

Proposed Draft Amendment to LD 1767, An Act to Increase the Efficiency of Certain Consumer Credit Protection Laws
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Amend the bill by inserting after Part D and before the summary the following:

PART E

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

11. Collection action prohibited on debt from medical expenses if eligible for free or charity care. A debt collector may not collect or attempt to collect a debt from medical expenses against a consumer eligible for free or charity care under rules adopted pursuant to Title 22, section 1716.

PART F

Sec. F-1. 32 MRSA §11019, sub-§1 is amended to read

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:

Sec. F-2. 32 MRSA §11020 is enacted to read:

§11020. Collection action to collect credit card and student loan debts; additional requirements for collection action by debt buyer

1. Applicability. This section applies to any collection action against a consumer to collect a credit card or student loan debt and to any collection action initiated by a debt buyer.

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

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

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

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B. A sample answer and an explanation that the consumer may fill out the form and return it to the court in the envelope provided 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. Complaint; required information. In addition to the content of the complaint required by other laws or rules, in a collection action subject to this section, the complaint must allege the following information, some of which may not be available to the public:

A. The identity of the original creditor;

B. The name of the current owner of the debt and, if a debt buyer, that the debt buyer is the current owner of the debt;

C. The principal amount due at charge-off if the plaintiff is a debt buyer;

D. An itemization of any interest and fees claimed to be owed, and an indication whether those were imposed by the original creditor or any subsequent owners of the debt;

E. 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;

F. If the debt is from a revolving credit account, 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. If applicable, the names of all persons or entities that owned debt after the time of the charge-off and the date of each sale or transfer;

I. The basis for the request for attorney fees, if applicable;

J. That the cause of action is filed within the time prescribed in the applicable statute of limitations; and

K. If the plaintiff is a debt buyer and the original creditor used an account number to identify the debt, the original creditor's account number used to identify the debt at the time of the charge-off, though the account number shall not be included in the complaint and shall instead be included in a non-public affidavit attached to the copy of the complaint served on the creditor.

5. Attachments to Complaint. In addition to any other attachments required by this chapter, the following materials must be attached to the complaint:

A. A copy of a form answer, available in the clerk's office and on the Judicial Branch website, appearing as the first page of the papers served;

B. A collection action summons, available in the clerk's office;

C. 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 include 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;

E. When it exists, 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

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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; and

F. If the plaintiff is a debt collector, a copy of the plaintiff's current license as a debt collector in this State.

6. Preliminary Review. If the consumer files a timely response to a complaint brought under this section, the court shall assign the complaint to a single judge or justice. The court shall conduct a preliminary review of the filings. The court shall make a prima facie determination whether the complaint, along with attachments and supporting documentation, including any affidavits submitted, meets the requirements of this section and all other applicable requirements; whether service was properly completed; and whether the action was properly commenced. The preliminary review under this subsection is a facial review and does not decide the legal sufficiency of the evidence presented. Any issue regarding expiration of the statute of limitations or other factual or legal determination is reserved.

7. Return of Inadequate Filings. If the court determines that the filings do not satisfy all requirements of this section, the court shall direct the clerk of court to return the complaint as incomplete for not including a legally required element pursuant to this section.

8. Adequate Filings. If the court determines that the plaintiff's filings satisfy the requirements of this section, the court shall issue a scheduling order, and the case shall proceed as a civil action.

9. Entry of Judgment. A court may not enter 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, whether the plaintiff has produced evidence that is admissible pursuant to the Maine Rules of Evidence on all required elements of its claim.

10. 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 statute and all other applicable requirements are met, including, but not limited to, whether the plaintiff has produced evidence admissible pursuant to the Maine Rules of Evidence on all required elements of its claim.

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

SUMMARY

The amendment adds Parts E and F to the bill.

Part D makes it a violation of the Maine Fair Debt Collections Practices Act to collect or attempt to collect a debt from medical expenses against an individual eligible for free or charity care.

Part E adds requirements relating to collection actions for credit card debt and student loan debt. Part E also adds additional requirements for collection actions brought by debt buyers.