

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

**SENATE BILL****No. 1038** Session of  
1999

---

INTRODUCED BY PICCOLA, DENT, HART, SALVATORE, BOSCOLA, MUSTO,  
WAGNER, WENGER, MOWERY, MADIGAN, PUNT, LEMMOND, MELLOW,  
TARTAGLIONE AND SLOCUM, JUNE 18, 1999

---

SENATOR PICCOLA, INTERGOVERNMENTAL AFFAIRS, RE-REPORTED AS  
AMENDED, OCTOBER 26, 1999

---

## AN ACT

1 Establishing the Fair Credit Extension Uniformity Act; and  
2 providing for debt collection trade practices and penalties.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Fair Credit  
7 Extension Uniformity Act.

8 Section 2. Scope of act.

9 This act establishes what shall be considered unfair methods  
10 of competition and unfair or deceptive acts or practices with  
11 regard to the collection of debts.

12 Section 3. Definitions.

13 The following words and phrases when used in this act shall  
14 have the meanings given to them in this section unless the  
15 context clearly indicates otherwise:

16 "Communication." The conveying of information regarding a  
17 debt directly or indirectly to any person through any medium.

1 "Consumer." A natural person residing in this Commonwealth  
2 who owes or is alleged to owe a debt or one who has incurred or  
3 is alleged to have incurred liability for the debt within this  
4 Commonwealth, including, but not limited to, a comaker,  
5 guarantor, surety or parent if the consumer is under 18 years of  
6 age. The term includes the consumer's guardian, executor or  
7 administrator.

8 "Creditor." A person, including agents, servants or  
9 employees conducting business under the name of a creditor and  
10 within this Commonwealth, to whom a debt is owed or alleged to  
11 be owed.

12 "Debt." An actual or alleged past due obligation, claim,  
13 demand, note or other similar liability of a consumer to pay  
14 money, arising out of a single account as a result of a  
15 purchase, lease or loan of goods, services or real or personal  
16 property for personal, family or household purposes or as a  
17 result of a loan of money or extension of credit which is  
18 obtained primarily for personal, family or household purposes,  
19 provided, however, that money which is ~~owing~~ OWED or alleged to <—  
20 be ~~owing~~ OWED as a result of a loan secured by a purchase money <—  
21 mortgage on real estate ~~may~~ SHALL not be included within the <—  
22 definition of debt. The term also includes any amount owed as a  
23 tax to any political subdivision of this Commonwealth. Tax  
24 includes an assessment, any interest, penalty, fee or other  
25 amount permitted by law to be collected. Debt does not include  
26 any such amount owed to the United States or the Commonwealth.

27 "Debt collector."

28 (1) A person not a creditor conducting business within  
29 this Commonwealth, acting on behalf of a creditor, engaging  
30 or aiding directly or indirectly in collecting a debt owed or

1       alleged to be owed a creditor or assignee of a creditor.

2           (2) The term does not include:

3               (i) Any officer or employee of a creditor while, in  
4       the name of the creditor, collecting debts for such  
5       creditor.

6               (ii) A person while attempting to collect a debt on  
7       behalf of a creditor, both of whom are related by common  
8       ownership or affiliated by corporate control, if the  
9       person acting as a debt collector does so only for  
10      creditors to whom it is so related or affiliated and if  
11      the principal business of the person is not the  
12      collection of debts.

13              (iii) A person while collecting or attempting to  
14      collect any debt owed or due or asserted to be owed or  
15      due TO another to the extent such activity: <—

16                   (A) is incidental to a bona fide fiduciary  
17      obligation or a bona fide escrow arrangement;

18                   (B) concerns a debt which was originated by such  
19      person;

20                   (C) concerns a debt which was not in default at  
21      the time it was obtained by such person; or

22                   (D) concerns a debt obtained by such person as a  
23      secured party in a commercial credit transaction  
24      involving the creditor.

25      Persons included within this subparagraph shall be  
26      considered creditors and not debt collectors for purposes  
27      of this subchapter.

28              (iv) A person while serving or attempting to serve  
29      legal process on another person in connection with the  
30      judicial enforcement of a debt.

1           (v) A person who is an elected or appointed official  
2 of any political subdivision of this Commonwealth, who  
3 collects or attempts to collect a tax or assessment owed  
4 to the political subdivision which employs the person,  
5 while that person is acting within the scope of his  
6 elected or appointed position or employment.

7       (3) The term does include:

8           (i) A creditor who, in the process of collecting his  
9 or her own debt, uses a name other than his or her own  
10 which would indicate that a third person is collecting or  
11 attempting to collect the debt.

