



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB1398

Introduced 2/9/2007, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

225 ILCS 425/2	from Ch. 111, par. 2002
225 ILCS 425/3	from Ch. 111, par. 2006
225 ILCS 425/9.1 new	
225 ILCS 425/9.2 new	
225 ILCS 425/9.3 new	
225 ILCS 425/9.4 new	
815 ILCS 505/2Z	from Ch. 121 1/2, par. 262Z
225 ILCS 425/2.01 rep.	
225 ILCS 425/2.02 rep.	

Amends the Collection Agency Act. Makes changes in provisions concerning definitions and entities acting as a collection agency. Sets forth requirements for debt collectors or collection agencies regarding communication with persons other than the debtor, communication conducted in connection with debt collection, validation of debts, and debt collection as a result of identity theft. Amends the Consumer Fraud and Deceptive Business Practices Act to provide that a violation of certain Sections of the Collection Agency Act constitutes an unlawful practice under the Act. Effective January 1, 2008.

LRB095 08474 RAS 28653 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Collection Agency Act is amended by changing  
5 Sections 2 and 3 and by adding Sections 9.1, 9.2, 9.3, and 9.4  
6 as follows:

7 (225 ILCS 425/2) (from Ch. 111, par. 2002)

8 (Section scheduled to be repealed on January 1, 2016)

9 Sec. 2. Definitions. In this Act:

10 "Consumer credit transaction" means a transaction between  
11 a natural person and another person in which property, service,  
12 or money is acquired on credit by that natural person from such  
13 other person primarily for personal, family, or household  
14 purposes.

15 "Consumer debt" or "consumer credit" means money,  
16 property, or their equivalent, due or owing or alleged to be  
17 due or owing from a natural person by reason of a consumer  
18 credit transaction.

19 "Creditor" means a person who extends consumer credit to a  
20 debtor.

21 "Debt" means money, property, or their equivalent which is  
22 due or owing or alleged to be due or owing from a natural  
23 person to another person.

1       "Debt collection" means any act or practice in connection  
2 with the collection of consumer debts.

3       "Debt collector", "collection agency", or "agency" means  
4 any person who, in the ordinary course of business, regularly,  
5 on behalf of himself or herself or others, engages in debt  
6 collection.

7       "Debtor" means a natural person from whom a debt collector  
8 seeks to collect a consumer debt that is due and owing or  
9 alleged to be due and owing from such person.

10       "Department" means Division of Professional Regulation  
11 within the Department of Financial and Professional  
12 Regulation.

13       "Director" means the Director of the Division of  
14 Professional Regulation within the Department of Financial and  
15 Professional Regulation.

16       "Person" means a natural person, partnership, corporation,  
17 limited liability company, trust, estate, cooperative,  
18 association, or other similar entity. Unless the context  
19 clearly requires otherwise, the following terms have the  
20 meanings ascribed to them in Sections 2.01 through 2.02.

21       (Source: P.A. 78-1248.)

22               (225 ILCS 425/3) (from Ch. 111, par. 2006)

23               (Section scheduled to be repealed on January 1, 2016)

24               Sec. 3. A person, association, partnership, corporation,  
25 or other legal entity acts as a collection agency when he or

1 it:

2 (a) Engages in the business of collection for others of  
3 any account, bill or other indebtedness;

4 (b) Receives, by assignment or otherwise, accounts,  
5 bills, or other indebtedness from any person owning or  
6 controlling 20% or more of the business receiving the  
7 assignment, with the purpose of collecting monies due on  
8 such account, bill or other indebtedness;

9 (c) Sells or attempts to sell, or gives away or  
10 attempts to give away to any other person, other than one  
11 registered under this Act, any system of collection,  
12 letters, demand forms, or other printed matter where the  
13 name of any person, other than that of the creditor,  
14 appears in such a manner as to indicate, directly or  
15 indirectly, that a request or demand is being made by any  
16 person other than the creditor for the payment of the sum  
17 or sums due or asserted to be due;

18 (d) Buys accounts, bills or other indebtedness ~~with~~  
19 ~~recourse~~ and engages in collecting the same; or

20 (e) Uses a fictitious name in collecting its own  
21 accounts, bills, or debts with the intention of conveying  
22 to the debtor that a third party has been employed to make  
23 such collection.

24 (Source: P.A. 94-414, eff. 12-31-05.)

