



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1219

Introduced 02/08/11, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

See Index

Amends the Collection Agency Act. Provides that in any action initiated by a debt buyer or debt collector to enforce the collection of a debt shall include (i) a copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant and (ii) a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. Provides that in any action brought by a debt buyer or debt collector to enforce the collection of a debt, the plaintiff shall affirmatively state in his or her complaint that the claim is within the statutory period of limitation for the cause of action. Permits that any aggrieved person may bring a civil action to enforce this Act for actual damages sustained by a person as a result of the defendant's failure to adhere to the provisions of this Act and an injunction prohibiting further violations. Provides that in an action brought by an individual, additional damages, as the court may allow, shall not exceed \$5,000 per violation. Provides that in an action brought by class action, the court may allow the amount for each named plaintiff as could be recovered if the action was brought as an individual, and the amount as for all other class members, without regard to a minimum individual recovery, shall not exceed \$1,000,000. Permits the recovery of attorney's fees and costs if the court finds an action was brought in bad faith and for the purposes of harassment. Provides guidelines for the court to consider in determining damages for a violation of this Act. Provides that a debt collector may not be held liable in any action if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Makes other changes.

LRB097 06683 CEL 46769 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 9 and by adding Sections 8b-1, 8b-2, and 14c as
6 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8 (Section scheduled to be repealed on January 1, 2016)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.

19 (Source: P.A. 95-437, eff. 1-1-08.)

20 (225 ILCS 425/8b-1 new)

21 Sec. 8b-1. Required attachments. In any action initiated by
22 a debt buyer or debt collector to enforce the collection of a
23 debt, the following materials shall be attached to the
24 complaint:

25 (1) A copy of the contract or other writing evidencing

1 the original debt, which must contain a signature of the
2 defendant. If a claim is based on credit card debt and no
3 signed writing is evident that the original debt ever
4 existed, then copies of documents generated when the credit
5 card was actually used to incur the debt must be attached.

6 (2) A copy of the assignment or other writing
7 establishing that the plaintiff is the owner of the debt.
8 If the debt has been assigned more than once, then each
9 assignment or other writing evidencing transfer of
10 ownership must be attached to establish an unbroken chain
11 of ownership. Each assignment or other writing evidencing
12 transfer of ownership must contain the original account
13 number of the debt purchased and must clearly show the
14 debtor's name associated with that account number.

15 (225 ILCS 425/8b-2 new)

16 Sec. 8b-2. Pleading timeliness. In any action brought by a
17 debt buyer or debt collector to enforce the collection of a
18 debt, the plaintiff shall affirmatively state in his or her
19 complaint that the claim is within the statutory period of
20 limitation for the cause of action.

21 (225 ILCS 425/9) (from Ch. 111, par. 2012)

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

23 Sec. 9. (a) The Department may refuse to issue or renew, or
24 may revoke, suspend, place on probation, reprimand or take

1 other disciplinary action as the Department may deem proper,
2 including fines not to exceed \$5,000 for a first violation and
3 not to exceed \$10,000 for a second or subsequent violation, for
4 any one or any combination of the following causes:

5 (1) Violations of this Act or of the rules promulgated
6 hereunder.

7 (2) Conviction of the collection agency or the
8 principals of the agency of any crime under the laws of any
9 U.S. jurisdiction which is a felony, a misdemeanor an
10 essential element of which is dishonesty, or of any crime
11 which directly relates to the practice of the profession.

12 (3) Making any misrepresentation for the purpose of
13 obtaining a license or certificate.

14 (4) Habitual or excessive use or addiction to alcohol,
15 narcotics, stimulants or any other chemical agent or drug
16 which results in the inability to practice with reasonable
17 judgment, skill, or safety by any of the principals of a
18 collection agency.

19 (5) Discipline by another U.S. jurisdiction or foreign
20 nation, if at least one of the grounds for the discipline
21 is the same or substantially equivalent to those set forth
22 in this Act.

23 (6) A finding by the Department that the licensee,
24 after having his license placed on probationary status, has
25 violated the terms of probation.

26 (7) Practicing or attempting to practice under a name

1 other than the name as shown on his or her license or any
2 other legally authorized name.

3 (8) A finding by the Federal Trade Commission that a
4 licensee violated the Federal Fair Debt and Collection Act
5 or its rules.

