

collector is involved in the collection process rather than the creditor.³

As compared to section 803(6) of the FDCPA, therefore, section 11002.6 of the Maine Act provides greater protection to the consumer because it specifically includes those who routinely provide creditors with the means of misrepresent the involvement of a debt collector in the creditor's collection activities.

3. Collection Activities Related to a Business

Section 11003.8 of the Maine Act excludes from the definition of "debt collector" those whose collection activities are confined or directly related to the operation of a business other than that of a debt collector, such as a financial institution already regulated under title 9-B of the Maine Banking Code. The FDCPA does not contain this precise exclusion, although section 803(6) does exclude creditors collecting their own debts in their own names, as well as other designated groups such as government employees, process servers, non-profit organizations and mortgage servicers.⁴ The section 11003.8 exclusion appears to be directed to persons who are not collection agencies but collect their own debts on occasion. Presumably, these groups are employees or officers of creditors such as financial institutions who collect only for themselves or others whose principal business is not debt collection but who sometimes engage in collection activity. These groups are also excluded by section 803(6) of the FDCPA. Thus, the scope of the section 11003.8 exclusion in the Maine Act is no greater than that provided by section 803(6) of the FDCPA. The coverage of the two Acts, therefore, remains "substantially similar."

4. Attorneys

Section 11002.6 of the Maine Act specifically includes within the definition of debt collector "any attorney-at-law whose principal activities include collecting debts as an attorney on behalf of and in the name of clients."⁵ Section 803(6) of the FDCPA

defines debt collectors as persons who regularly collect debts for others or who are engaged in a business the principal purpose of which is debt collection. An attorney could fall within this definition. The FDCPA, however, does not specifically cover attorneys, as a group, as does Section 11002.6 of the Maine Act. In any event, the principle in both is the same: a party must regularly collect debts for others or run a debt collection business to be covered.

The Maine Act⁶ differs from the FDCPA only in that it specifically identifies attorneys who collect debts for clients as "debt collectors."

Because it specifically addresses attorneys, the definition of debt collector in the Maine Act is more precise as to attorneys than section 803(6) of the FDCPA. Its coverage may be slightly more restrictive than that of the FDCPA, depending upon how the phrase "principal activities include collecting debts" is interpreted. We do not regard this latter difference as significant. Neither Act excludes attorneys. As far as attorneys are concerned, the requirements are substantially similar and the level of protection afforded by the Maine Act is essentially the same as that of the FDCPA.

5. Enforcement of Security Interests

Section 11002.6 of the Maine Act includes within the definition of "debt collector" any person regularly engaged in the enforcement of security interests. According to the Applicant, this includes persons who have engaged in this activity more than five times in the current or previous calendar year. The definition expressly excludes persons who routinely retrieve collateral when a person has voluntarily surrendered possession. Similarly, the FDCPA's definition of "debt collector" (Section 803 (6) (A)) includes any "person * * * in any business the principal purpose of which is the enforcement of security interests."

The Maine Act is more specific than the FDCPA and arguably more strict since it would expressly include persons enforcing security interests as infrequently as six times per year, whether or not that activity is the "principal purpose" of the business, as set forth in the FDCPA. Additionally, the FDCPA has never been interpreted to include parties who are hired simply to "pick up" collateral. The coverage of the Maine Act in this area is at least

equal to, and probably greater than, that of the FDCPA. Thus, the level of protection provided is also at least equal to, and probably greater than, that provided by the FDCPA.

6. Repossession Activity

Section 11017 of the Maine Act defines how repossession is to take place and requires (1) that the debt collector/reposessor take inventory of any unsecured property that it acquires along with the repossessed property; and (2) that it notify the consumer that the unsecured collateral will be available at the consumer's convenience. There is no comparable definition in the FDCPA. Since Section 11017 of the Maine Act places additional requirements on the debt collector to supply information to the consumer, it provides greater protection to the consumer in this area than does the FDCPA.

7. Conclusion

These comparisons reveal that the definitions of terms in the Maine Act as a whole import the same meaning and have the same application as those prescribed by Sections 803-812 of the FDCPA, in accordance with Section 901.4(a) (1) of the Procedures. Therefore, as a whole, they function to provide substantially similar or greater protection to consumers than do the analogous definitions in the FDCPA.

B. Acquisition of Location Information (Section 804 of the FDCPA; Section 11011 of the Maine Act)

Section 11011 of the Maine Act is virtually identical to Section 804 of the FDCPA; therefore, its requirements are "substantially similar" to those in the FDCPA and debt collectors' obligations and prohibitions under the Maine Act are the same as those prescribed in the FDCPA, as mandated by Sections 901.4(a) (3) and (4) of the Procedures.

C. Debt Collection Communications (Section 805 of the FDCPA; Section 11012 of the Maine Act)

Section 805 of the FDCPA and Section 11012 of the Maine Act are virtually identical, with the exception of non-substantive language differences and dissimilar references to related state and federal laws. Thus, Maine's requirements in this area also meet the "substantially similar" test and debt collectors' obligations and prohibitions under the Maine Act satisfy the requirements of Sections 901.4(a) (3) and (4) of the Procedures. Section 11012 of the Maine Act also satisfies Section 901.4(a)(6) of the Procedures since the consumer's cease communication rights

³ As such, Section 11002.6 also provides much the same protection as Section 812 of the FDCPA (which addresses form-sellers).

⁴ Section 11003.1 of the Maine Act also excludes creditors collecting in their own names.

⁵ Section 11003.1 of the Maine Act, which previously excluded attorneys from the definition of "debt collector," was repealed following Maine's initial request for exemption of February 25, 1993. Maine submitted an addendum to its application, dated May 27, 1993, reporting that Section 11002.6 of the Maine Act had been modified by the legislature to include attorneys at law collecting debts on behalf of their clients (Maine Public Law

126, May 18, 1993). The modification became effective in September 1993.

⁶ The Maine Act requires that the attorney's "principal activities" include collecting debts.