



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1199

H.P. 836

House of Representatives, March 28, 2017

An Act To Promote Fiscal Responsibility in the Purchasing of Debt

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script, reading "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SANBORN of Portland.
Cosponsored by Senator WHITEMORE of Somerset and
Representatives: CARDONE of Bangor, CASÁS of Rockport, FOLEY of Wells, GROHMAN
of Biddeford, LAWRENCE of South Berwick, PRESCOTT of Waterboro, Senator: CARSON
of Cumberland.

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

2 **Sec. 1. 9-A MRSA §5-105, sub-§1, ¶¶A and B**, as enacted by PL 1973, c. 762,
3 §1, are amended to read:

4 A. "Disposable earnings" means that part of the earnings of an individual remaining
5 after the deduction from those earnings of amounts required by law to be withheld;
6 ~~and~~

7 B. "Garnishment" means an installment payment order under Title 14, chapter 502-;
8 and

9 **Sec. 2. 9-A MRSA §5-105, sub-§1, ¶C** is enacted to read:

10 C. "Debt buyer" has the meaning set out in Title 32, section 11002, subsection 5-A.

11 **Sec. 3. 9-A MRSA §5-105, sub-§4** is enacted to read:

12 4. A debt buyer may not seek and a court may not issue a garnishment order to
13 enforce payment of a judgment.

14 **Sec. 4. 14 MRSA §3127-B, sub-§8** is enacted to read:

15 8. Exclusion. The court may not enter an order under this section if the judgment
16 creditor is a debt buyer within the meaning of the Maine Fair Debt Collection Practices
17 Act.

18 **Sec. 5. 16 MRSA §355**, as amended by PL 1981, c. 470, Pt. A, §34, is further
19 amended to read:

20 **§355. Affidavit of plaintiff as prima facie evidence; exception**

21 In all actions brought on an itemized account annexed to the complaint, the affidavit
22 of the plaintiff, made before a notary public using a seal, that the account on which the
23 action is brought is a true statement of the indebtedness existing between the parties to
24 the action with all proper credits given and that the prices or items charged therein are
25 just and reasonable ~~shall be~~ is prima facie evidence of the truth of the statement made in
26 such affidavit and ~~shall entitle~~ entitles the plaintiff to the judgment unless rebutted by
27 competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may
28 be made by its president, vice-president, secretary, treasurer or other person authorized by
29 the corporation.

30 This section does not apply if the plaintiff is a debt buyer within the meaning of the
31 Maine Fair Debt Collection Practices Act.

32 **Sec. 6. 32 MRSA §11002, sub-§5-A** is enacted to read:

33 5-A. Debt buyer. "Debt buyer" means a person that is engaged in the business of
34 purchasing delinquent debt for collection purposes, whether the person collects the debt
35 directly or hires a 3rd party, which may include an attorney-at-law, to collect the debt. A
36 "debt buyer" is considered a debt collector for all purposes under this chapter.

1 **Sec. 7. 32 MRSA §11002, sub-§8-C** is enacted to read:

2 **8-C. Resolved debt.** "Resolved debt" means a debt that has been paid, settled or
3 discharged in bankruptcy or for which the consumer is no longer liable because collection
4 of the debt is barred by the statute of limitations set forth in section 11013, subsection 8.

5 **Sec. 8. 32 MRSA §11003, sub-§1**, as enacted by PL 1985, c. 702, §2, is amended
6 to read:

7 **1. Officers or employees of a creditor that is not a debt buyer.** Any officer or
8 employee of a creditor while, in the name of the creditor, collecting debts for that
9 creditor, except that officers and employees of debt buyers are considered debt collectors;

10 **Sec. 9. 32 MRSA §11013, sub-§§9 to 11** are enacted to read:

11 **9. Transfer of ownership of debt; required information.** A creditor may not sell
12 or otherwise transfer ownership of a debt to another creditor or to a debt buyer unless the
13 creditor provides the following to the other creditor or debt buyer:

