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Monday to Friday 8:30AM -5:00PM

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April 19, 2021

Committee on Health Coverage, Insurance and Financial Services
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

RE: LD 1466 – An Act to Improve the Efficiency of Certain Consumer Credit Protection Laws

Dear Senators and Representatives:

I write in opposition to two small portions of LD 1466. Thank you for the opportunity to present my testimony.

I have represented a wide variety of creditors, including credit card issuers, student loan providers, medical providers, and debt buyers, in Maine since my admission to the bar in 2005. Based on my experience the statutory, regulatory, and judicial protections in place in Maine effectively protect consumers from abusive debt collection tactics. Parts of LD 1466 would erect barriers for certain classes of creditors without any justification presented and would impose unnecessary burdens on Maine judicial processes. Therefore, I must respectfully oppose Parts E and F of LD 1466.

Part E

Part E of LD 1466 would add a subsection to the Maine Fair Debt Collections Practices Act ("ME FDCPA"), Section 11013 which governs "Prohibited Practices." Proposed Subsection 11 would prohibit any attempt to collect or collection action for "a debt from medical expenses against a consumer ***who has been determined to be qualified for free or charity care*** … or against a consumer ***who would have been determined to be qualified*** for free or charity care … ***but did not apply for good cause***." (emphasis added)

Maine law requires free or charity care for "medically necessary" services provided to Maine residents with income less than a threshold poverty level established by the federal government. In my experience, Maine hospitals' eligibility requirements are more generous than those set by law. My hospital and medical provider clients routinely encourage patients to apply for free or charity care. Likewise, my office does the same.

Unfortunately, the language of Part E, as drafted, could lead to confusion and unintended consequences for innocent parties. The first problem stems from the phrase "***who has been determined to be qualified for free or charity care.***" If a consumer has been determined to qualify for free or charity care at hospital A, there is no way for hospital B to know. Therefore, any attorney or agency hired by hospital B to collect a debt will likewise be unaware that hospital A has determined the consumer qualified for free or charity care under hospital A's program. As drafted, hospital B could attempt to collect a debt from a consumer and unknowingly lead to a violation of Part E as a separate entity, hospital A, could have made a determination that the consumer qualified for hospital A's free or charity care program. I believe this issue could be avoided by changing this portion of Part E to "***who has been determined to be qualified for free or charity care by the creditor***" or similar language limiting the effect of the determination to only the entity that has made the determination of eligibility.

The second problem of the language of Part E as drafted is the provision stating that a debt collector may not collect or attempt to collect a debt from medical expenses against a consumer "***who would have been determined to be qualified for free or charity care … but did not apply for good cause***." There is simply no way for my clients, or my office, to know that someone "would have" qualified if they did not apply, regardless of the reason why they did not apply.

There is no way for my clients, or my office, to know if a consumer is eligible for free or charity care until or unless they communicate with us. Without communication from the consumer their potential eligibility for such a program is unknown and unknowable to creditors or debt collectors alike. There is also no way for my clients, or my office, to know why someone did not apply for free or charity care. If the information is provided *after* collection or an attempt to collect has happened, it will be too late and a violation will have already occurred with no intent to do so by the debt collector, or their creditor client. Therefore, I encourage the committee to amend Part E to eliminate this language.

Amending the language of Part E to limit the restriction on collecting or attempting to collect a debt after a determination of eligibility for free or charity care to the entity that made the determination and deleting the portion of Part E concerning consumers who "would have" qualified but did not apply should eliminate the problem of creditors and debt collectors being simply unable to comply with the proposed law due to a lack of information.

Part F

Part F includes a new proposed Section 11020 to the ME FDCPA adding additional requirements to a collection action brought by a debt collector to collect credit card and student loan debts in addition to those already included in Section 11019.

Subsection 3 of proposed Section 11020 requires a "form notice" to be included with any collection action subject to the section that includes "A statement that failure to answer the complaint may result in entry of judgment in the amount demanded by the debt collector." Such a notice and statement are simply not necessary. All civil actions require service of a summons and complaint on the opposing party. M.R.Civ.P. 2 – 4. The summons, which is court form CV-

030, Rev. 07/18, already includes a section entitled **IMPORTANT WARNING** (emphasis in original) which is offset in box in the center of the document. The warning is not minimized or hidden. Extra care has been taken to draw attention to the important warning included in the document. The important warning section of the summons form states "**If you fail to serve an answer within the time stated above ... a judgment by default may be entered against you in your absence for the money damages or other relief demanded in the Complaint...**" and "**If you intend to oppose this lawsuit, do not fail to answer within the requested time.**" (emphasis in original). Consumers are already clearly warned in the summons served on all defendants in civil actions of the consequences of failing to file an answer.