25 (225 ILCS 425/9.1 new)

1 (Section scheduled to be repealed on January 1, 2016)

2 Sec. 9.1. Communication with persons other than debtor.

3 (a) Any debt collector or collection agency communicating  
4 with any person other than the debtor for the purpose of  
5 acquiring location information about the debtor shall:

6 (1) identify himself or herself, state that he or she  
7 is confirming or correcting location information  
8 concerning the consumer, and, only if expressly requested,  
9 identify his or her employer;

10 (2) not state that the consumer owes any debt;

11 (3) not communicate with any the person more than once  
12 unless requested to do so by the person or unless the debt  
13 collector or collection agency reasonably believes that  
14 the earlier response of the person is erroneous or  
15 incomplete and that the person now has correct or complete  
16 location information;

17 (4) not communicate by postcard;

18 (5) not use any language or symbol on any envelope or  
19 in the contents of any communication effected by mail or  
20 telegram that indicates that the debt collector or  
21 collection agency is in the debt collection business or  
22 that the communication relates to the collection of a debt;  
23 and

24 (6) after the debt collector or collection agency knows  
25 the debtor is represented by an attorney with regard to the  
26 subject debt and has knowledge of or can readily ascertain

1 the attorney's name and address, not communicate with any  
2 person other than the attorney, unless the attorney fails  
3 to respond within a reasonable period of time, not less  
4 than 30 days, to communication from the debt collector or  
5 collection agency.

6 (225 ILCS 425/9.2 new)

7 (Section scheduled to be repealed on January 1, 2016)

8 Sec. 9.2. Communication in connection with debt  
9 collection.

10 (a) Without the prior consent of the debtor given directly  
11 to the debt collector or collection agency or the express  
12 permission of a court of competent jurisdiction, a debt  
13 collector or collection agency may not communicate with a  
14 debtor in connection with the collection of any debt in any of  
15 the following circumstances:

16 (1) At any unusual time, place, or manner that is known  
17 or should be known to be inconvenient to the debtor. In the  
18 absence of knowledge of circumstances to the contrary, a  
19 debt collector or collection agency shall assume that the  
20 convenient time for communicating with a debtor is after 8  
21 o'clock a.m. and before 9 o'clock p.m. local time at the  
22 debtor's location.

23 (2) If the debt collector or collection agency knows  
24 the debtor is represented by an attorney with respect to  
25 such debt and has knowledge of or can readily ascertain,

1 the attorney's name and address, unless the attorney fails  
2 to respond within a reasonable period of time to a  
3 communication from the debt collector or collection agency  
4 or unless the attorney consents to direct communication  
5 with the debtor.

6 (3) At the debtor's place of employment, if the debt  
7 collector or collection agency knows or has reason to know  
8 that the debtor's employer prohibits the debtor from  
9 receiving such communication.

10 (b) Except as provided in Section 9.1 of this Act, without  
11 the prior consent of the debtor given directly to the debt  
12 collector or collection agency or the express permission of a  
13 court of competent jurisdiction or as reasonably necessary to  
14 effectuate a post judgment judicial remedy, a debt collector or  
15 collection agency may not communicate, in connection with the  
16 collection of any debt, with any person other than the debtor,  
17 the debtor's attorney, a consumer reporting agency if otherwise  
18 permitted by law, the creditor, the attorney of the creditor,  
19 or the attorney of the collection agency.

20 (c) If a debtor notifies a debt collector or collection  
21 agency in writing that the debtor refuses to pay a debt or that  
22 the debtor wishes the debt collector or collection agency to  
23 cease further communication with the debtor, the debt collector  
24 or collection agency may not communicate further with the  
25 debtor with respect to such debt, except to perform any of the  
26 following tasks:

1           (1) Advise the debtor that the debt collector's or  
2           collection agency's further efforts are being terminated.

3           (2) Notify the debtor that the collection agency or  
4           creditor may invoke specified remedies that are ordinarily  
5           invoked by such collection agency or creditor.

6           (3) Notify the debtor that the collection agency or  
7           creditor intends to invoke a specified remedy.

8           If such notice from the debtor is made by mail,  
9           notification shall be complete upon receipt. (d) For the  
10           purposes of this Section, "debtor" includes the debtor's  
11           spouse, parent (if the debtor is a minor), guardian, executor,  
12           or administrator.

