under this Act, the superintendent shall issue a license forthwith. If the application is not sufficient in form or substance, the superintendent shall reject it and notify the applicant of the manner in which it is deficient. The rejection shall be without prejudice to the filing of a new application. If the superintendent finds that the applicant is not qualified under this Act, he shall reject the application and shall give the applicant written notice of the rejection and the reasons for the rejection. In addition, any foreign business, incorporated or unincorporated, before obtaining a license in order to conduct the business of a debt collector within the State shall furnish the superintendent with:

(1) A certified copy of its charter and by-laws; and

(2) A power of attorney appointing the superintendent to be the true and lawful attorney of the business in and for this State, upon whom all lawful process in an action or proceeding against the business may be served with the same effect as if the business existed in this State. The power of attorney shall stipulate and agree on the part of the business that any lawful process against the company which is served on the attorney shall be the same in legal force and validity as if served on the business



itself, and that the authority shall continue in force irrevocable so long as any liability remains outstanding against the business in this State. A certificate of the appointment, duly certified and authenticated shall be filed in the office of the superintendent and a copy certified by him shall be received in evidence in all courts of this State.

4. Change in ownership or management. A change of 25% or more in ownership or management of any corporate licensee, or of the partners in any partnership licensee, shall require the filing of a new application under this section.

#### §11032. Bond

The superintendent shall require each licensee to file and maintain in force a surety bond, in a form prescribed by the superintendent and acceptable to him, and in such sum as he may deem reasonably necessary, to safeguard the interests of the public. The bond may be cancelled by the surety on the bond by giving 30 days' notice to the superintendent, but the cancellation shall not in any manner affect the liability of the surety as to anything occurring prior to the cancellation.

#### §11033. Prior convictions as disqualifications

In evaluating a license application, the superintendent shall consider the criminal record of any individual applicant, of any partner, if the applicant is a partnership, of any officer or director, if the applicant is a corporation, or of any employee of the foregoing, in accordance with Title 5, chapter 341. No license may be granted to any lawyer, whose license to practice law has been suspended or revoked, during the effective period of that suspension or revocation.

#### §11034. Rulemaking

The superintendent may make such reasonable rules, not inconsistent with this chapter, pertaining to the operation of the business of licensees as he deems necessary to safeguard the interest of the public. The rules shall be adopted in the manner prescribed in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II.

§11035. Advisory rulings

The superintendent may issue advisory rulings pertaining to the applicability of any statutory provision or any rule adopted under this chapter and shall provide by rule for the filing and prompt disposition of requests for advisory rulings.

§11036. Reports and records

1. Financial statements. The superintendent may at any time require a licensee to submit to the bureau a verified financial statement for examination by the superintendent so that he may determine whether or not the licensee is financially responsible to carry on a debt collector's business.

2. Books and records. The superintendent shall require the licensee to keep such books and records in this State as will enable the superintendent to determine whether the provisions of this chapter are being complied with. At the superintendent's option, a licensee may keep the books and records in a location outside this State, provided that the licensee agrees to produce the books and records in this State upon demand. Every licensee shall preserve the records of final entry used in that business for a period of 2 years after final remittance is made on any account placed with the licensee for collection or after any account has been returned to the claimant on which one or more payments have been made.

§11037. Voluntary termination of business

1. Procedures prior to termination. Prior to voluntarily ceasing business as a debt collector, a licensee shall:

A. Notify the superintendent of the proposed termination at least 30 days prior to its effective date;

B. Notify all creditor clients in writing of the proposed termination at least 30 days prior to its effective date;

C. Provide all creditor clients with detailed final accountings of all debt accounts;

D. Remit all money held in the agency trust account to each respective creditor client;

E. Return all papers, documents and other property of creditor clients provided to the licensee in connection with its collection efforts to those clients; and

F. Return its license to the superintendent for cancellation.

2. Transfer of accounts. No licensee, when terminating its business, may transfer an account to another debt collector without first securing the written permission of the client.

§11038. Insolvency and liquidation

1. Insolvency. If the superintendent determines that a licensee located in this State is insolvent or that he has collected accounts but has failed to remit money due to any claimant or forwarder within 30 days from the end of the month in which collection was made or, when the license of a debt collector has expired or terminated for any reason whatsoever, the superintendent, if he determines that action necessary to protect the public interest, may apply to the Superior Court of the county in which the main office of the debt collector is located, authorizing him to take possession of the assets and the books and records of the licensee for the purpose of liquidating its business and for such other relief as the nature of the case and the interest of the claimants or forwarders may require. The court, after citing the licensee to show cause why the superintendent should not be authorized to take possession of the assets and books of accounts and records for the purpose of liquidating the business of the licensee, and, after hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss the application or, if it finds that action necessary for the protection of the public, issue its order authorizing the superintendent to take possession of the books and records and to liquidate the business and granting such other relief as it deems necessary under the circumstances.

2. Powers and duties. In every case where the court issues an order authorizing the superintendent to take possession of the books and records and to liquidate the business of a licensee, the superintendent shall be vested with all of the powers, duties, authority and responsibility of a receiver, and without limiting the generality of this subsection and subject to the approval of the court.

A. The liquidation of the business shall be made by and under the supervision of the superintendent, either in the name of the superintendent or in the name of the licensee, and the superintendent or his successor shall be vested with title to all of the assets, including the proceeds of the financial security which has been filed with the superintendent and the proceeds of any and all money paid directly to the claimant or forwarder by any debtor prior to the date of the order. Money paid to the licensee or to the superintendent after the date of the order shall be disposed of by the superintendent.

