

compared with Section 813 of the FDCPA; and (3) the statute of limitations for civil liability in the state law (for actions brought in the private sector) which should be substantially similar or longer than that in the FDCPA. The Commission must consider each provision of the state law in comparison with each corresponding provision in Sections 803 through 812 of the FDCPA, and not the state law as a whole in comparison with the FDCPA as a whole.

Section 901.3 of the Procedures requires that an application be accompanied by a variety of documents including (1) the state law; (2) a comparison of the provisions of the state law with various sections of the FDCPA; (3) a copy of the full text of the law that provides for its enforcement; (4) a comparison of provisions of the law that provides for enforcement with the provisions of Section 814 of the FDCPA; and (5) a statement identifying the state office designated to administer the state law, along with a description of the ability of that office to effectively administer the statute. If an application is filed in accordance with the Procedures, Section 901.5 states that the filing shall be published in the Federal Register. Section 901.6 provides that the Commission may grant an exemption under the provisions of the Procedures.

Maine's application requests exemption from the provisions of the FDCPA for various classes of debt collection practices in Maine governed by Title 32 of the Maine Revised Statutes, Section 11001 *et seq.* Maine seeks an exemption for the following classes of practices: Collection by means of the mails and other interstate and intrastate written communications; collection by use of telephone and other electronic means of transmission; in-person collection; and repossession or other "enforcement of security interest" activity. In filing the application, Maine complied with Section 901.3 of the Procedures.

On May 27, 1993, Applicant filed an addendum to its application of February 25, 1993, stating that certain changes had been made to Title 32 of the Maine Revised Statutes, Section 11002.6. The definition of the term "debt collector" was broadened to include attorneys whose principal activities include collection of debts for clients. Subsection 6 was further amended by including within the definition of "debt collector" any person who regularly engages in the enforcement of security interests securing debts, but excluding any person who retrieves collateral when a consumer has voluntarily surrendered possession. A new Section 11017 authorizes a debt collector to take

possession of collateral after default under certain conditions.

Applicant asserts that the provisions of Maine's Fair Debt Collection Practices Act ("Maine Act"), Me. Rev. Stat. Ann., Title 32 Section 11011 *et seq.*, and related statutes are substantially similar to, or provide greater protection for consumers than, the equivalent provisions of the FDCPA, and that the State of Maine is able to provide adequate enforcement of the Maine Act's requirements. Applicant's request was published in the Federal Register for sixty days of comment.¹

After evaluating the request and the comments received, the Commission has determined that an exemption from Sections 803–812 of the FDCPA for debt collection practices conducted within Maine should be granted. Pursuant to Section 817 of the FDCPA, the Commission analyzed whether the level of protection to consumers under the Maine Act is substantially equivalent to that provided in the FDCPA and whether there is adequate provision for enforcement of the Maine Act by the State. In making this determination, the Commission considered each provision of the Maine Act and compared it with the corresponding provision in the FDCPA, in accordance with 16 C.F.R. 901.4, as discussed below. The exemption proceeding as a whole was conducted pursuant to 16 C.F.R. 901 *et seq.*

Comments

Two comments were received. One comment was from a consumer from Virginia who objected to "certain provisions of the debt collection act being waived" and expressed concern over "state licensing to avoid the Federal Debt Collection Practices Act" and the monitoring of state requirements. The second comment was from Harry W. Giddinge, Deputy Superintendent of the Bureau of Consumer Credit Protection of the State of Maine, addressing each question posed in the Commission's Request for Comment and concluding in each case that the protection afforded consumers by the Maine Act are substantially similar to, or greater than, those provided by the FDCPA.

I. The Level of Protection to Consumers Provided by the Maine Act Is Substantially Equivalent to or Greater Than That Provided by the FDCPA

Generally, the Maine Act either replicates the language of the FDCPA or provides greater protection than the FDCPA. In the Federal Register notice

of Maine's application for exemption, the Commission highlighted the language differences between the various sections of the Maine Act and the FDCPA, each of which discussed is below.

A. Definitions (Section 803 of the FDCPA; Sections 11002, 11003, 11012 of the Maine Act)

1. Conducting Business Within the State

Section 11002.2 of the Maine Act limits the coverage of the Maine Act to those conducting business in Maine; it has no precise counterpart in the FDCPA because the FDCPA's jurisdiction is nationwide. The jurisdiction of the Maine Act extends to violations by debt collectors physically located in Maine and to non-residents doing business in Maine, to the extent that the State's long-arm statute affords jurisdiction over non-resident defendants.²

The definition reflects the limits of Maine's jurisdiction in policing debt collectors as compared to the nationwide jurisdiction of the Commission in policing debt collectors. The language limiting the scope of Maine's enforcement only to violations committed in the State by resident debt collectors as well as non-resident collectors acting within the State does not affect the level of protection afforded to Maine residents by the Maine Act as compared to the protection afforded to Maine residents by the FDCPA.

2. Definition of Debt Collector

Maine's definition of debt collector in its Act is identical to section 803(6) of the FDCPA, except that section 11002.6 of the Maine Act also includes:

Persons who furnish collection systems carrying a name which simulates the name of the debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor.

Applicant views this provision as a logical extension of the portion of section 803(6) that includes creditors using names other than their own within the definition of debt collector. The State provision functions to prevent creditors from using collection systems that create the false impression in the mind of the consumer that a debt

¹ 59 FR 24,159 (May 10, 1994).

² Maine's jurisdiction would extend, therefore, to those transacting any business within the State to the extent permitted by the due process clause of the Fourteenth Amendment of the U.S. Constitution. Me. Rev. Stat. Ann., Title 14 §§ 704–A.1–A.2.A (1975).