

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND NINETEENTH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 5, 2000 to May 12, 2000**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 11, 2000**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**2000**

~~projected sales tax collections within the market area, the difference is presumed to be shifts in retail spending and the total sales tax collection within the state tax increment financing district is reduced by the difference; and~~

(3) Revenues attributed to normal growth. This adjustment is calculated by subtracting from the gross state tax increment a figure obtained by multiplying the previous year's total amount of sales taxes reported and income taxes withheld by designated businesses within the district by the percentage change in sales tax receipts and withholding taxes for all businesses within the State as a whole;

C. Offsetting designated businesses with negative tax increments with those with positive increments in determining the state tax increment for the district as a whole; and

D. Excluding all income tax revenue in calculating the state tax increment attributable to retail business operations.

See title page for effective date.

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**CHAPTER 560**

**S.P. 865 - L.D. 2263**

**An Act to Regulate Nonprofit Debt Management Service Providers**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** debt management and budget planning service providers may currently be soliciting business in this State in violation of Maine law; and

**Whereas,** the regulation of debt management service providers is needed for the protection of Maine consumers; and

**Whereas,** this Act permits only nonprofit debt management service providers to legally operate in this State for the further protection of Maine consumers; and

**Whereas,** this Act provides additional enforcement measures against for-profit debt management service providers; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following

legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 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 prohibited.** Except as provided in subsection 2, a person, firm, association or corporation may not engage in the business of budget planning on behalf of a consumer.

**2. Exceptions.** This chapter does not apply to:

A. A person admitted to the practice of law in this State as of the effective date of this section, except to the extent that budget planning or debt management services constitute the exclusive activity of that attorney;

B. A supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A;

C. A supervised lender as defined in Title 9-A, section 1-301, subsection 39; or

D. Any organization that is registered with the State as a debt management service provider under Title 32, chapter 80-A.

**Sec. 2. 17 MRSA §702** is amended to read:

**§702. Budget planning, defined**

"Budget planning" means the making of a contract with a particular debtor, ~~whereby~~ when the debtor agrees to pay a certain amount periodically to the person engaged in the budget planning, who shall distribute the same to a certain specified creditor or among certain specified creditors in accordance with a plan agreed upon by the debtor.

**Sec. 3. 32 MRSA c. 80-A** is enacted to read:

**CHAPTER 80-A**

**NONPROFIT DEBT MANAGEMENT SERVICES**

**§6171. Short title**

This chapter may be known and cited as the "Nonprofit Debt Management Services Act."

**§6172. Definitions**

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

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

**2. Debt management service.** "Debt management service" means the receiving of money from a consumer for the purpose of distributing that money to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation.

**3. Debt management service provider.** "Debt management service provider" means a person that provides or offers to provide to a consumer in this State any debt management services, in return for a fee or other consideration. "Debt management service provider" does not include:

A. A supervised financial organization;

B. A supervised lender; or

C. A person admitted to the practice of law in this State as of the effective date of this chapter, except to the extent that debt management services constitute the exclusive activity of that attorney.

**4. Person.** "Person" means an individual or an organization.

**5. Supervised financial organization.** "Supervised financial organization" has the same meaning as in Title 9-A, section 1-301, subsection 38-A.

**6. Supervised lender.** "Supervised lender" has the same meaning as defined in Title 9-A, section 1-301, subsection 39.

### **§6173. Registration and annual reregistration**

**1. Nonprofit organizations.** Only a nonprofit organization that is exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) may register under this chapter to act as a debt management service provider with respect to consumers who are residents of this State.

**2. Registration and reregistration.** 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, with respect to consumers in this State as a debt management service provider shall apply to the administrator for registration or reregistration in accordance with this chapter. 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 soundness and responsibility, insurance coverage, consumer education programs and services component, 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 chapter. The initial application for registration may be filed at any time and must include a fee of \$500. A registration or reregistration under this chapter expires on December 31st of the year approved. An annual reregistration application must be filed by December 1st of each year for the following year and must include a fee of \$250.

**3. Action on registration application.** The administrator shall take action on an application within 30 days after the administrator has accepted the application as complete. Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for registration if the administrator has notified the applicant in writing that the application has been denied or the administrator has not issued a registration within 30 days after the application for the registration was accepted as complete by the administrator. A request for a hearing may not be made more than 60 days after the application was accepted as complete or the administrator has mailed a written notice to the applicant stating that the application has been denied and stating the reasons for the denial of the application.

### **§6174. Bond required**

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 provider. The terms of the bond must run concurrently with the period of time during which the registration is in effect.