B. The superintendent for the purpose of collection or liquidation may sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of the debt collector under such terms and conditions as the superintendent deems best for the best interests of the claimants of the debt collector.

C. The superintendent shall cause notice to be given by advertisement in such newspapers as he may direct weekly for 4 consecutive weeks after the issue of the order authorizing him to take possession of the assets of the debt collector, calling on all persons who may have claims against the licensee to bring the claims to the superintendent and make legal proof of the claims at a place and time to be specified. The superintendent shall mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the superintendent. Any claimant or forwarder whose portion of the collections has not been properly remitted shall file a claim, which shall be allowed for the amount actually due the claimant or forwarder after deduction of a commission or fee that may be due and owing the licensee. If the superintendent doubts the justice and validity of any claim, he may reject the claim and serve notice of that rejection upon the claimant, either by mail or personally. An affidavit of service of notice, which shall be prima facie evidence of service, shall be filed with the superintendent. The claimant may, within 30 days after receipt of notice of rejection, file a petition in the court in which the proceedings are pending to establish his claim or claims. Claims presented after the expiration of the time fixed in the notice to the claimants or forwarders shall be entitled to re-

ceive only liquidating dividends declared after presentation, unless otherwise ordered by the court. The court may fix a date after which all claimants may be barred.

D. The assets of the licensee in liquidation, exclusive of any bond proceeds, shall be disbursed in the following order:

(1) Expenses of liquidation;

(2) The full amount of claims of each claimant or forwarder of the licensee whose claim against the licensee has been approved by the superintendent;

(3) Reserves for unclaimed and unpaid collections;

(4) General creditors; and

(5) Residue to licensee.

E. All accounts and valuable papers given to the licensee by the claimant or forwarders in possession of the superintendent pertaining to accounts placed with the licensee for collection shall be returned to the claimant or forwarder by the superintendent within 30 days after verification has been made.

F. Nothing contained in this subsection may preclude a creditor of a debt collector from prosecuting any and all legal actions and pursuing any and all remedies afforded him by the laws of this State for collection of debts until such time as the superintendent takes possession of the debt collector's agency under this section.

§11039. Fees

The aggregate of license fees provided for by this chapter is appropriated for the use of the Bureau of Consumer Credit Protection. Any balance of these funds shall not lapse, but shall be carried forward to be expended for the same purposes in the following fiscal year.

§11040. Penalty

Any person who carries on business as a debt collector without first obtaining a license pursuant to this subchapter, or who carries on that business af-

ter the revocation, suspension or expiration of any license, or who performs duties relating to the conduct of a debt collector on behalf of another person as an officer, director, employee, agent or in any other capacity, unless the other person has first obtained a license which has not expired, but been revoked nor suspended is guilty of a Class E crime.

#### SUBCHAPTER IV

#### ENFORCEMENT

#### §11051. Investigation, suspension and revocation of licenses

The Bureau of Consumer Credit Protection may investigate the records and practices of a licensee in accordance with Title 9-A, section 6-106, and may charge for expenses incurred pursuant to Title 9-A, section 6-203, subsection 4. The superintendent may file a complaint with the Administrative Court to suspend or revoke a license issued pursuant to this chapter, if, after investigation or hearing, or both, the superintendent has reason to believe that the licensee has violated any provisions of this chapter or any administrative rules issued pursuant to this chapter, or has failed to maintain its financial condition sufficient to qualify for a license on an original application.

#### §11052. Appeals

Any appeal from the decision of the superintendent may be taken in accordance with Title 5, chapter 375, subchapter VII.

#### §11053. Civil penalty

The superintendent may, through the Attorney General, bring a civil action for a penalty not to exceed \$5,000 against any person who willfully violates this chapter. No civil penalty pursuant to this section may be imposed for violations of this chapter occurring more than 2 years before the civil action is brought.

#### §11054. Civil liability

1. Failure to comply with this Act. Except as otherwise provided by this section, any debt collector who fails to comply with any provisions of this Act with respect to any person is liable to that person in an amount equal to the sum of:

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

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

C. In the case of a class action:

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

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

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

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

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

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

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

4. Action to enforce liability. An action to enforce liability under this section shall be brought within one year from the date on which the violation occurs.

5. Action in good faith. No provision of this section imposing any liability may apply to any act done or omitted in good faith in conformity with any rule or advisory ruling of the superintendent, notwithstanding that, after the act or omission has occurred, the rule or advisory ruling is amended, rescinded, repealed or determined by judicial or other authority to be invalid for any reason.

Sec. 3. Transition provisions. All licenses and rules issued under authority of the Maine Revised Statutes, Title 32, chapter 10, and otherwise valid, shall remain in full force and effect and treated as if issued under the Maine Revised Statutes, Title 32, chapter 111, subchapter III, until, in the case of licenses their stated expiration date.

Effective July 16, 1986.

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## CHAPTER 703

H.P. 1621 - L.D. 2284

### AN ACT Concerning Atlantic Salmon.

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

Sec. 1. 12 MRSA §6171, sub-§2, as amended by PL 1983, c. 680, §1, is further amended to read:

2. Limitations. This section grants no authority to adopt regulations for the conservation of Atlantic salmon, except as provided in section 6253, subsection 3. A regulation authorized under this section may only limit the taking of marine organisms by one or more of the following:

- A. Time;
- B. Method;
- C. Number;
- D. Weight;