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

15 B. The original creditor's name;

16 C. The original creditor's account number for the consumer;

17 D. The principal amount due;

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

20 F. The date that the debt was incurred. In the case of a revolving credit account, the
21 date that the debt was incurred is the date the last extension of credit was made for
22 the purchase of goods or services, for the lease of goods or as a loan of money;

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

24 H. The names of all persons or entities that owned the debt after the original creditor,
25 if applicable, and the date of each sale or transfer;

26 I. Documentation establishing that the debt buyer is the owner of the specific debt at
27 issue. Each bill of sale or other writing evidencing transfer of ownership must
28 contain the original creditor's account number of the debt purchased and must clearly
29 show the consumer's name associated with that account number; and

30 J. A copy of the contract, application or other documents evidencing the consumer's
31 liability for the debt containing the consumer's signature. If the debt arises from a
32 credit card and no such signed document evidencing the debt ever existed, the
33 creditor shall provide copies of the most recent monthly statement recording a
34 purchase transaction, service billed, last payment or balance transfer and monthly
35 statements from the 11 months immediately preceding the most recent statement, if
36 applicable.

1 **10. Transfer of ownership of certain debts.** A creditor may not sell or otherwise
2 transfer ownership of a resolved debt, an interest in a resolved debt or any financial
3 information relating to a resolved debt.

4 **11. Garnishment of wages.** A debt buyer may not seek and a court may not issue
5 an order pursuant to Title 14, section 3127-B when enforcing a money judgment entered
6 in a collection action.

7 **Sec. 10. 32 MRSA §11019** is enacted to read:

8 **§11019. Collection action by debt buyer**

9 **1. Complaint; required allegations.** A debt buyer may not initiate a collection
10 action against a consumer unless the debt buyer alleges all of the following information in
11 the complaint:

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

14 B. The basis for any interest and fees claimed to be owed and sought to be collected
15 in the collection action;

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

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

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

19 **2. Requirements for judgment.** Regardless of whether the consumer appears in the
20 action, the court may not enter a judgment in favor of a debt buyer in a collection action
21 against a consumer unless the debt buyer files with the court:

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

29 B. If not included in the contract, application or other writing filed under paragraph
30 A, a copy admissible under the Maine Rules of Evidence of the terms and conditions
31 that apply to the consumer's account and that establish the basis for the interest and
32 fees alleged;

33 C. Business records or other evidence admissible under the Maine Rules of Evidence
34 to establish the outstanding principal amount of debt and the interest and fees, if any,
35 claimed to be owed;

36 D. A copy admissible under the Maine Rules of Evidence of each bill of sale or other
37 writing establishing transfer of ownership of the debt from the original creditor to the
38 debt buyer. Each bill of sale or other writing evidencing transfer of ownership must

contain the original creditor's account number of the debt purchased and must clearly show the consumer's name associated with that account number; and

E. 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. 11. 32 MRSA §11055 is enacted to read:

§11055. Criminal liability

A person that intentionally, knowingly or recklessly attempts to collect a resolved debt commits a Class C crime.

SUMMARY

This bill amends the Maine Fair Debt Collection Practices Act in the following ways:

1. It defines the term "debt buyer" and requires debt buyers to obtain debt collector licenses from the Superintendent of Consumer Credit Protection;

2. It requires creditors to transfer specific documentation when selling or otherwise transferring a consumer debt to another creditor or to a debt buyer;

3. It prevents a debt buyer from obtaining a default judgment in a collection action due to the nonappearance of the consumer in court and instead requires the debt buyer to provide admissible evidence in support of its claim;

4. It prohibits a debt buyer from seeking to garnish a consumer's wages to enforce a judgment obtained against the consumer in a collection action; and

5. It makes it unlawful for a creditor or a debt collector to attempt to collect a debt that has been paid, discharged in bankruptcy court or for which the statute of limitations has expired.

This bill also amends the Maine Revised Statutes, Title 16 to prevent debt buyers from enjoying the presumption of correctness attendant to an account annexed form of court action when bringing a lawsuit to enforce a debt.