



Memorandum in Opposition

LD 1466 (HP 1082)

An Act to Improve the Efficiency of Certain Consumer Credit Protection Laws

April 20, 2021

Joint Standing Committee on Health Coverage, Insurance and Financial Services
Cross Building, Room 220, 287-1314
100 State House Station
Augusta, ME 04333
HCIFS@legislature.maine.gov

Dear Senator Sanborn, Representative Tepler and members of the Committee:

On behalf of Encore Capital Group, Inc. and its wholly-owned subsidiaries (collectively, “Encore”), I’m writing in **opposition** to LD 1466 (HP 1082). We strongly support raised standards for the debt buying and debt collections industry, including NMLS licensing and ensuring that debt buyers adhere to requirements set forth under existing federal and state laws that govern our industry. However, there are several items in Part F of this legislation that concern us deeply, including eliminating our industry’s ability to utilize the lower-cost small claims court system. Given that this legislation was just prefiled twelve days ago, we have not yet had a fair opportunity to discuss our concerns with the bill sponsors and other stakeholders.

Comprehensive reforms for the debt industry were enacted in 2017.¹ The 2017 law made Maine’s state debt buyer laws one of the most protective in the nation for consumers, and enacted sweeping requirements for debt buyers – including notice, data and document requirements to collect, file suit and obtain judgments. The 2017 law created extremely rigorous requirements for the debt buying industry, and required significant changes to compliance processes, procedures and operations by debt buyers to be able to continue to operate in the state. It is unclear why another comprehensive reform bill is needed so soon, but what is clear that the legislation will create an extremely burdensome climate for legitimate debt buyers to operate in, and will eliminate our industry’s ability to utilize the small claims court system in Maine.

Background on Our Company

Encore is a publicly-traded company and a leading provider of debt recovery solutions for consumers, with more than 60 years of experience helping consumers toward a better life. Through its subsidiaries, our company purchases portfolios of mostly consumer credit card receivables from

¹ Maine Revised Statutes, Title 32, Chapter 109-A, Subchapter 2, §11013 (HP 836 (LD1199) (Sanborn)).



major banks and partners with individuals as they repay their obligations and work toward financial recovery.

We take a consumer-centric approach to helping consumers resolve their obligations, and we forgive or suspend debt where consumers demonstrate a hardship.² Indeed, last year we forgave over \$768,828 in debt to Maine consumers alone.

Still, even with our consumer-centric approach, we sometimes must resort to litigation as a last recovery method. A key priority for us is to try to communicate with our consumers to resolve their debt obligations, and we typically offer a steep discount off of the face value of the debt. In addition, we charge no interest or fees on debt we purchase. However, for a small segment of consumers who we believe have the ability, but not the willingness, to repay their obligations, litigation is a path we sometimes take.

Our Industry Requests the Opportunity to Fairly Discuss Our Concerns With the Sponsors and Other Stakeholders, Including the Bill's Restricting Our Industry's Access to the Lower-Cost Small Claims Courts

One of the concerns we see in LD 1466 is that it would eliminate the ability for debt buyers to file suit in small claims court. Small claims court is often a less costly and more efficient way for parties to resolve legal disputes. Small claims courts benefit consumers and all litigants on simple contract and credit card cases to provide for an easy-to-navigate, less expensive and less formal process. It should remain an option for collections litigation, and there is little reason why collection litigation specifically regarding credit card and student loan debt should be singled out as banned from a type of courtroom setting.

We sincerely ask the Committee to allow for us to discuss our concerns without rushing to pass this comprehensive legislation. Without giving us a seat at the table, our industry is truly being legislated out of business in the state.

Maine's 2017 Law for Debt Buyers Created Some of the Strictest Requirements in the Nation for Our Industry

We believe that the comprehensive debt buyer reforms enacted in 2017 provide substantial protections to Maine consumers, and make Maine one of the most rigorous states in the nation for debt buyers to operate in. The 2017 legislation provided for robust protections that included:

² Encore's Consumer Bill of Rights, <https://www.midlandcredit.com/who-is-mcm/our-pledge/>



- In order to collect or attempt to collect a debt, a debt buyer must possess a host of data and documents, including
 - The name of the owner of the debt;
 - The original creditor's name at the time of the charge-off;
 - The original creditor's account number used to identify the debt at the time of the charge-off, if the original creditor used an account number to identify the debt at the time of charge-off;
 - The principal amount due at charge-off;
 - An itemization of interest and fees, if any, incurred after charge-off claimed to be owed and whether those were imposed by the original creditor or any subsequent owners of the debt;
 - 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. In the case of debt from a revolving credit account, the debt buyer must possess 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;
 - The date and amount of the last payment, if applicable;
 - The names of all persons or entities that owned the debt after the time of the charge-off, if applicable, and the date of each sale or transfer;
 - 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 possess 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; and
 - 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 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.

The law also states that a debt buyer may not sell or otherwise transfer ownership of a debt without the information and documentation listed above, and may not sell or transfer ownership of or information relating to a resolved debt.

In order to file a complaint against a consumer, a debt buyer must allege all of the following in their complaint:

- The information described above, including that the debt buyer possesses the documentation described above;
- The basis for any interest and fees described above;
- The basis for the request for attorney's fees, if applicable;



- That the debt buyer is the current owner of the debt; and
- That the cause of action is filed within the applicable statute of limitations period.

And in a collection action initiated by a debt buyer, the debt buyer must attach all of the following to the complaint:

- A copy of the contract, application or other document evidencing the consumer's agreement to the debt. If a signed writing evidencing the original debt does not exist, the debt buyer shall attach a copy of a document provided to the consumer before charge-off 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 or the last payment or balance transfer; and
- A copy of the bill of sale or other writing establishing that the debt buyer is the owner of the debt. If the debt was assigned more than once, the debt buyer shall attach 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.

Finally, the law outlines penalties for non-compliance. All in, the many requirements above enacted in 2017 made Maine the nation's leader in regulating debt buyers, and created an extremely burdensome environment for debt buyers to operate in. This new legislation will now create additional onerous restrictions for debt buying companies that are trying to legitimately operate in Maine, including disallowing certain classes of debt buyers from accessing the lower-cost small claims court system.

Thank you for your attention to this important matter. Please feel free to contact me at Sonia.Gibson@encorecapital.com for any further information.

Sincerely,

Sonia Gibson
National Government Affairs