



Sen. Don Harmon

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09500SB1398sam001

LRB095 08474 RAS 33448 a

1 AMENDMENT TO SENATE BILL 1398

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1398 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Collection Agency Act is amended by  
5 changing Sections 2, 2.03, and 3 and by adding Sections 9.1,  
6 9.2, 9.3, 9.4, and 9.7 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8 (Section scheduled to be repealed on January 1, 2016)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

1 due or owing from a natural person by reason of a consumer  
2 credit transaction.

3 "Creditor" means a person who extends consumer credit to a  
4 debtor.

5 "Debt" means money, property, or their equivalent which is  
6 due or owing or alleged to be due or owing from a natural  
7 person to another person.

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

10 "Debt collector", "collection agency", or "agency" means  
11 any person who, in the ordinary course of business, regularly,  
12 on behalf of himself or herself or others, engages in debt  
13 collection.

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

17 "Department" means Division of Professional Regulation  
18 within the Department of Financial and Professional  
19 Regulation.

20 "Director" means the Director of the Division of  
21 Professional Regulation within the Department of Financial and  
22 Professional Regulation.

23 "Person" means a natural person, partnership, corporation,  
24 limited liability company, trust, estate, cooperative,  
25 association, or other similar entity. ~~Unless the context~~  
26 ~~clearly requires otherwise, the following terms have the~~

1 ~~meanings ascribed to them in Sections 2.01 through 2.02.~~

2 (Source: P.A. 78-1248.)

3 (225 ILCS 425/2.03) (from Ch. 111, par. 2005)

4 (Section scheduled to be repealed on January 1, 2016)

5 Sec. 2.03. This Act does not apply to persons whose  
6 collection activities are confined to and are directly related  
7 to the operation of a business other than that of a collection  
8 agency, and specifically does not include the following:

9 1. Banks, including trust departments, affiliates, and  
10 subsidiaries thereof, fiduciaries, and financing and  
11 lending institutions (except those who own or operate  
12 collection agencies);

13 2. Abstract companies doing an escrow business;

14 3. Real estate brokers when acting in the pursuit of  
15 their profession;

16 4. Public officers and judicial officers acting under  
17 order of a court;

18 5. Licensed attorneys at law;

19 6. Insurance companies;

20 7. Credit unions;

21 8. Loan and finance companies;

22 9. Retail stores collecting their own accounts;

23 10. Unit Owner's Associations established under the  
24 Condominium Property Act, and their duly authorized  
25 agents, when collecting assessments from unit owners; and

1           11. Any person or business under contract with a  
2           creditor to notify the creditor's debtors of a debt using  
3           only the creditor's name.

4           (Source: P.A. 89-387, eff. 1-1-96.)

5           (225 ILCS 425/3) (from Ch. 111, par. 2006)

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

7           Sec. 3. A person, association, partnership, corporation,  
8           or other legal entity acts as a collection agency when he or  
9           it:

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

12           (b) Receives, by assignment or otherwise, accounts,  
13           bills, or other indebtedness from any person owning or  
14           controlling 20% or more of the business receiving the  
15           assignment, with the purpose of collecting monies due on  
16           such account, bill or other indebtedness;

17           (c) Sells or attempts to sell, or gives away or  
18           attempts to give away to any other person, other than one  
19           registered under this Act, any system of collection,  
20           letters, demand forms, or other printed matter where the  
21           name of any person, other than that of the creditor,  
22           appears in such a manner as to indicate, directly or  
23           indirectly, that a request or demand is being made by any  
24           person other than the creditor for the payment of the sum  
25           or sums due or asserted to be due;

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

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

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

8 (225 ILCS 425/9.1 new)

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

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

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

14 (1) identify himself or herself, state that he or she  
15 is confirming or correcting location information  
16 concerning the consumer, and, only if expressly requested,  
17 identify his or her employer;

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

19 (3) not communicate with any the person more than once  
20 unless requested to do so by the person or unless the debt  
21 collector or collection agency reasonably believes that  
22 the earlier response of the person is erroneous or  
23 incomplete and that the person now has correct or complete  
24 location information;

25 (4) not communicate by postcard;

1           (5) not use any language or symbol on any envelope or  
2           in the contents of any communication effected by mail or  
3           telegram that indicates that the debt collector or  
4           collection agency is in the debt collection business or  
5           that the communication relates to the collection of a debt;  
6           and

7           (6) after the debt collector or collection agency knows  
8           the debtor is represented by an attorney with regard to the  
9           subject debt and has knowledge of or can readily ascertain  
10           the attorney's name and address, not communicate with any  
11           person other than the attorney, unless the attorney fails  
12           to respond within a reasonable period of time, not less  
13           than 30 days, to communication from the debt collector or  
14           collection agency.