6 (9) Failure to file a return, or to pay the tax,
7 penalty or interest shown in a filed return, or to pay any
8 final assessment of tax, penalty or interest, as required
9 by any tax Act administered by the Illinois Department of
10 Revenue until such time as the requirements of any such tax
11 Act are satisfied.

12 (10) Using or threatening to use force or violence to
13 cause physical harm to a debtor, his family or his
14 property.

15 (11) Threatening to instigate an arrest or criminal
16 prosecution where no basis for a criminal complaint
17 lawfully exists.

18 (12) Threatening the seizure, attachment or sale of a
19 debtor's property where such action can only be taken
20 pursuant to court order without disclosing that prior court
21 proceedings are required.

22 (13) Disclosing or threatening to disclose information
23 adversely affecting a debtor's reputation for credit
24 worthiness with knowledge the information is false.

25 (14) Initiating or threatening to initiate
26 communication with a debtor's employer unless there has

1 been a default of the payment of the obligation for at
2 least 30 days and at least 5 days prior written notice, to
3 the last known address of the debtor, of the intention to
4 communicate with the employer has been given to the
5 employee, except as expressly permitted by law or court
6 order.

7 (15) Communicating with the debtor or any member of the
8 debtor's family at such a time of day or night and with
9 such frequency as to constitute harassment of the debtor or
10 any member of the debtor's family. For purposes of this
11 Section the following conduct shall constitute harassment:

12 (A) Communicating with the debtor or any member of
13 his or her family in connection with the collection of
14 any debt without the prior consent of the debtor given
15 directly to the debt collector, or the express
16 permission of a court of competent jurisdiction, at any
17 unusual time or place or a time or place known or which
18 should be known to be inconvenient to the debtor. In
19 the absence of knowledge of circumstances to the
20 contrary, a debt collector shall assume that the
21 convenient time for communicating with a consumer is
22 after 8 o'clock a.m. and before 9 o'clock p.m. local
23 time at the debtor's location.

24 (B) The threat of publication or publication of a
25 list of consumers who allegedly refuse to pay debts,
26 except to a consumer reporting agency.

1 (C) The threat of advertisement or advertisement
2 for sale of any debt to coerce payment of the debt.

3 (D) Causing a telephone to ring or engaging any
4 person in telephone conversation repeatedly or
5 continuously with intent to annoy, abuse, or harass any
6 person at the called number.

7 (16) Using profane, obscene or abusive language in
8 communicating with a debtor, his or her family or others.

9 (17) Disclosing or threatening to disclose information
10 relating to a debtor's indebtedness to any other person
11 except where such other person has a legitimate business
12 need for the information or except where such disclosure is
13 regulated by law.

14 (18) Disclosing or threatening to disclose information
15 concerning the existence of a debt which the debt collector
16 knows to be reasonably disputed by the debtor without
17 disclosing the fact that the debtor disputes the debt.

18 (19) Engaging in any conduct which the Director finds
19 was intended to cause and did cause mental or physical
20 illness to the debtor or his or her family.

21 (20) Attempting or threatening to enforce a right or
22 remedy with knowledge or reason to know that the right or
23 remedy does not exist.

24 (21) Failing to disclose to the debtor or his or her
25 family the corporate, partnership or proprietary name, or
26 other trade or business name, under which the debt

1 collector is engaging in debt collections and which he or
2 she is legally authorized to use.

3 (22) Using any form of communication which simulates
4 legal or judicial process or which gives the appearance of
5 being authorized, issued or approved by a governmental
6 agency or official or by an attorney at law when it is not.

7 (23) Using any badge, uniform, or other indicia of any
8 governmental agency or official except as authorized by
9 law.

10 (24) Conducting business under any name or in any
11 manner which suggests or implies that a debt collector is
12 bonded if such collector is or is a branch of or is
13 affiliated with any governmental agency or court if such
14 collector is not.

15 (25) Failing to disclose, at the time of making any
16 demand for payment, the name of the person to whom the
17 claim is owed and at the request of the debtor, the address
18 where payment is to be made and the address of the person
19 to whom the claim is owed.

20 (26) Misrepresenting the amount of the claim or debt
21 alleged to be owed.