Requiring a one-page form notice attached to the front of a complaint explaining that a failure to answer may result in entry of judgment in the amount demanded is needlessly repetitive. The same warning ***already*** appears in the summons attached to the front of a complaint that is provided to consumers upon service.

Subsection 3 to proposed Section 11020 also requires a "sample answer" to be included with the complaint. To my knowledge, no copy of the form notice or sample answer have been created to date or provided for review. It is not possible to fully evaluate this proposal without the inclusion of the form answer or notice to examine. Moreover, the summons form already makes clear that all a consumer needs to do to oppose a lawsuit is to serve a written answer to that effect. There is no requirement for any level of formality. Clear instructions on where to file the answer are included in the text of the summons itself.

Subsections 4 and 5 to proposed Section 11020 would unnecessarily burden the courts and without providing any substantive benefit to consumers. Proposed subsection 4 requires that a court may not enter judgment "unless it specifically finds that all requirements" of proposed Section 11020 and the remainder of the ME FDCPA have been met "including...whether the plaintiff has produced evidence that is admissible pursuant to the Maine Rule of Evidence on all required elements of its claim." Proposed subsection 5, though titled "Default Judgment," would prevent the court from entering default judgment or a judgment based on a settlement, "unless the court determines that all requirements of this section and all other applicable requirements of this chapter are met" and "plaintiff has produced evidence admissible pursuant to the Maine Rules of Evidence on all required elements of its claim."

Subsection 11019 of the ME FDCPA already includes requirements for obtaining judgment by debt buyers whether or not a consumer appears in an action. Additionally, Subsection 11019 applies to all debt buyer actions and is not limited only to actions to collect "a credit card or student loan debt." In my practice I have seen the courts diligently adhere to the requirements of Subsection 11019 before granting judgment by default, motion, or at trial. As a result, proposed subsections 4 and 5 will not add any substantive new protections to consumers. The additional language and reviews included in proposed subsections 4 and 5 will merely increase the burdens on the judiciary without adding any new protections for consumers.

As this subsection is limited only to collection actions "initiated by a debt collector," by the definitions included in the ME FDCPA it applies only to debt buyers. If the intention of Part F is to be applicable to original creditors who issue credit cards and student loans this will lead to

confusion as such creditors are excluded by other provisions of the ME FDCPA. Furthermore, there has been no demonstrated need for such time-consuming procedures for actions brought by original creditors. For all other types of civil litigation the authenticity and sufficiency of the complaint is attested to by the signature of a Maine-licensed attorney. That signature, and review by the court clerk, judge or justice, is sufficient to award judgment if the defendant fails to appear and dispute the allegations contained in the complaint.

Proposed subsections 4 and 5 of Section 11020 would eliminate the standard process for entering default judgments by the court clerks in actions for a sum certain if the Plaintiff is a debt buyer and the action is based on a credit card or student loan. This would greatly increase the burden on judges/justices and could lead a bottleneck delaying civil cases unless additional resources are provided to the judicial branch.

Most concerning, proposed subsection 5 would not allow judgment to enter unless "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.**" (emphasis added) This provision indicates a deep misunderstanding of civil practice and procedure in Maine. Maine is a notice pleading state. A complaint is not a vehicle for introducing evidence. Instead a civil complaint is intended to put a defendant on notice of the claims pending against them. Evidence is admitted at a trial or other hearing on the merits or submitted by affidavit on a motion to decide a case on the merits. Essentially, to introduce admissible evidence a trial, other hearing, or motion for summary judgment would be required for every case filed by a debt buyer for an action on a credit card or student loan. This is at odds with the very concept of a default judgment. The efficiency of the court system would be decreased and additional judicial resources would be required. No demonstration of why such a drastic change would significantly benefit consumers has been made.

Moreover, proposed subsection 5 ignores the reality that default judgments are also entered for reasons other than failing to plead. In civil practice default judgments are also issued for failing to obey court orders, failing to comply with the discovery process, and failing to appear at hearings. Depriving the sitting judge or justice of the ability to use the sanction of a default, or threat of default, would remove an important tool that judges and justices use to control their dockets, litigants, and courtrooms.