15           (225 ILCS 425/9.2 new)

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

17           Sec. 9.2. Communication in connection with debt  
18           collection.

19           (a) Without the prior consent of the debtor given directly  
20           to the debt collector or collection agency or the express  
21           permission of a court of competent jurisdiction, a debt  
22           collector or collection agency may not communicate with a  
23           debtor in connection with the collection of any debt in any of  
24           the following circumstances:

25           (1) At any unusual time, place, or manner that is known

1       or should be known to be inconvenient to the debtor. In the  
2       absence of knowledge of circumstances to the contrary, a  
3       debt collector or collection agency shall assume that the  
4       convenient time for communicating with a debtor is after 8  
5       o'clock a.m. and before 9 o'clock p.m. local time at the  
6       debtor's location.

7       (2) If the debt collector or collection agency knows  
8       the debtor is represented by an attorney with respect to  
9       such debt and has knowledge of or can readily ascertain,  
10      the attorney's name and address, unless the attorney fails  
11      to respond within a reasonable period of time to a  
12      communication from the debt collector or collection agency  
13      or unless the attorney consents to direct communication  
14      with the debtor.

15      (3) At the debtor's place of employment, if the debt  
16      collector or collection agency knows or has reason to know  
17      that the debtor's employer prohibits the debtor from  
18      receiving such communication.

19      (b) Except as provided in Section 9.1 of this Act, without  
20      the prior consent of the debtor given directly to the debt  
21      collector or collection agency or the express permission of a  
22      court of competent jurisdiction or as reasonably necessary to  
23      effectuate a post judgment judicial remedy, a debt collector or  
24      collection agency may not communicate, in connection with the  
25      collection of any debt, with any person other than the debtor,  
26      the debtor's attorney, a consumer reporting agency if otherwise

1 permitted by law, the creditor, the attorney of the creditor,  
2 or the attorney of the collection agency.

3 (c) If a debtor notifies a debt collector or collection  
4 agency in writing that the debtor refuses to pay a debt or that  
5 the debtor wishes the debt collector or collection agency to  
6 cease further communication with the debtor, the debt collector  
7 or collection agency may not communicate further with the  
8 debtor with respect to such debt, except to perform any of the  
9 following tasks:

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

12 (2) Notify the debtor that the collection agency or  
13 creditor may invoke specified remedies that are ordinarily  
14 invoked by such collection agency or creditor.

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

17 If such notice from the debtor is made by mail,  
18 notification shall be complete upon receipt. (d) For the  
19 purposes of this Section, "debtor" includes the debtor's  
20 spouse, parent (if the debtor is a minor), guardian, executor,  
21 or administrator.

22 (225 ILCS 425/9.3 new)

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

24 Sec. 9.3. Validation of debts.

25 (a) Within 5 days after the initial communication with a



1 debtor in connection with the collection of any debt, a debt  
2 collector or collection agency shall, unless the following  
3 information is contained in the initial communication or the  
4 debtor has paid the debt, send the debtor a written notice with  
5 each of the following disclosures:

6 (1) The amount of the debt.

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

8 (3) That, unless the debtor, within 30 days after  
9 receipt of the notice, disputes the validity of the debt,  
10 or any portion thereof, the debt will be assumed to be  
11 valid by the debt collector or collection agency.

12 (4) That, if the debtor notifies the debt collector or  
13 collection agency in writing within the 30-day period that  
14 the debt, or any portion thereof, is disputed, the debt  
15 collector or collection agency will obtain verification of  
16 the debt or a copy of a judgment against the debtor and a  
17 copy of the verification or judgment will be mailed to the  
18 debtor by the debt collector or collection agency.

19 (5) That upon the debtor's written request within the  
20 30-day period, the debt collector or collection agency will  
21 provide the debtor with the name and address of the  
22 original creditor, if different from the current creditor.  
23 If the disclosures required under this subsection (a) are  
24 placed on the back of the notice, the front of the notice  
25 shall contain a statement notifying debtors of that fact.

26 (b) If the debtor notifies the debt collector or collection

1 agency in writing within the 30-day period set forth in  
2 paragraph (3) of subsection (a) of this Section that the debt,  
3 or any portion thereof, is disputed or that the debtor requests  
4 the name and address of the original creditor, the debt  
5 collector or collection agency shall cease collection of the  
6 debt, or any disputed portion thereof, until the debt collector  
7 or collection agency obtains verification of the debt or a copy  
8 of a judgment or the name and address of the original creditor  
9 and mails a copy of the verification or judgment or name and  
10 address of the original creditor to the debtor.

