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H.P. 753

House of Representatives, March 25, 2015

An Act To Prevent Abusive Debt Collection Practices

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative COOPER of Yarmouth.
Cosponsored by Senator LIBBY of Androscoggin and
Representatives: BEAVERS of South Berwick, BRYANT of Windham, HOGAN of Old
Orchard Beach, LAJOIE of Lewiston, LONGSTAFF of Waterville, RUSSELL of Portland,
SCHNECK of Bangor, TUCKER of Brunswick.

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

2 **Sec. 1. 32 MRSA§11002, sub-§§1-A to 1-C, 5-A, 7-A, 7-B and 8-C** are
3 enacted to read:

4 **1-A. Cause of action.** "Cause of action" means a lawsuit or arbitration proceeding.

5 **1-B. Charge-off.** "Charge-off" means the act of a creditor removing an account
6 from its books as an asset and treating it as a loss or expense because payment is unlikely.

7 **1-C. Charged-off debt.** "Charged-off debt" means a debt that has been removed
8 from a creditor's books as an asset and treated as a loss or expense because payment is
9 unlikely.

10 **5-A. Debt buyer.** "Debt buyer" means a person or entity that is engaged in the
11 business of purchasing charged-off debt or other delinquent debt for collection purposes,
12 whether it collects the debt itself or hires a 3rd party, which may include an attorney-at-
13 law, in order to collect such debt. A "debt buyer" is considered a debt collector for all
14 purposes.

15 **7-A. Original creditor.** "Original creditor" means the last person or entity that
16 extended credit to the consumer for the purchase of goods or services, for the lease of
17 goods or as a loan of money. The original creditor's name is the name it uses in dealings
18 with a consumer.

19 **7-B. Principal.** "Principal" means the unpaid balance of the funds borrowed, credit
20 used, the sales price of goods or services obtained or the capital sum of any other debt or
21 obligation arising out of a transaction in which the money, property, insurance or services
22 that are the subject of the transaction are primarily for personal, family or household
23 purposes. "Principal" does not include interest, fees or charges added to the obligation or
24 alleged obligation by the original creditor or any subsequent assignees or purchasers of
25 the debt.

26 **8-C. Resolved debt.** "Resolved debt" means a debt that has been paid, settled or
27 discharged in bankruptcy or for which the consumer is no longer liable.

28 **Sec. 2. 32 MRSA §11013, sub-§§6 to 10** are enacted to read:

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

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

32 **B.** The original creditor's name at the time of the charge-off, if different from the
33 current owner of the debt;

34 **C.** The original creditor's account number for the consumer at the time of the charge-
35 off;

36 **D.** The principal amount due at charge-off;

37 **E.** An itemization of pre-charge-off interest and fees, if any, claimed to be owed;

1 F. An itemization of post-charge-off interest and fees, if any, claimed to be owed and
2 whether those were imposed by the original creditor or any subsequent owners of the
3 debt;

4 G. The date that the debt was incurred. In the case of a revolving credit account, the
5 date that the debt was incurred is the last extension of credit made for the purchase of
6 goods or services, for the lease of goods or as a loan of money;

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

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

10 J. Documentation establishing that the debt buyer is the owner of the specific debt at
11 issue; and

12 K. A copy of the contract, application or other documents evidencing the consumer's
13 liability for the debt containing the consumer's signature.

14 **7. Written requirement for payment agreement.** A debt collector may not enter
15 into a debt payment schedule or settlement agreement regarding a debt without providing
16 a written copy of the payment schedule or settlement agreement to the consumer. The
17 debt collector shall provide the written copy within 10 business days of entering into a
18 schedule or agreement. A consumer need not make a payment on a payment schedule or
19 settlement agreement until the written copy has been provided.

20 **8. Acting on time-barred debt.** A debt collector may not attempt to collect or
21 initiate a cause of action against a consumer when the debt collector knows or reasonably
22 should know that collection is barred by the statute of limitations set forth in subsection
23 10.

24 **9. Transfer of ownership of debt.** A debt buyer may not sell or otherwise transfer
25 ownership of:

26 A. A debt without the information and documentation required in this section;

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

29 C. A debt that is beyond the statute of limitations period set forth in subsection 10,
30 an interest in a debt that is beyond the statute of limitations period set forth in
31 subsection 10 or any financial information relating to a debt that is beyond the statute
32 of limitations period set forth in subsection 10.

