
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 1038 Session of
1999

INTRODUCED BY PICCOLA, DENT, HART, SALVATORE, BOSCOLA, MUSTO,
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TARTAGLIONE AND SLOCUM, JUNE 18, 1999

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 20, 2000

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

1 debt directly or indirectly to any person through any medium.

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

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

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

28 "Debt collector."

29 (1) A person not a creditor conducting business within
30 this Commonwealth, acting on behalf of a creditor, engaging

1 or aiding directly or indirectly in collecting a debt owed or
2 alleged to be owed a creditor or assignee of a creditor.

3 (2) The term does not include:

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

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

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

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

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

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

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

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

29 (iv) A person while serving or attempting to serve
30 legal process on another person in connection with the

1 judicial enforcement of a debt.

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

8 (VI) ANY OFFICER OR EMPLOYEE OF THE COMMONWEALTH, TO <—
9 THE EXTENT THAT COLLECTING OR ATTEMPTING TO COLLECT ANY
10 STUDENT LOAN DEBT IS IN THE PERFORMANCE OF HIS OR HER
11 OFFICIAL DUTIES.

12 (3) The term does include:

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

17 (ii) An attorney, whenever such attorney attempts to
18 collect a debt, as herein defined, except in connection
19 with the filing or service of pleadings or discovery or
20 the prosecution of a lawsuit to reduce a debt to
21 judgment.

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

25 (iv) A person, other than an elected or appointed
26 official of any political subdivision of this
27 Commonwealth, who collects or attempts to collect a tax
28 or assessment owed to any political subdivision of this
29 Commonwealth.

30 "Location information." A consumer's place of abode and his

1 telephone number at such place or his place of employment.

2 "State." Any state, territory or possession of the United
3 States, the District of Columbia, the Commonwealth of Puerto
4 Rico or any political subdivision of any of the above.

5 Section 4. Unfair or deceptive acts or practices.

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

11 (b) By creditors.--With respect to debt collection
12 activities of creditors in this Commonwealth, it shall
13 constitute an unfair or deceptive debt collection act or
14 practice under this act if a creditor violates any of the
15 following provisions:

16 (1) Any creditor communicating with any person other
17 than the consumer for the purpose of acquiring location
18 information about the consumer shall:

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

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

23 (iii) not communicate with any such person more than
24 once unless requested to do so by such person or unless
25 the creditor reasonably believes that the earlier
26 response of such person is erroneous or incomplete and
27 that such person now has correct or complete location
28 information;

29 (iv) not communicate by post card;

30 (v) not use any language or symbol on any envelope

1 or in the contents of any communication effected by the
2 mails or telegram that indicates that the communication
3 relates to the collection of a debt; and

4 (vi) after the creditor knows the consumer is
5 represented by an attorney with regard to the subject
6 debt and has knowledge of or can readily ascertain such
7 attorney's name and address, not communicate with any
8 person other than that attorney unless the attorney fails
9 to respond within a reasonable period of time to
10 communication from the creditor.

11 (2) Without the prior consent of the consumer given
12 directly to the creditor or the express permission of a court
13 of competent jurisdiction, a creditor may not communicate
14 with a consumer in connection with the collection of any
15 debt:

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

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

29 (iii) at the consumer's place of employment if the
30 creditor knows or has reason to know that the consumer's

1 employer prohibits the consumer from receiving such
2 communication.

3 (3) Except as provided in paragraph (1), without the
4 prior consent of the consumer given directly to the creditor
5 or the express permission of a court of competent
6 jurisdiction or as reasonably necessary to effectuate a
7 postjudgment judicial remedy, a creditor may not communicate,
8 in connection with the collection of any debt, with any
9 person other than the consumer, his attorney, a consumer
10 reporting agency if otherwise permitted by law, a debt
11 collector, the attorney of the debt collector or the attorney
12 of the creditor.

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

18 (i) The use or threat of use of violence or other
19 criminal means to harm the physical person, reputation or
20 property of any person.

21 (ii) The use of obscene or profane language or
22 language the natural consequence of which is to abuse the
23 hearer or reader.

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

30 (iv) The advertisement for sale of any debt to

1 coerce payment of the debt.

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

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

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

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

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

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

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

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

30 (vi) The false representation or implication that a

1 sale, referral or other transfer of any interest in a
2 debt shall cause the consumer to lose any claim or
3 defense to payment of the debt or become subject to any
4 practice prohibited by this subchapter.

5 (vii) The false representation or implication that
6 the consumer committed any crime or other conduct in
7 order to disgrace the consumer.

8 (viii) Communicating or threatening to communicate
9 to any person credit information which is known or which
10 should be known to be false, including the failure to
11 communicate that a debt is disputed.

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

18 (x) The use of any false representation or deceptive
19 means to collect or attempt to collect any debt or to
20 obtain information concerning a consumer.

21 (xi) The false representation or implication that
22 accounts have been turned over to innocent purchasers for
23 value.

24 (xii) The false representation or implication that
25 documents are legal process.

26 (xiii) The false representation or implication that
27 documents are not legal process forms or do not require
28 action by the consumer.

29 (6) A creditor may not use unfair or unconscionable
30 means to collect or attempt to collect any debt. Without

1 limiting the general application of the foregoing, the
2 following conduct is a violation of this paragraph:

3 (i) The collection of any amount, including any
4 interest, fee, charge or expense incidental to the
5 principal obligation, unless such amount is expressly
6 authorized by the agreement creating the debt or
7 permitted by law.

8 (ii) The acceptance by a creditor from any person of
9 a check or other payment instrument postdated by more
10 than five days unless such person will be notified in
11 writing of the creditor's intent to deposit such check or
12 instrument not more than ten nor less than three business
13 days prior to such deposit.

14 (iii) The solicitation by a creditor of any
15 postdated check or other postdated payment instrument for
16 the purpose of threatening or instituting criminal
17 prosecution.

18 (iv) Depositing or threatening to deposit any
19 postdated check or other postdated payment instrument
20 prior to the date on such check or instrument.

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

25 (vi) Taking or threatening to take any nonjudicial
26 action to effect dispossession or disablement of property
27 if:

28 (A) there is no present right to possession of
29 the property claimed as collateral through an
30 enforceable security interest;

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

3 (C) the property is exempt by law from such
4 dispossession or disablement.

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

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

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

15 Section 5. Enforcement and penalties.

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

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

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

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

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

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

11 Section 6. Repeal.

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

14 Section 7. Effective date.

15 This act shall take effect in 90 days.