

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

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IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2017

all applicable state and federal laws, rules and regulations.

See title page for effective date.

CHAPTER 216

H.P. 836 - L.D. 1199

An Act To Promote Fiscal Responsibility in the Purchasing of Debt

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

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 organization as defined in Title 9-A, section 1-301, subsection 38-A or a person that acquires charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of

consumer debt that has not been charged off. A debt buyer is considered a debt collector for all purposes under this chapter.

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

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

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

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

A. The name of the owner of the debt;

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

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

D. The principal amount due at charge-off;

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

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

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

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

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

J. A copy of the contract, application or other documents evidencing the consumer's liability for the debt. If a signed writing evidencing the original debt does not exist, the debt buyer must possess a copy of a document provided to the consumer before charge-off demonstrating that the

debt was incurred by the consumer or, for a revolving credit account, the most recent monthly statement recording the extension of credit for the purchase of goods or services, for the lease of goods or as a loan of money.

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

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

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

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

§11019. Collection action by debt buyer

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

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

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

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

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

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

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

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

B. A copy of the bill of sale or other writing establishing that the debt buyer is the owner of the debt. If the debt was assigned more than once, the

debt buyer shall attach each assignment or other writing evidencing the transfer of ownership to establish an unbroken chain of ownership, beginning with the original creditor to the first debt buyer and each subsequent debt buyer.

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

A. A copy admissible under the Maine Rules of Evidence of the contract, application or other writing establishing the consumer's agreement to the debt and any contract interest or fees alleged to be owed. If a signed writing evidencing the original debt does not exist, the debt buyer must file a copy of a document provided to the consumer before charge-off demonstrating that the debt was incurred by the consumer or, for a revolving credit account, the most recent monthly statement recording the extension of credit for the purchase of goods or services, for the lease of goods or as a loan of money or the last payment or balance transfer;

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

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

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

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

A. The superintendent may require such financial statements and references of all applicants for a license as he the superintendent 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. If the applicant is a debt buyer, the superintendent shall require documentation that the debt buyer has conducted a criminal background check prior

to employment on every officer or employee of the debt buyer who engages in the active collection of debt for the debt buyer or has access to consumer credit information.

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

§11053. Civil penalty

The Except for a civil action against a debt buyer, 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. The superintendent may, through the Attorney General, bring a civil action for a penalty not to exceed \$10,000 against a debt buyer 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.

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

1-A. Failure to comply with this Act by a debt buyer. Except as otherwise provided by this section, any debt buyer 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 \$2,000;

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 and 1% of the net worth of the debt buyer; 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.

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

2. Considerations affecting liability. In determining the amount of liability in any action under sub-

section 1 or 1-A, the court shall consider, among other relevant factors:

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

3. Defenses. A debt collector or debt buyer may not be held liable in any action brought under this chapter if the debt collector or debt buyer 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.

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

See title page for effective date.

CHAPTER 217

S.P. 509 - L.D. 1463

**An Act To Amend the Laws
Relating to Motor Vehicle
Dealers**

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

Sec. 1. 10 MRSA §1174, sub-§3, ¶¶C-2 to C-5 are enacted to read:

C-2. To discriminate, directly or indirectly, or to use an unreasonable, arbitrary or unfair sales or other performance standard in determining a franchise motor vehicle dealer's compliance with a franchise agreement. The manufacturer has the burden of proving the reasonableness of its performance standards by clear and convincing evidence;

C-3. To fail to compensate a motor vehicle dealer for the reconditioning expenses and for all labor and parts the manufacturer requires a dealer to use to repair a new or used vehicle subject to a recall.