33 **10. Limitations for debt buyer cause of action.** A debt buyer may not commence a
34 cause of action against a consumer to collect a debt more than 3 years after the cause of
35 action accrues. The date of accrual is the later of the date of charge-off and 180 days after
36 the last regular payment on the debt. This limitations period applies notwithstanding any
37 other applicable statute of limitations, unless such statute of limitations provides for a
38 shorter limitations period.

1 A. Notwithstanding any other provision of any other law, when the limitations period
2 set forth in this subsection expires, any subsequent payment toward, or written or oral
3 affirmation of, such debt does not extend the limitations period.

4 B. When the limitations period set forth in this subsection expires, the right to collect
5 the debt is extinguished along with any remedies available to the debt buyer pursuant
6 to a cause of action to collect the debt.

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

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

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

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

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

14 (1) The principal amount at charge-off;

15 (2) An itemization of the pre-charge-off interest and fees, if any, claimed to be
16 owed;

17 (3) An itemization of the post-charge-off interest and fees, if any, claimed to be
18 owed;

19 (4) The name of the creditor or debt collector that levied each interest or fee; and

20 (5) The date and amount of the last payment, if applicable;

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

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

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

26 **§11019. Cause of action by debt buyer to collect debt**

27 **1. Debt buyer cause of action; required allegations.** In a cause of action initiated
28 by a debt buyer against a consumer to collect a debt, the debt buyer shall allege all of the
29 following information:

30 A. A short and plain statement of the type of debt;

31 B. The information described in section 11013, subsection 6;

32 C. The basis for any interest and fees described in section 11013, subsection 6;

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

34 E. That the debt buyer is the current owner of the debt and a chronological listing of
35 the names of all prior owners of the debt and the date of each transfer of ownership,
36 beginning with the original creditor; and

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

2 **2. Debt collection complaint; attachments.** In a cause of action initiated by a debt
3 buyer against a consumer to collect a debt, the debt buyer shall attach all of the following
4 materials to the complaint:

5 A. Documentation to establish the information required in section 11013, subsection
6 6;

7 B. A copy of the contract, application or other writing evidencing the consumer's
8 agreement to the debt, which must contain the consumer's signature. If the debt arises
9 from a credit card and no such signed document evidencing the debt ever existed, the
10 debt buyer shall provide copies of the most recent monthly statement recording a
11 purchase transaction, service billed, last payment or balance transfer and monthly
12 statements from the 11 months immediately preceding the most recent statement; and

13 C. A copy of the bill of sale or other writing establishing that the debt buyer is the
14 owner of the debt. If ownership of the debt has transferred more than once, a copy of
15 each bill of sale or other writing establishing transfer of ownership of the debt must
16 be attached. Each bill of sale or other writing evidencing transfer of ownership must
17 contain the original creditor's account number of the debt purchased and must clearly
18 show the consumer's name associated with that account number.

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

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

28 A. An authenticated copy of the contract, application or other writing that satisfies
29 the requirements of Title 16 evidencing the consumer's agreement to the debt, which
30 must contain the consumer's signature. If the debt arises from a credit card and no
31 such signed document evidencing the debt ever existed, the debt buyer shall file
32 authenticated copies of the most recent monthly statement recording a purchase
33 transaction, service billed, last payment or balance transfer and the monthly
34 statements from the 11 months immediately preceding the most recent statement;

35 B. An authenticated copy of the terms and conditions that apply to the consumer's
36 account and establishes the basis for the interest and fees alleged;

37 C. Authenticated business records that satisfy the requirements of Title 16 to
38 establish the information and documentation required under subsection 1; and

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

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

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

8 A. The rate agreed upon in the original contract sued upon, which may not exceed an
9 annual rate of 6% even though a higher rate of interest may properly have been
10 charged according to the contract prior to judgment; or

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

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

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

18 SUMMARY

19 This bill amends the Maine Fair Debt Collection Practices Act to provide protection
20 to debtors with regard to collection actions by debt buyers. A debt buyer may not collect
21 on a debt without providing specified information that includes the name of the original
22 creditor and all intervening creditors, as well as the sources of added fees and interest.
23 The information must be included in the complaint to initiate the cause of action to
24 collect the debt.

25 This bill establishes a 3-year statute of limitations that replaces all other limitations
26 unless the existing limitations is a shorter period.

27 This bill provides that a debt may not be collected if a debt buyer violates the Act.