12          (ii) An attorney, whenever such attorney attempts to  
13 collect a debt, as herein defined, except in connection  
14 with the filing or service of pleadings or discovery or  
15 the prosecution of a lawsuit to reduce a debt to  
16 judgment.

17          (iii) A person who sells or offers to sell forms  
18 represented to be a collection system, device or scheme  
19 which is intended or designed to collect debts.

20          (iv) A person, other than an elected or appointed  
21 official of any political subdivision of this  
22 Commonwealth, who collects or attempts to collect a tax  
23 or assessment owed to any political subdivision of this  
24 Commonwealth.

25       "Location information." A consumer's place of abode and his  
26 telephone number at such place or his place of employment.

27       "State." Any state, territory or possession of the United  
28 States, the District of Columbia, the Commonwealth of Puerto  
29 Rico or any political subdivision of any of the above.

30       Section 4. Unfair or deceptive acts or practices.

1 (a) By debt collectors.--It shall constitute an unfair or  
2 deceptive debt collection act or practice under this act if a  
3 debt collector violates any of the provisions of the Fair Debt  
4 Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et  
5 seq.).

6 (b) By creditors.--With respect to debt collection  
7 activities of creditors in this Commonwealth, it shall  
8 constitute an unfair or deceptive debt collection act or  
9 practice under this act if a creditor violates any of the  
10 following provisions:

11 (1) Any creditor communicating with any person other  
12 than the consumer for the purpose of acquiring location  
13 information about the consumer shall:

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

17 (ii) not state that such consumer owes any debt;

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

24 (iv) not communicate by post card;

25 (v) not use any language or symbol on any envelope  
26 or in the contents of any communication effected by the  
27 mails or telegram that indicates that the communication  
28 relates to the collection of a debt; and

29 (vi) after the creditor knows the consumer is  
30 represented by an attorney with regard to the subject

1 debt and has knowledge of or can readily ascertain such  
2 attorney's name and address, not communicate with any  
3 person other than that attorney unless the attorney fails  
4 to respond within a reasonable period of time to  
5 communication from the creditor.

6 (2) Without the prior consent of the consumer given  
7 directly to the creditor or the express permission of a court  
8 of competent jurisdiction, a creditor may not communicate  
9 with a consumer in connection with the collection of any  
10 debt:

11 (i) at any unusual time or place or a time or place  
12 known or which should be known to be inconvenient to the  
13 consumer. In the absence of knowledge of circumstances to  
14 the contrary, a creditor shall assume that the convenient  
15 time for communicating with a consumer is after 8 a.m.  
16 and before 9 p.m., local time at the consumer's location;

17 (ii) if the creditor knows the consumer is  
18 represented by an attorney with respect to such debt and  
19 has knowledge of or can readily ascertain such attorney's  
20 name and address unless the attorney fails to respond  
21 within a reasonable period of time to a communication  
22 from the creditor or unless the attorney consents to  
23 direct communication with the consumer; or

24 (iii) at the consumer's place of employment if the  
25 creditor knows or has reason to know that the consumer's  
26 employer prohibits the consumer from receiving such  
27 communication.

28 (3) Except as provided in paragraph (1), without the  
29 prior consent of the consumer given directly to the creditor  
30 or the express permission of a court of competent

1 jurisdiction or as reasonably necessary to effectuate a  
2 postjudgment judicial remedy, a creditor may not communicate,  
3 in connection with the collection of any debt, with any  
4 person other than the consumer, his attorney, a consumer  
5 reporting agency if otherwise permitted by law, a debt  
6 collector, the attorney of the debt collector or the attorney  
7 of the creditor.

8 (4) A creditor may not engage in any conduct the natural  
9 consequence of which is to harass, oppress or abuse any  
10 person in connection with the collection of a debt. Without  
11 limiting the general application of the foregoing, the  
12 following conduct is a violation of this paragraph:

13 (i) The use or threat of use of violence or other  
14 criminal means to harm the physical person, reputation or  
15 property of any person.

16 (ii) The use of obscene or profane language or  
17 language the natural consequence of which is to abuse the  
18 hearer or reader.

19 (iii) The publication of a list of consumers who  
20 allegedly refuse to pay debts, except to a consumer  
21 reporting agency or to persons meeting the requirements  
22 of section 1681a(f) or 1681b(a)(3) of the Fair Credit  
23 Reporting Act (Public Law 91-508, 15 U.S.C. § 1681 et  
24 seq.).

25 (iv) The advertisement for sale of any debt to  
26 coerce payment of the debt.

27 (v) Causing a telephone to ring or engaging any  
28 person in telephone conversation repeatedly or  
29 continuously with intent to annoy, abuse or harass any  
30 person at the called number.

