



**TESTIMONY OF DONALD MAURICE
IN OPPOSITION TO
LD 1466
April 20, 2021
JOINT STANDING COMMITTEE ON HEALTH COVERAGE,
INSURANCE AND FINANCIAL SERVICES**

Senator Sanborn, Representative Tepler and distinguished members of the Committee, my name is Donald Maurice, I am outside counsel to the Receivables Management Association International. It is an honor to address you this afternoon. The Receivables Management Association International, also known as RMAI, respectfully opposes LD 1466. While the purpose of the bill was surely to enhance consumer protections, its structure would do the very opposite and cause great harm to Maine consumers by denying them access to justice in cases involving certain credit card and student loan debt.

Small Claims Court is the “People’s Court”

It is a simple fact that legal services are not available to many people who find themselves engaged in civil litigation in our courts. The cost of hiring a lawyer is beyond the means of many, and particularly those already facing financial difficulties. Our goal should be access to justice and particularly for those who are the most financially vulnerable. That goal can only be achieved by providing Mainers with simple, efficient and low-cost dispute resolution that encourages participation and avoids complex rules of evidence and procedure that require extensive legal skills. The small claims courts are designed to do just that. But LD 1466 Part F, section F-2 would deny financially vulnerable people from having credit card and student loan collection disputes heard in small claims court. In doing so, LD 1466 Part F, section F-2 would deny Mainers access to justice.

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In most states, including Maine, a small claims court can hear matters up to a certain monetary threshold. Here, a claim brought in small claims court cannot exceed \$6,000. And because of these efficiencies, legal costs are substantially less for creditors often choose small claims court. To be sure, these efficiencies reduce the cost for legal services as well for consumers represented by counsel.

But there is a trade-off that causes the creditor to give up certain rights in small claims court. First, small claims courts conduct their proceedings *informally* and do not strictly apply rules of evidence or procedure.¹ As the State of Maine Judicial Branch describes it, matters conducted in the small claims court are “simple, speedy and informal.”² I am in my fourth decade as a litigation attorney and conduct trials in both state and federal court. One significant advantage of an experienced litigation attorney is their knowledge and use of rules of evidence and procedure. A case can be disposed simply by applying the rules. Small claims court removes this advantage and provides a more level playing field for *pro se* consumers who, in the case of debt collection, are often the most financially vulnerable, cannot afford legal services and often cannot take time from work to appear in court. I have seen judges sitting in small claims courts routinely accept documents and testimony from *pro se* consumers that would never be admitted in an upper court proceeding where the rules of evidence and procedure must be strictly applied.

Second, if a party is unhappy with a decision in the small claims court, they may appeal the decision. However, creditor plaintiffs can only have a judge review the small claims court decision, while consumer defendants can request a jury trial.³ Finally, creditors also lose certain rights of appeal in the small claims court. If the

¹ According to the State of Maine Judicial Branch, in small claims courts “[r]ules and procedures are simpler and less formal. Rules of evidence not strictly applied.” Publicly available at <https://www.courts.maine.gov/help/small-claims/index.html> and last accessed April 20, 2021.

² *Id.*

³ *Id.*



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plaintiff-creditor loses, the rules of the Small Claims court only allow it to appeal from *legal* errors. It cannot appeal a decision based on an error arising from fact-finding as it could in the District Court. Consumer-defendants on the other hand, can appeal from both legal and fact issues.

And, on the day of the hearing the small claims court offers litigants a program called the Court Alternative Dispute Resolution Service (CADRES) which assists the parties in attempting to settle their case and avoid a hearing.⁴

But LD 1466 proposes to strip consumers of these advantages and forces them to make their case in a rule-based environment they are woefully prepared to enter. Some creditors might prefer this advantage and some so-called consumer advocates would prefer to litigate in a long, drawn out and expensive process. RMAI believes otherwise. Consumers deserve access to justice provided by a better venue to air their case, like the small claims court — the “People’s Court.”