13           (225 ILCS 425/9.3 new)

14           (Section scheduled to be repealed on January 1, 2016)

15           Sec. 9.3. Validation of debts.

16           (a) Within 5 days after the initial communication with a  
17           debtor in connection with the collection of any debt, a debt  
18           collector or collection agency shall, unless the following  
19           information is contained in writing in the initial  
20           communication or the debtor has paid the debt, send the debtor  
21           a written notice with each of the following disclosures:

22                   (1) The amount of the debt.

23                   (2) The name of the creditor to whom the debt is owed.

24                   (3) That, unless the debtor, within 30 days after  
25           receipt of the notice, disputes the validity of the debt,



1 or any portion thereof, the debt will be assumed to be  
2 valid by the debt collector or collection agency.

3 (4) That, if the debtor notifies the debt collector or  
4 collection agency in writing within the 30-day period that  
5 the debt, or any portion thereof, is disputed, the debt  
6 collector or collection agency will obtain verification of  
7 the debt or a copy of a judgment against the debtor and a  
8 copy of the verification or judgment will be mailed to the  
9 debtor by the debt collector or collection agency.

10 (5) That upon the debtor's written request within the  
11 30-day period, the debt collector or collection agency will  
12 provide the debtor with the name and address of the  
13 original creditor, if different from the current creditor.  
14 If the disclosures required under this subsection (a) are  
15 placed on the back of the notice, the front of the notice  
16 shall contain a statement notifying debtors of that fact.

17 (b) If the debtor notifies the debt collector or collection  
18 agency in writing within the 30-day period set forth in  
19 paragraph (3) of subsection (a) of this Section that the debt,  
20 or any portion thereof, is disputed or that the debtor requests  
21 the name and address of the original creditor, the debt  
22 collector or collection agency shall cease collection of the  
23 debt, or any disputed portion thereof, until the debt collector  
24 or collection agency obtains verification of the debt or a copy  
25 of a judgment or the name and address of the original creditor  
26 and mails a copy of the verification or judgment or name and

1 address of the original creditor to the debtor.

2 (c) The failure of a debtor to dispute the validity of a  
3 debt under this Section shall not be construed by any court as  
4 an admission of liability by the debtor.

5 (225 ILCS 425/9.4 new)

6 (Section scheduled to be repealed on January 1, 2016)

7 Sec. 9.4. Debt collection as a result of identity theft.

8 (a) Upon receipt from a debtor of all of the following  
9 information, a debt collector or collection agency must cease  
10 collection activities until completion of the review provided  
11 in subsection (d) of this Section:

12 (1) A copy of a police report filed by the debtor  
13 alleging that the debtor is the victim of an identity theft  
14 crime for the specific debt being collected by the debt  
15 collector.

16 (2) The debtor's written statement that the debtor  
17 claims to be the victim of identity theft with respect to  
18 the specific debt being collected by the debt collector,  
19 including (i) a Federal Trade Commission's Affidavit of  
20 Identity Theft, (ii) an Illinois Attorney General ID Theft  
21 Affidavit, or (iii) a written statement that certifies that  
22 the representations are true, correct, and contain no  
23 material omissions of fact to the best knowledge and belief  
24 of the person submitting the certification. This written  
25 statement must contain or be accompanied by, each of the

1       following, to the extent that an item listed below is  
2       relevant to the debtor's allegation of identity theft with  
3       respect to the debt in question:

4               (A) A statement that the debtor is a victim of  
5               identity theft.

6               (B) A copy of the debtor's driver's license or  
7               identification card, as issued by this State.

8               (C) Any other identification document that  
9               supports the statement of identity theft.

10              (D) Specific facts supporting the claim of  
11              identity theft, if available.

12              (E) Any explanation showing that the debtor did not  
13              incur the debt.

14              (F) Any available correspondence disputing the  
15              debt after transaction information has been provided  
16              to the debtor.

17              (G) Documentation of the residence of the debtor at  
18              the time of the alleged debt, which may include copies  
19              of bills and statements, such as utility bills, tax  
20              statements, or other statements from businesses sent  
21              to the debtor and showing that the debtor lived at  
22              another residence at the time the debt was incurred.

23              (H) A telephone number for contacting the debtor  
24              concerning any additional information or questions or  
25              direction that further communications to the debtor be  
26              in writing only, with the mailing address specified in

1           the statement.

2           (I) To the extent the debtor has information  
3           concerning who may have incurred the debt, the  
4           identification of any person whom the debtor believes  
5           is responsible.

6           (J) An express statement that the debtor did not  
7           authorize the use of the debtor's name or personal  
8           information for incurring the debt.

