TESTIMONY OF WILL LUND, SUPERINTENDENT
BUREAU OF CONSUMER CREDIT PROTECTION
In Support of L.D. 1466
"An Act to Improve the Efficiency of Certain Consumer Credit Protection Laws"
Sponsored by Representative Tepler
Cosponsored by Senator Sanborn
Before the Joint Standing Committee on Health Coverage, Insurance and Financial Services
April 20, 2021; 1:30 p.m.

Senator Sanborn, Representative Tepler and members of the Committee – I am Will Lund, Superintendent of the Bureau of Consumer Credit Protection. I appear before you to speak in support of L.D. 1466, which the two committee chairs have generously sponsored on our agency's behalf.

This legislation was drafted by me and the Bureau staff in an effort to accomplish two goals – first, to update several of the laws we administer, to make certain that consumer protections keep pace with new ways that Maine consumers enter into credit transactions; and second, to allow our agency to streamline operations so we can concentrate on our primary mission, which is to encourage responsible business activities in the area of consumer finance, while protecting consumers from the actions of companies that act in ways that harm consumers.

This is a lengthy bill, and for that I apologize. The good news, however, is that every provision of this bill was vetted by this committee in 2020, and it received an "ought to pass" recommendation. The final wording was awaiting only language review when the pandemic shut things down.

In the interest of time, and with the Committee's permission, I would like to briefly describe the bill's provisions, and if the Committee members have questions you can either interrupt me or wait until the end and address specific inquiries.

The laws proposed for amendment in this bill include the Consumer Credit Code, the Payroll Processor Act, the Fair Debt Collection Practices Act, and the Money Transmitter Act.

Section A-1 is an effort to clarify that if you are a Maine resident, and if you are in Maine, then you can expect the protections of Maine law to apply if you enter into a consumer credit transaction. As you can see from the language proposed for deletion, current law contains references to a creditor receiving a "signed writing" in this state, and "face-to-face" solicitation. Back in 2005, the Legislature made clear that if a payday lender makes a loan to a consumer who is located in Maine, our state's laws apply; we believe it's time to adopt this same standard to all consumer credit transactions.

Section A-2 would apply the protections of the Consumer Credit Code, including its rate caps and requirements for notice prior to repossession, to automobile transactions in which a dealer makes more than 15 credit transactions per year. Current law allows a dealer to make 25 credit sales per year before any of the protections of the law apply.

Section A-3 would make clear that mortgage servicers of Maine loans need to obtain a supervised lender license, even if they don't have a physical office in Maine.

Section A-4 does not represent a change in current law regarding confidentiality; rather, it moves a provision found elsewhere so as to consolidate confidentiality language in one place, to make it easier for creditors and regulators to locate.

Section A-5 reinstates a provision that was inadvertently repealed several years ago during a recodification of the Truth-in-Lending provisions of the Code. The Legislature required our bureau to hire an attorney and a field investigator to help in our efforts to combat predatory lending, and provided this funding mechanism. We issued a regulation based on the law, and then the law was repealed, leaving us in limbo. This is the exact language that was mistakenly repealed.

Section A-6 is a technical name change, correcting my title from Director to Superintendent.

Section A-7 would grant our office administrative license revocation authority over payroll processors, which is a remedy we have in other areas of our regulatory jurisdiction.

Section A-8 is another technical name change, correcting my title from Director to Superintendent. This is language left over from 1995.

Section A-9 would make clear that the money transmitter law includes transmission of digital currencies such as Bitcoin. Since that's the law in most other states, many digital currency companies have already registered with our agency.

Regarding this proposal – Last week the video gaming industry raised a question as to whether it was the Bureau's intent to regulate "tokens" that are

earned in video games, as digital currency. As a general matter, if such tokens are not redeemable for cash and cannot be bought and sold on the open market as an equivalent of cash, then it's not our intention to regulate in-game tokens as digital currency. I believe Curtis Picard will be bringing forward language to clarify that exception.

Sections A-10, A-11 and A-12 amend the debt collection law to provide the same regulatory remedies as apply to other license types under our jurisdiction. No action could be taken without notice and an opportunity for an administrative hearing that complied with the requirements of the Administrative Procedures Act. The last of those three sections, A-12, lists a very important regulatory tool – the "Assurance of Discontinuance." We probably enter into 15 or 20 of these "AODs" each year with different types of creditors, and this proposal would make clear that such a remedy is available for debt collection cases, as well.

Section A-13 corrects another reference to "Director," updating it to "Superintendent."

Parts B, C and D the bill authorize the Bureau of Consumer Credit Protection (BCCP) to require that certain types of companies apply for licenses through the Nationwide Mortgage Licensing System (NMLS). NMLS is a multi-state system developed by state regulators that has been used successfully by our office for many years to license mortgage lenders, mortgage loan originators and money transmitters.

These sections of the bill consist of many pages, as a result of the wide range of companies regulated by our office, including consumer lenders (addressed in Section D-1 of the bill), loan brokers (Section D-2), "litigation funding" companies (D-3), credit reporting agencies (D-4), "like-kind"

exchange facilitators (D-5), real estate settlement agencies (D-7), payroll processors (D-9), guaranteed asset protection (GAP) administrators (D-11), money transmitters and check cashers (D-15 and D-20) and debt management service providers (*i.e.*, credit counselors)(D-24).

Regarding the NMLS, many other states have already expanded their use of NMLS, and they employ it for different license types. Many multi-state businesses favor use of the NMLS, since it allows those companies to input basic information once, and then distribute that information to multiple states simultaneously. With respect to smaller companies, especially those operating solely here in Maine, we would plan to move slowly on implementing the system's capabilities, mindful of any burdens its use might create on those businesses. As an example, we allowed use of NMLS as an option for many years for money transmitters, until the industry was comfortable with the system's use.

With respect to Part E, this language was not part of our agency's original 2020 bill. Rather, it was proposed by Senator Sanborn at the request of consumer advocacy groups, and the provision then received the support of the committee. The language would prevent a debt collector from collecting medical debt from a consumer who has been qualified for charity care, or who would have been eligible for charity care if he or she had applied.

Section F-1 was also added to this bill in the committee process last year. It relates to "debt buyers," and requires that the debt buyer allege certain facts as part of any collection action, to demonstrate they are the proper owner of the debt and that they have the legal authority to bring the action.

Section F-2 prohibits creditors from instituting collection actions in

Small Claims Court for credit card and student loan debts. This change was sought by consumer advocates to ensure that the higher standards of evidence required in District Court and Superior Court apply to these civil actions.

And Part G, added during committee deliberations in 2020 at the request of the Judicial System, would authorize judges to refer such collection cases to the Court Alternative Resolution Service for mediation, since that process has proven effective in Small Claims Court cases.

Thank you for your attention. I would be pleased to any questions now or at the work session.