

No. 2000-7

AN ACT

SB 1038

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

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

Section 1. Short title.

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

Section 2. Scope of act.

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

Section 3. Definitions.

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

“Communication.” The conveying of information regarding a debt directly or indirectly to any person through any medium.

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

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

“Debt.” An actual or alleged past due obligation, claim, demand, note or other similar liability of a consumer to pay money, arising out of a single account as a result of a purchase, lease or loan of goods, services or real or personal property for personal, family or household purposes or as a result of a loan of money or extension of credit which is obtained primarily for personal, family or household purposes, provided, however, that money which is owed or alleged to be owed as a result of a loan secured by a purchase money mortgage on real estate shall not be included within the definition of debt. The term also includes any amount owed as a tax to any political subdivision of this Commonwealth. Tax includes an assessment, any interest, penalty, fee or other amount permitted by law to be collected.

Debt does not include any such amount owed to the United States or the Commonwealth.

“Debt collector.”

(1) A person not a creditor conducting business within this Commonwealth, acting on behalf of a creditor, engaging or aiding directly or indirectly in collecting a debt owed or alleged to be owed a creditor or assignee of a creditor.

(2) The term does not include:

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

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

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

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

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

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

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

Persons included within this subparagraph shall be considered creditors and not debt collectors for purposes of this act.¹

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

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

(3) The term does include:

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

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

¹ “subchapter.” in enrolled bill.

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

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

“Location information.” A consumer’s place of abode and his telephone number at such place or his place of employment.

“State.” Any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any political subdivision of any of the above.

Section 4. Unfair or deceptive acts or practices.

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

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

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

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

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

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

(iv) not communicate by postcard;

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

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

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

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

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

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

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

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

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

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

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

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

(v) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any 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, attachment or sale of any property 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 act.¹

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

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

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

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

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

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

¹ "subchapter." in enrolled bill.

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

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

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

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

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

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

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

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

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

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

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

(vii) Communicating with a consumer regarding a debt by postcard.

(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 act,¹ 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 act² 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 act² 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 act² and the 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 act² if the debt collector or creditor shows by a preponderance of the evidence that the violation was both not intentional and:

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

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

Section 6. Repeal.

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

Section 7. Effective date.

This act shall take effect in 90 days.

APPROVED—The 28th day of March, A.D. 2000.

THOMAS J. RIDGE

¹ “subchapter,” in enrolled bill.

² “subchapter” in enrolled bill.