Proposed Subsection 5 of Section 11020 likewise would require that the court may not enter a judgment "based on a proposed order concerning a settlement" without the plaintiff producing admissible evidence on all required elements. This would eliminate the ability of parties to reach a settlement to avoid the costs, burden, and time of litigation. Even if the parties agreed to stipulate to judgment, the court would still need to hold a trial, or require a summary judgment motion or other process to allow the Plaintiff to introduce admissible evidence on the record. Parties choose to settle to reduce the cost, time and complication of litigation. Proposed subsection 5 would take that choice away from parties, even if represented by counsel.

Part F ignores the reality that not all consumers are acting *pro se*. Even if a consumer is represented by an attorney no judgment can enter under proposed subsection 11020, even by

agreement, without the added burdens of admissible evidence and additional judicial review. This burden on the courts is absolutely not necessary when the litigants on both sides of an action are represented by counsel.

I am not aware of any pattern of abuses by credit card issuers or student loan providers that have been identified by the Maine Bureau of Consumer Credit Protection. Based on my most recent review of complaints published by the federal Consumer Financial Protection Bureau, there is minimal complaint activity against credit card issuers and student loan providers in Maine. There does not appear to be any compelling justification for the barriers and burdens that would be imposed by Part F, proposed section 11020.

Proposed Part F unjustifiably erects barriers for certain classes of debts, would impose undue burdens on the judiciary, and does not provide substantive protections to consumers not already provided by Maine laws.

Therefore, I respectfully urge this Committee to vote that LD 1466, Parts E and F ought not to pass as drafted.

Very truly yours,

Kate E. Conley, Esq.

CONTAINS NONPUBLIC DIGITAL INFORMATION

MAINE JUDICIAL BRANCH

_____ Plaintiff

V.

_____ Defendant

_____ Address

_____

"X" the court for filing:

☐ Superior Court ☐ District Court

County: _____

Location (Town): _____

Docket No.: _____

SUMMONS

M. R. Civ. P. 4(d)

The Plaintiff has begun a lawsuit against you in the ☐ District ☐ Superior Court, which holds sessions at (*street address*) _____, in the Town/City of _____, County of _____, Maine. If you wish to oppose this lawsuit, you or your attorney **MUST PREPARE AND SERVE A WRITTEN ANSWER** to the attached Complaint **WITHIN 20 DAYS** from the day this Summons was served upon you. You or your attorney must serve your Answer by delivering a copy of it in person, by mail, or by email to the Plaintiff's attorney, whose name and address, including email address appear below, or by delivering a copy of it in person or by mail to the Plaintiff, if the Plaintiff's name and address appear below. You or your attorney must also file the original of your Answer with the court by mailing it to: Clerk of ☐ District ☐ Superior Court, _____ (*Mailing Address*), _____ (*Town, City*), Maine _____ (*Zip*) before, or within a reasonable time after, it is served. Court rules governing the preparation and service of Answers are found at www.courts.maine.gov.

IMPORTANT WARNING: If you fail to serve an answer within the time stated above, or if, after you answer, you fail to appear at any time the Court notifies you to do so, a judgment by default may be entered against you in your absence for the money damages or other relief demanded in the Complaint. If this occurs, your employer may be ordered to pay part of your wages to the Plaintiff or your personal property, including bank accounts and your real estate may be taken to satisfy the judgment. **If you intend to oppose this lawsuit, do not fail to answer within the requested time.**

If you believe the plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the clerk of court for information as to places where you may seek legal assistance.

Date (*mm/dd/yyyy*): _____

_____ (☐ Attorney for) Plaintiff

_____ Address

_____

_____ Telephone

_____ Email Address

(Seal of Court)

▶ _____ Clerk

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.
Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

CONTAINS NONPUBLIC DIGITAL INFORMATION

MAINE JUDICIAL BRANCH

STATE OF MAINE

_____ County

On (*date*) _____, I served the Complaint (and Summons, and Notice Regarding Electronic Service) upon Defendant _____ by delivering a copy of the same at the following address:

_____

☐ to the above-named Defendant in hand.

☐ to (*name*) _____, a person of suitable age and discretion who was then residing at Defendant's usual residence.

☐ to (*name*) _____, who is authorized to receive service for Defendant.

☐ by (*describe other manner of service*): _____

_____

_____

Date *(mm/dd/yyyy)*: _____ ▶ _____

Deputy Sheriff Signature

_____

Printed Name

_____

Agency

Costs of Service:

Service:	$ _____
Travel:	$ _____
Postage:	$ _____
Other:	$ _____
Total	$ _____

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