22 (27) Representing that an existing debt may be
23 increased by the addition of attorney's fees,
24 investigation fees or any other fees or charges when such
25 fees or charges may not legally be added to the existing
26 debt.

1 (28) Representing that the debt collector is an
2 attorney at law or an agent for an attorney if he is not.

3 (29) Collecting or attempting to collect any interest
4 or other charge or fee in excess of the actual debt or
5 claim unless such interest or other charge or fee is
6 expressly authorized by the agreement creating the debt or
7 claim unless expressly authorized by law or unless in a
8 commercial transaction such interest or other charge or fee
9 is expressly authorized in a subsequent agreement. If a
10 contingency or hourly fee arrangement (i) is established
11 under an agreement between a collection agency and a
12 creditor to collect a debt and (ii) is paid by a debtor
13 pursuant to a contract between the debtor and the creditor,
14 then that fee arrangement does not violate this Section
15 unless the fee is unreasonable. The Department shall
16 determine what constitutes a reasonable collection fee.

17 (30) Communicating or threatening to communicate with
18 a debtor when the debt collector is informed in writing by
19 an attorney that the attorney represents the debtor
20 concerning the claim, unless authorized by the attorney. If
21 the attorney fails to respond within a reasonable period of
22 time, the collector may communicate with the debtor. The
23 collector may communicate with the debtor when the attorney
24 gives his consent.

25 (31) Engaging in dishonorable, unethical, or
26 unprofessional conduct of a character likely to deceive,

1 defraud, or harm the public.

2 (32) Filing a false affidavit, including, but not
3 limited to, a false affidavit of service.

4 (b) The Department shall deny any license or renewal
5 authorized by this Act to any person who has defaulted on an
6 educational loan guaranteed by the Illinois State Scholarship
7 Commission; however, the Department may issue a license or
8 renewal if the person in default has established a satisfactory
9 repayment record as determined by the Illinois State
10 Scholarship Commission.

11 No debt collector while collecting or attempting to collect
12 a debt shall engage in any of the Acts specified in this
13 Section, each of which shall be unlawful practice.

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

15 (225 ILCS 425/14c new)

16 Sec. 14c. Violations; civil liability.

17 (a) Except as otherwise provided by this Section, any
18 aggrieved person may bring a civil action to enforce this Act
19 for:

20 (1) any actual damages sustained by a person as a
21 result of the defendant's failure to adhere to the
22 provisions of this Act; and

23 (2) an injunction prohibiting further violations.

24 In the case of any action by an individual, the court may
25 allow additional damages, which may not exceed \$5,000 per

1 violation.

2 In the case of a class action, the court may allow the
3 amount for each named plaintiff as could be recovered if the
4 action was brought as an individual, and the amount as for all
5 other class members, without regard to a minimum individual
6 recovery, shall not exceed \$1,000,000.

7 In the case of any successful action to enforce this Act,
8 the defendant or defendants may recover the costs of the
9 action, together with reasonable attorney's fees as determined
10 by the court. On a finding by the court that an action under
11 this subsection (a) was brought in bad faith and for the
12 purpose of harassment, the court may award to the defendant
13 attorney's fees reasonable in relation to the work expended and
14 costs.

15 (b) In determining damages for a violation of this Act, the
16 court shall consider the following:

17 (1) in any individual action under subsection (a), the
18 frequency and persistence of noncompliance by the debt
19 buyer or collector, the nature of the noncompliance, and
20 the extent that the noncompliance was intentional; or

21 (2) in any class action under subsection (a), the
22 frequency and persistence of noncompliance by the debt
23 collector, the nature of the noncompliance, the resources
24 of the debt collector, the number of persons adversely
25 affected, and the extent that the debt collector's
26 noncompliance was intentional.

1 (c) A debt collector may not be held liable in any action
2 brought under this Section if the debt collector shows by a
3 preponderance of evidence that the violation was not
4 intentional and resulted from a bona fide error notwithstanding
5 the maintenance of procedures reasonably adapted to avoid any
6 such error.

1 INDEX

2 Statutes amended in order of appearance

3 225 ILCS 425/2 from Ch. 111, par. 2002

4 225 ILCS 425/8b-1 new

5 225 ILCS 425/8b-2 new

6 225 ILCS 425/9 from Ch. 111, par. 2012

7 225 ILCS 425/14c new