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

14 (225 ILCS 425/9.4 new)

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

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

17 (a) Upon receipt from a debtor of all of the following  
18 information, a debt collector or collection agency must cease  
19 collection activities until completion of the review provided  
20 in subsection (d) of this Section:

21 (1) A copy of a police report filed by the debtor  
22 alleging that the debtor is the victim of an identity theft  
23 crime for the specific debt being collected by the debt  
24 collector.

25 (2) The debtor's written statement that the debtor

1       claims to be the victim of identity theft with respect to  
2       the specific debt being collected by the debt collector,  
3       including (i) a Federal Trade Commission's Affidavit of  
4       Identity Theft, (ii) an Illinois Attorney General ID Theft  
5       Affidavit, or (iii) a written statement that certifies that  
6       the representations are true, correct, and contain no  
7       material omissions of fact to the best knowledge and belief  
8       of the person submitting the certification. This written  
9       statement must contain or be accompanied by, each of the  
10       following, to the extent that an item listed below is  
11       relevant to the debtor's allegation of identity theft with  
12       respect to the debt in question:

13               (A) A statement that the debtor is a victim of  
14               identity theft.

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

17               (C) Any other identification document that  
18               supports the statement of identity theft.

19               (D) Specific facts supporting the claim of  
20               identity theft, if available.

21               (E) Any explanation showing that the debtor did not  
22               incur the debt.

23               (F) Any available correspondence disputing the  
24               debt after transaction information has been provided  
25               to the debtor.

26               (G) Documentation of the residence of the debtor at

1           the time of the alleged debt, which may include copies  
2           of bills and statements, such as utility bills, tax  
3           statements, or other statements from businesses sent  
4           to the debtor and showing that the debtor lived at  
5           another residence at the time the debt was incurred.

6           (H) A telephone number for contacting the debtor  
7           concerning any additional information or questions or  
8           direction that further communications to the debtor be  
9           in writing only, with the mailing address specified in  
10           the statement.

11           (I) To the extent the debtor has information  
12           concerning who may have incurred the debt, the  
13           identification of any person whom the debtor believes  
14           is responsible.

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

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

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

23           (Signature)

24           (Date)"

1       (c) If a debtor notifies a debt collector or collection  
2 agency orally that he or she is a victim of identity theft, the  
3 debt collector or collection agency shall notify the debtor  
4 orally or in writing, that the debtor's claim must be in  
5 writing. If a debtor notifies a debt collector or collection  
6 agency in writing that he or she is a victim of identity theft,  
7 but omits information required pursuant to this Section, if the  
8 debt collector or collection agency does not cease collection  
9 activities, the debt collector or collection agency must  
10 provide written notice to the debtor of the additional  
11 information that is required or send the debtor a copy of the  
12 Federal Trade Commission's Affidavit of Identity Theft form.

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

1 agency's determination shall be based on all of the information  
2 provided by the debtor and other information available to the  
3 debt collector or collection agency in its file or from the  
4 creditor.

5 (e) No inference or presumption that the debt is valid or  
6 invalid or that the debtor is liable or not liable for the debt  
7 may arise if the debt collector or collection agency decides  
8 after the review described in subsection (d) to cease or  
9 recommence the debt collection activities. The exercise or  
10 non-exercise of rights under this Section is not a waiver of  
11 any other right or defense of the debtor or debt collector.

12 (f) A debt collector or collection agency that (i) ceases  
13 collection activities under this Section, (ii) does not  
14 recommence those collection activities, and (iii) furnishes  
15 adverse information to a consumer credit reporting agency, must  
16 notify the consumer credit reporting agency to delete that  
17 adverse information.

18 (225 ILCS 425/9.7 new)

19 Sec. 9.7. Enforcement under the Consumer Fraud and  
20 Deceptive Business Practices Act. The Attorney General may  
21 enforce the knowing violation of Section 9 (except for items  
22 (1) through (9) and (19) of subsection (a)), 9.1, 9.2, 9.3, or  
23 9.4 of this Act as an unlawful practice under the Consumer  
24 Fraud and Deceptive Business Practices Act.

1 (225 ILCS 425/2.01 rep.)

2 (225 ILCS 425/2.02 rep.)

3 Section 10. The Collection Agency Act is amended by  
4 repealing Sections 2.01 and 2.02.

5 Section 99. Effective date. This Act takes effect January  
6 1, 2008.".