### **§6175. Handling of consumer funds**

**1. Funds deposited in trust account.** The debt management service provider shall deposit, within 2 business days of receipt, all funds received from or on behalf of a consumer for payment to a creditor or creditors in a federally insured trust account for the benefit of the consumer in a supervised financial organization. Any trust account established to receive consumer funds is free from trustee process and unavailable to creditors of the debt management service provider.

**2. Requirements for handling of funds.** The debt management service provider shall:

A. Maintain separate records of account for each consumer receiving debt management services;

B. Remit funds received from or on behalf of a consumer to the consumer's creditor or creditors within 15 business days of receipt of the funds; and

C. Correct or remedy any misdirected payments resulting from an error by the debt management service provider and reimburse the consumer for any actual costs or fees imposed by a creditor as a result of such misdirection.

**3. Commingling of funds.** The debt management service provider may not commingle trust accounts established for the benefit of consumers with any operating accounts of the debt management service provider.

### **§6176. Requirement for written agreement**

**1. Written agreement.** A debt management service provider may not perform debt management services for a consumer unless the consumer and the debt management service provider have first executed a written agreement with regard to the debt management services to be provided. A copy of the completed agreement must be given to the consumer.

**2. Required provisions.** Each agreement between a consumer and a debt management service provider must be dated and signed by the consumer and must include the following:

A. The name and address of the consumer and the debt management service provider and the state registration number of the debt management service provider;

B. A full description of the services to be performed for the consumer, any fees to be charged to the consumer for such services and any contributions, fees or charges the consumer has agreed to make or pay to the debt management service provider;

C. Disclosure of the existence of the surety bond on file with the State pursuant to section 6174 and a notice that the consumer may contact the Office of Consumer Credit Regulation with any questions or complaints regarding the debt management service provider;

D. The identification of the supervised financial organization where funds remitted by a consumer for payment to one or more creditors will be held;

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

F. A complete list of the consumer's obligations that are subject to the agreement and the names and addresses of the creditors holding those obligations;

G. A full description and schedule of the periodic amounts to be remitted to the debt management service provider for payment to the consumer's creditor or creditors and the amounts to be remitted to each creditor;

H. A notice to the consumer that by executing the agreement the consumer authorizes the supervised financial organization to disclose financial records relating to the trust account in which the consumer's funds are held pursuant to section 6175 to the administrator during the course of any examination of the debt management service provider by the administrator; and

I. The following notice:

NOTICE TO CONSUMER: Do not sign this agreement before you read it. You must be given a copy of this agreement.

### **§6177. Reports and records**

**1. Written reports to consumers.** A debt management service provider shall provide to each consumer receiving debt management services periodic written reports accounting for funds received from the consumer for payment to the consumer's creditor or creditors whose obligations are listed in the consumer's agreement with the debt management service provider and disbursements made to each such creditor on the consumer's behalf since the last report. The debt management service provider shall provide such reports to the consumer not less than once each calendar quarter.

**2. Maintenance of records.** A debt management service provider shall maintain books and records for each consumer for whom it provides debt management services for 6 years following the final transaction with the consumer.

### **§6178. Powers and functions of administrator**

The administrator may exercise the following powers and functions.

**1. Complaint investigation.** The administrator may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases, including cases involving violations under section 6173 or 6175 or Title 17, section 701, to the

Attorney General, who shall appear for and represent the administrator in court.

**2. Rules.** The administrator may adopt rules to carry out the requirements of this chapter in accordance with Title 5, chapter 375. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

**3. Examinations.** The administrator may examine the books, accounts and records of any debt management service provider, make an investigation to determine compliance with this chapter and charge the reasonable expenses necessarily incurred to conduct the examinations to the debt management service provider.

**4. Appropriation of funds.** The administrator may appropriate for the use of the administrator the aggregate of fees, examination expense reimbursement or other payments made to the administrator pursuant to this chapter and carry forward any balance of funds from a fiscal year to be expended for the same purpose in the following fiscal year.

#### **§6179. Prohibited acts**

A debt management service provider may not:

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

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

**3. Mortgage interest.** Obtain a mortgage or other security interest in property of a consumer;

**4. Debt collector.** Operate as a debt collector in this State, as defined in section 11002, subsection 6; or

**5. Negative amortization.** Structure an agreement for the consumer that, at the conclusion of the projected term for the consumer's participation in the debt management service agreement, would result in negative amortization of any of the consumer's obligations to creditors.