⁴ *Id.*



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Small Claims Cases in District Court	Civil Cases in Superior Court or regular District Court
Damages and related relief cannot be more than \$6000.	No limit on money damages; equitable relief also available.
Can represent yourself or hire a lawyer. Corporation or other legal entity can be represented by an employee or other principal even if not a lawyer.	Can represent yourself or hire a lawyer. Must hire a lawyer if a corporation or other legal entity.
Filing fees are less expensive.	Filing fees are more expensive.
Rules and procedures are simpler and less formal. Rules of evidence not strictly applied.	Rules and procedures are more formal. Rules of evidence apply.
The judge decides the case without a jury.	Jury trial is available for cases filed in or removed to Superior Court.
Pre-hearing discovery is not available.	Pre-trial discovery is available. Discovery must be conducted according to court rules and procedures.
Mediation is available before the small claims hearing is held to try to resolve the dispute.	Depending upon the type of case and in which court filed, mediation or another form of Alternative Dispute Resolution may be required or available.
The hearing is generally held more quickly.	The trial is generally held later.
If the plaintiff loses, the plaintiff can appeal to the Superior Court on questions of law only. If the defendant loses, the defendant can appeal to the Superior Court on questions of law and/or fact and request a jury trial (jury fee required).	Either side may appeal on questions of law to another court.

Source: State of Maine Judicial Branch <https://www.courts.maine.gov/help/small-claims/index.html>

Maine is a Leader in Consumer Financial Services Law

RMAI was the only national organization that worked with stakeholders in achieving substantial financial services legislation in Maine in both 2015 and 2017. We are proud of the role we played and are thankful for the opportunity to be a part of your achievements. When we work in other states we often speak of Maine as an example of legislation that provides extraordinary consumer



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protections. That is why today you can find parts of the 2015 and 2017 Maine legislation incorporated into debt collection regulation around the country.

As I said at the beginning of my testimony, our goal should be to extend access to justice, not set up barriers to it. We can do this only by encouraging participation in the courts, providing tools and structures that promote participation and allow the financially vulnerable to have their voices heard.⁵ Part F of LD 1466 does the very opposite – it subjects consumers to a lengthy, complex and intimidating system, in which skilled lawyers have an advantage. Consumers who cannot afford attorneys will have their voices muffled. While there is much within LD 1466 that RMAI could support, it cannot support this measure because its passage removes access to justice and would impose extraordinary harm on the most vulnerable people.

Thank you for your time.

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ABOUT RMAI

RMAI is a national nonprofit trade association representing over 550 companies that purchase or support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. Our membership includes banks, nonbank lenders, debt buying companies, collection agencies, and collection law firms.

RMAI members interact with millions of consumers every year concerning all aspects of consumer credit. It is because of this extraordinary level of interaction

⁵ See “Online Dispute Resolution Offers a New Way to Access Local Courts,” The Pew Charitable Trusts (Jan. 2019) noting that in a 2017 national survey conducted by the nonprofit National Center for State Courts (NCSC), “80 percent of respondents said they want more online access to local courts, including the ability to ask for guidance from court staff rather than come to the courthouse.” Publicly available at https://www.ncsc.org/data/assets/pdf_file/0027/39582/Pew-ODR-Fact-Sheet-January-2019.pdf and last accessed April 20, 2021.



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that perhaps no other industry knows the concerns of consumers in debt collection better than RMAI members. RMAI has zero tolerance for bad actors and criminals who take advantage of any consumer but especially those who are the most vulnerable.

RMAI is therefore a strong proponent of fairness in debt collection. And it has done much to advance consumer protection.

RMAI launched the Receivables Management Certification Program in 2013 with the stated mission that the program would “provide enhanced consumer protections through rigorous and uniform industry standards of best practice.” The program certifies collection agencies, debt buying companies, collection law firms, and brokers in the United States.

The federal Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) were immensely supportive of this initiative and provided feedback along the way, which has been incorporated in the program. RMAI has the single most comprehensive program in the nation that not only ensures its member companies are compliant with state and federal laws and regulations but that they exceed those requirements.

RMAI continues to engage with regulators and legislators at both the federal and state levels to bring about laws and regulations that offer enhanced consumer protections.

ABOUT DONALD MAURICE

Donald Maurice is a partner at Maurice Wutscher LLP, a law firm with offices throughout the United States. Don has practiced in consumer financial services law for over four decades. He is a fellow of the American College of Consumer Financial Services Lawyers, a fellow of the American Bar Foundation and serves on the Governing Committee of the Conference on Consumer Finance Law. He formerly chaired the Debt Collection Practices and Bankruptcy Subcommittee of



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the American Bar Association and serves as outside counsel to Receivables Management Association International, the trade association for debt purchasers. He is admitted to the Bars of Massachusetts, New York, New Jersey and the District of Columbia. He is editor of the Consumer Financial Services Blog (cfsblog.com). Don can be reached at dmaurice@mauricewutscher.com or 908-237-4570.