9           (b) A written certification submitted pursuant to item  
10          (iii) of paragraph (2) of subsection (a) of this Section shall  
11          be sufficient if it is in substantially the following form:

12           "I certify that the representations made are true, correct,  
13           and contain no material omissions of fact known to me.

14                   (Signature)

15                   (Date)"

16          (c) If a debtor notifies a debt collector or collection  
17          agency orally that he or she is a victim of identity theft, the  
18          debt collector or collection agency shall notify the debtor  
19          orally or in writing, that the debtor's claim must be in  
20          writing. If a debtor notifies a debt collector or collection  
21          agency in writing that he or she is a victim of identity theft,  
22          but omits information required pursuant to this Section, if the  
23          debt collector or collection agency does not cease collection

1 activities, the debt collector or collection agency must  
2 provide written notice to the debtor of the additional  
3 information that is required or send the debtor a copy of the  
4 Federal Trade Commission's Affidavit of Identity Theft form.

5 (d) Upon receipt of the complete statement and information  
6 described in subsection (a) of this Section, the debt collector  
7 shall review and consider all of the information provided by  
8 the debtor and other information available to the debt  
9 collector or collection agency in its file or from the  
10 creditor. The debt collector or collection agency may  
11 recommence debt collection activities only upon making a good  
12 faith determination that the information does not establish  
13 that the debtor is not responsible for the specific debt in  
14 question. The debt collector or collection agency must notify  
15 the consumer in writing of that determination and the basis for  
16 that determination before proceeding with any further  
17 collection activities. The debt collector's or collection  
18 agency's determination shall be based on all of the information  
19 provided by the debtor and other information available to the  
20 debt collector or collection agency in its file or from the  
21 creditor.

22 (e) No inference or presumption that the debt is valid or  
23 invalid or that the debtor is liable or not liable for the debt  
24 may arise if the debt collector or collection agency decides  
25 after the review described in subsection (d) to cease or  
26 recommence the debt collection activities. The exercise or

1 non-exercise of rights under this Section is not a waiver of  
2 any other right or defense of the debtor or debt collector.

3 (f) A debt collector or collection agency that (i) ceases  
4 collection activities under this Section, (ii) does not  
5 recommence those collection activities, and (iii) furnishes  
6 adverse information to a consumer credit reporting agency, must  
7 notify the consumer credit reporting agency to delete that  
8 adverse information.

9 Section 10. The Consumer Fraud and Deceptive Business  
10 Practices Act is amended by changing Section 2Z as follows:

11 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

12 Sec. 2Z. Violations of other Acts. Any person who knowingly  
13 violates the Automotive Repair Act, the Automotive Collision  
14 Repair Act, the Home Repair and Remodeling Act, the Dance  
15 Studio Act, the Physical Fitness Services Act, the Hearing  
16 Instrument Consumer Protection Act, the Illinois Union Label  
17 Act, the Job Referral and Job Listing Services Consumer  
18 Protection Act, the Travel Promotion Consumer Protection Act,  
19 the Credit Services Organizations Act, the Automatic Telephone  
20 Dialers Act, the Pay-Per-Call Services Consumer Protection  
21 Act, the Telephone Solicitations Act, the Illinois Funeral or  
22 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic  
23 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home  
24 Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud

1 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax  
2 Act, the Payday Loan Reform Act, subsection (a) or (b) of  
3 Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail  
4 Act, paragraph (6) of subsection (k) of Section 6-305 of the  
5 Illinois Vehicle Code, Article 3 of the Residential Real  
6 Property Disclosure Act, the Automatic Contract Renewal Act,  
7 Sections 9 (except for items (1) through (9) and (19) of  
8 subsection (a)), 9.1, 9.2, 9.3, or 9.4 of the Collection Agency  
9 Act, or the Personal Information Protection Act commits an  
10 unlawful practice within the meaning of this Act.

11 (Source: P.A. 93-561, eff. 1-1-04; 93-950, eff. 1-1-05; 94-13,  
12 eff. 12-6-05; 94-36, eff. 1-1-06; 94-280, eff. 1-1-06; 94-292,  
13 eff. 1-1-06; 94-822, eff. 1-1-07.)

14 (225 ILCS 425/2.01 rep.)

15 (225 ILCS 425/2.02 rep.)

16 Section 15. The Collection Agency Act is amended by  
17 repealing Sections 2.01 and 2.02.

18 Section 99. Effective date. This Act takes effect January  
19 1, 2008.