#### **§6180. Advertising**

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

**2. Dissemination; no liability.** This section does not impose liability on the owner or personnel of any medium in which an advertisement appears or through which an advertisement is disseminated.

#### **§6181. Effects of violations on rights of parties**

**1. Violations; unfair, unconscionable or deceptive practices.** A debt management service provider that violates any provision of this chapter or any rule adopted by the administrator or that through any unfair, unconscionable or deceptive practice causes actual damage to a consumer is subject to enforcement action pursuant to subsection 2.

**2. Enforcement actions.** The following enforcement actions may be taken by the administrator or an aggrieved consumer against a debt management service provider for violations of any provision of this chapter or any rule adopted pursuant to this chapter or for unfair, unconscionable or deceptive practices that cause actual damage to a consumer:

A. After notice and hearing, a cease and desist order from the administrator;

B. When in the opinion of the administrator immediate action is required to protect the public interest, a cease and desist order without prior notice and hearing after which the administrator shall afford an opportunity for a hearing, the results of which are subject to review under Title 5, chapter 375, subchapter VII;

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

D. A civil action by the administrator through the Attorney General, after which a court may assess a civil penalty payable to the State of not more than \$5,000;

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

F. Revocation, suspension or nonrenewal of the debt management service provider's registration pursuant to section 6182.

#### **§6182. Suspension or revocation of registration**

**1. Suspension or revocation.** After notice and hearing, the administrator may suspend or revoke a debt management service provider's registration if the administrator finds that one of the conditions of subsection 2 is met.

**2. Conditions for suspension or revocation.** The following conditions are grounds for suspension or revocation of a registration:

A. A fact or condition exists that, if it had existed at the time when the registrant applied for

registration, would have been grounds for denying the application;

B. The registrant knowingly violates a material provision of this chapter or rule or order validly adopted by the administrator under authority of this chapter;

C. The registrant is insolvent;

D. The registrant refuses to permit the administrator to make an examination authorized by this chapter; or

E. The registrant fails to respond within a reasonable time and in an appropriate manner to communications from the administrator.

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

Effective March 15, 2000.

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**CHAPTER 561**

**S.P. 930 - L.D. 2380**

**An Act to Implement  
Recommendations of the Commission  
on Performance Budgeting**

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

**Sec. 1. 5 MRSA §1710-L, sub-§3,** as corrected by RR 1997, c. 2, §12, is amended to read:

**3. Time of appointment; terms.** Commission members must be appointed in January of each odd-numbered year and serve 2-year terms, except that the initial commission members must be appointed within 30 days of June 30, 1995 and serve until January 1998.

**Sec. 2. 5 MRSA §1710-M, sub-§4-A,** as enacted by PL 1997, c. 764, §4, is amended to read:

**4-A. Auditing.** No later than January 15, ~~1999~~ 2001, recommend to the Legislature and the Governor the most cost-effective method for State Government to annually validate measurable objectives and conduct audits of the performance budgets for the most recent fiscal year.

See title page for effective date.

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**CHAPTER 562**

**H.P. 1072 - L.D. 1519**

**An Act to Encourage Environmental  
Management Systems**

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

**Sec. 1. 38 MRSA §343-G** is enacted to read:

**§343-G. Environmental management systems**

**1. Environmental management system incentive program.** The commissioner shall develop and implement an environmental management system incentive program to encourage entities subject to regulation by the department to improve and expand their environmental performance and compliance through the development and implementation of environmental management systems that, at a minimum, conform to international standards, comply with all applicable environmental laws, rules and regulations and prevent and reduce pollution. The incentive program may include the following elements:

A. Alternative schedules for routine compliance inspections;

B. Alternative record-keeping and reporting systems that provide equal or improved public access to information and do not result in any reduction in content or quality of information; and

C. Public recognition by the commissioner.

**2. Eligibility.** To be eligible for incentives under this section, an entity must have developed and implemented an environmental management system certified by an accredited 3rd-party certification body as conforming to the requirements of the International Organization for Standardization's standard 14001 (ISO 14001:1996); demonstrated full compliance with all applicable state and federal environmental laws, rules, regulations and permits for the 2 most recent years; demonstrated improved environmental performance that resulted in pollution prevention and reduction; involved the public in the development of any proposed incentives; and involved department staff in at least one environmental management system 3rd-party surveillance audit. The commissioner shall revoke all incentives granted to an entity under this section if the commissioner finds that the entity no longer meets the eligibility requirements in this subsection.

**3. Evaluation.** By January 15, 2002, the department shall submit a report to the joint standing