

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Prevent Abusive Debt Collection Tactics by Debt Buyers**

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

**Sec. 1. 32 MRSA §11002, sub-§§1-B, 1-C, 5-A, 7-A, 7-B and 8-C** are 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.

**1-C. Charged-off debt.** "Charged-off debt" means a debt that has been removed from a creditor's books as an asset and treated as a loss or expense because payment is unlikely.

**5-A. Debt buyer.** "Debt buyer" means a person that is engaged in the business of purchasing charged-off debt or other delinquent debt for collection purposes, whether it collects the debt itself or hires a 3rd party, which may include an attorney-at-law, in order to collect such debt. A debt buyer is considered a debt collector for all purposes.

**7-A. Original creditor.** "Original creditor" means a person that extended credit to a consumer for the purchase of goods or services, for the lease of goods or as a loan of money. The original creditor's name is the name it uses in dealings with a consumer.

**7-B. Principal.** "Principal" means the unpaid balance of the funds borrowed, the credit used, the sales price of goods or services obtained or the capital sum of any other debt or obligation arising out of a transaction if the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes. "Principal" does not include interest, fees or charges added to the obligation or alleged obligation by the original creditor or any subsequent assignees or purchasers of the debt.

**8-C. Resolved debt.** "Resolved debt" means a debt that has been paid, settled or discharged in bankruptcy; a debt for which the statute of limitations under section 11013, subsection 8 has expired; a debt that may not be collected pursuant to section 11054, subsection 6 due to a violation of this Act by a debt buyer; or a debt for which the consumer is no longer liable due to any other reason.

**Sec. 2. 32 MRSA §11013, sub-§§9 and 10** are enacted to read:

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

- A. The name of the current creditor or owner of the debt;
- B. The original creditor's name at the time of the charge-off, if different from the current owner of the debt;
- C. The original creditor's account number for the debt at the time of the charge-off;

- D. The principal amount due at charge-off;
- E. An itemization of pre-charge-off interest, fees and charges, if any, claimed to be owed;
- F. An itemization of post-charge-off interest, fees and charges, if any, claimed to be owed and whether those were imposed by the original creditor or any subsequent owners of the debt;
- G. The date that the debt was incurred. In the case of a revolving credit account, the date that the debt was incurred is the last extension of credit made for the purchase of goods or services, for the lease of goods or as a loan of money;
- H. The date and amount of the last payment, if applicable;
- I. The names of all persons that owned the debt after the original creditor, if applicable, and the date of each sale or transfer;
- J. Documentation establishing that the debt buyer is the owner of the specific debt at issue; and
- K. A copy of the contract, application or other documents evidencing the consumer's liability for the debt, which must contain the consumer's signature.

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

- A. A debt without the information and documentation required in this section; or
- B. A resolved debt, an interest in a resolved debt or any financial information relating to a resolved debt.

**Sec. 3. 32 MRSA §11014, sub-§1, ¶B,** as enacted by PL 1985, c. 702, §2, is amended to read:

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

**Sec. 4. 32 MRSA §11014, sub-§1, ¶¶B-1 to B-4** are enacted to read:

B-1. The name of the original creditor, if different from the current owner of the debt;

B-2. An itemization of the debt, including:

- (1) The principal amount at charge-off;
- (2) An itemization of the pre-charge-off interest, fees and charges, if any, claimed to be owed;
- (3) An itemization of the post-charge-off interest, fees and charges, if any, claimed to be owed;
- (4) The name of the creditor or debt collector that levied each interest, fee or charge; and
- (5) The date and amount of the last payment, if applicable;

B-3. The names of all persons that owned the debt after the original creditor, if applicable, and the date of each sale or transfer;

B-4. The types of income that are exempt from being taken to satisfy a judgment under state and federal law;

**Sec. 5. 32 MRSA §11019** is enacted to read:

**§ 11019. Collection action by debt buyer to collect debt**

**1. Debt buyer collection action; required allegations.** In a collection action initiated by a debt buyer, the debt buyer shall allege all of the following information:

- A. A short and plain statement of the type of debt;
- B. The information described in section 11013, subsection 9;
- C. The basis for any interest, fees and charges described in section 11013, subsection 9;
- D. The basis for the request for attorney's fees, if applicable;
- E. That the debt buyer is the current owner of the debt and a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership, beginning with the original creditor; and
- F. That the collection 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. Documentation to establish the information required in section 11013, subsection 9;
- B. A copy of the contract, application or other document evidencing the consumer's agreement to the debt, which must contain the consumer's signature. If the debt arises from a credit card and no such signed document evidencing the debt ever existed, the debt buyer shall provide copies of the most recent monthly statement recording a purchase transaction, service billed, last payment or balance transfer and monthly statements from the 11 months immediately preceding the most recent statement if applicable; and
- C. A copy of the bill of sale or other writing establishing that the debt buyer is the owner of the debt. If ownership of the debt has transferred more than once, a copy of each bill of sale or other writing establishing transfer of ownership of the debt must be attached. 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.

**3. Consumer appearance.** If the consumer appears for trial on the scheduled trial date and the debt buyer either fails to appear or is not prepared to proceed to trial and the court does not find good cause for continuance, the court shall enter judgment for the consumer dismissing the action with prejudice. Notwithstanding any other law, the court may award the consumer's costs of preparing for trial, including, but not limited to, lost wages, transportation expenses and attorney's fees.

**4. Requirements for judgment.** In a collection action initiated by a debt buyer, prior to entry of a judgment or order against a consumer, the debt buyer shall file:

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

B. An authenticated copy of the terms and conditions that apply to the consumer's account and establish the basis for the interest, fees and charges alleged;

C. Authenticated business records admissible pursuant to the Maine Rules of Evidence to establish the information and documentation required under subsection 1; and

D. Notwithstanding any other law, if attorney's fees are sought under contract, an authenticated copy of the contract evidencing entitlement to attorney's fees.

**5. Dismissal of collection action.** In a collection action initiated by a debt buyer, if a debt buyer seeks a judgment or order against the consumer and has not complied with the requirements of this section, the court may not enter a judgment for the debt buyer and shall dismiss the action with prejudice.

**6. Post-judgment interest.** Notwithstanding any other law, if the debt buyer is the prevailing party in an action against a consumer to collect a debt, any interest on the judgment must be:

A. The rate agreed upon in the original contract sued upon or an annual rate of 6%, whichever is lower, even though a higher rate of interest may properly have been charged according to the contract prior to judgment; or

B. An annual rate of 6% if there was no contract by the parties.

**Sec. 6. 32 MRSA §11054, sub-§6** is enacted to read:

**6. Effect of violation.** If a debt buyer violates this Act, neither the debt buyer nor any other person that may legally seek to collect the debt may collect the amount of the original claim or debt or any interest, service charge, attorney's fees, collection costs, delinquency charge or any other fees or charges legally chargeable to the consumer on such debt.

## SUMMARY

This bill amends the Maine Fair Debt Collection Practices Act to give debtors certain protections with respect to debt buyers. A debt buyer may not sell or transfer ownership of a debt or pursue collection activities regarding a debt without possessing specified information, including the names of the original creditor and all intervening creditors. If the debt collector initiates a court action to collect the debt,

specific information about the original creditor, the intervening creditors and the basis for any interest, fees and charges must be included in the complaint.

This bill establishes an annual rate of 6% as the maximum post-judgment interest rate applicable to a judgment obtained by a debt buyer.

The bill further provides that a debt may not be collected if a debt buyer violates the Maine Fair Debt Collection Practices Act.