(vi) Except as provided in paragraph (1), the placement of telephone calls without meaningful disclosure of the caller's identity.

(5) A creditor may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

(i) The false representation or implication that the creditor is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform or facsimile thereof.

(ii) The false representation of the character, amount or legal status of any debt.

(iii) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(iv) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, ~~garnishment,~~ attachment or sale of any property ~~or wages~~ of any person unless such action is lawful and the creditor intends to take such action.

(v) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(vi) The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to lose any claim or defense to payment of the debt or become subject to any practice prohibited by this subchapter.

1 (vii) The false representation or implication that  
2 the consumer committed any crime or other conduct in  
3 order to disgrace the consumer.

4 (viii) Communicating or threatening to communicate  
5 to any person credit information which is known or which  
6 should be known to be false, including the failure to  
7 communicate that a ~~disputed~~ debt is disputed. <—

8 (ix) The use or distribution of any written  
9 communication which simulates or is falsely represented  
10 to be a document authorized, issued or approved by any  
11 court, official or agency of the United States or any  
12 state, or which creates a false impression as to its  
13 source, authorization or approval.

14 (x) The use of any false representation or deceptive  
15 means to collect or attempt to collect any debt or to  
16 obtain information concerning a consumer.

17 (xi) The false representation or implication that  
18 accounts have been turned over to innocent purchasers for  
19 value.

20 (xii) The false representation or implication that  
21 documents are legal process.

22 (xiii) The false representation or implication that  
23 documents are not legal process forms or do not require  
24 action by the consumer.

25 (6) A creditor may not use unfair or unconscionable  
26 means to collect or attempt to collect any debt. Without  
27 limiting the general application of the foregoing, the  
28 following conduct is a violation of this paragraph:

29 (i) The collection of any amount, including any  
30 interest, fee, charge or expense incidental to the

1 principal obligation, unless such amount is expressly  
2 authorized by the agreement creating the debt or  
3 permitted by law.

4 (ii) The acceptance by a creditor from any person of  
5 a check or other payment instrument postdated by more  
6 than five days unless such person ~~is~~ WILL BE notified in <—  
7 writing of the creditor's intent to deposit such check or  
8 instrument not more than ten nor less than three business  
9 days prior to such deposit.

10 (iii) The solicitation by a creditor of any  
11 postdated check or other postdated payment instrument for  
12 the purpose of threatening or instituting criminal  
13 prosecution.

14 (iv) Depositing or threatening to deposit any  
15 postdated check or other postdated payment instrument  
16 prior to the date on such check or instrument.

17 (v) Causing charges to be made to any person for  
18 communications by concealment of the true purpose of the  
19 communication. Such charges include, but are not limited  
20 to, collect telephone calls and telegram fees.

21 (vi) Taking or threatening to take any nonjudicial  
22 action to effect dispossession or disablement of property  
23 if:

24 (A) there is no present right to possession of  
25 the property claimed as collateral through an  
26 enforceable security interest;

27 (B) there is no present intention to take  
28 possession of the property; or

29 (C) the property is exempt by law from such  
30 dispossession or disablement.

(vii) Communicating with a consumer regarding a debt by post card.

(viii) Using any language or symbol, other than the creditor's address, on any envelope when communicating with a consumer by use of the mails or by telegram, provided that a creditor may use its business name.

(c) Definition.--For the purpose of subsection (b)(2) and (3), the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor or administrator.

#### Section 5. Enforcement and penalties.

(a) Unfair trade practices.--If a debt collector or creditor engages in an unfair or deceptive debt collection act or practice under this subchapter, it shall constitute a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(b) Jurisdiction.--An action to enforce any liability created by this subchapter may be brought in any court of competent jurisdiction in this Commonwealth within two years from the date on which the violation occurs.

(c) Remedies.--Remedies available for violation of this subchapter and the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.) shall not be cumulative, and debt collectors who violate this subchapter and the Federal Fair Debt Collection Practices Act shall not incur cumulative penalties.

(d) Defenses.--A debt collector or creditor may not be held liable in any action for a violation of this subchapter if the debt collector or creditor shows by a preponderance of the evidence that the violation was both not intentional and:

1           (1) resulted from a bona fide error, notwithstanding the  
2 maintenance of procedures reasonably adapted to avoid any  
3 such error; or

4           (2) resulted from good faith reliance upon incorrect  
5 information offered by any person other than an agent,  
6 servant or employee of the debt collector or creditor.

7 Section 6. Repeal.

8       The provisions of 37 Pa. Code Ch. 303 (relating to debt  
9 collection trade practices) are repealed.

10 Section 7. Effective date.

11       This act shall take effect in 90 days.