

By Mr. Brownell of Quincy, petition of Thomas F. Brownell, Edward J. Markey, Arthur H. Tobin, Elizabeth N. Metayer, Paul E. Means, David J. Swartz and Robert G. Phelan for legislation to establish a consumer debt collection fair practices act. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Six.

AN ACT ESTABLISHING A CONSUMER DEBT COLLECTION FAIR PRACTICES ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. [*Short Title.*] This act may be cited as the
2 Consumer Debt Collection Fair Practices Act.

1 SECTION 2. [*Definitions.*] As used in this act:

2 (1) "Person" means any natural person, corporation, trust,
3 partnership, incorporated or unincorporated association, and any
4 other legal entity.

5 (2) "Debt" means any obligation owed or due or alleged to
6 be owed or due from a consumer.

7 (3) "Consumer" means any natural person who has incurred
8 a debt or alleged debt for personal, family, or household
9 purposes.

10 (4) "Consumer transaction" means any transaction in which
11 one or more of the parties thereto is a consumer.

12 (5) "Creditor" means any person who is a party to a
13 consumer transaction other than a consumer.

14 (6) "Debt collection" means any action, conduct, or practice
15 in connection with the solicitation of a consumer debt for
16 collection or in the collection of a consumer debt.

17 (7) "Debt collector" means any person engaging, directly or
18 indirectly, in debt collection from a consumer and includes any
19 person who sells, or offers to sell, forms represented to be a

20 collection system, device, or scheme, intended or calculated to be
21 used to collect debts.

1 SECTION 3. [*Prohibited Practices.*]

2 (a) No debt collector shall collect or attempt to collect any
3 debt alleged to be due and owing from a consumer by means of
4 any threat, coercion, or attempt to coerce in any of the following
5 ways:

6 (1) Using or threatening to use violence or any illegal means
7 to cause harm to the person, reputation, or property of any
8 person.

9 (2) Falsely accusing or threatening to accuse any person of
10 fraud or any crime, or any conduct which would tend to disgrace
11 such other person or in any way subject him to ridicule or
12 contempt.

13 (3) Making or threatening to make false accusations to
14 another person, including any credit reporting agency, that a
15 consumer has not paid a just debt.

16 (4) Threatening to sell or assign to another the debt of the
17 consumer with an attending representation or implication that
18 the result of such sale or assignment would be that the consumer
19 would lose any defense to the debt or would be subjected to
20 harsh, vindictive, or abusive collection attempts.

21 (5) Threatening that nonpayment of an alleged debt will
22 result in the arrest of any person.

23 (b) No debt collector shall unreasonably oppress, harass, or
24 abuse any person in connection with the attempt to collect any
25 debt alleged to be due and owing by that person or another in any
26 of the following ways:

27 (1) Using profane or obscene language intended to abuse the
28 hearer or reader.

29 (2) Making of telephone calls without disclosure of the debt
30 collector's identity, or the placing of telephone calls with the
31 intent to harass or threaten any person at the called number.

32 (3) Causing expense to any person for long-distance
33 telephone tolls, telegram fees, or other charges incurred through a
34 medium of communication, by concealment of the identity of the
35 debt collector or the purpose of the communication.

36 (c) No debt collector shall unreasonably publicize information

37 relating to any alleged debt or consumer in any of the following
38 ways:

39 (1) Communicating with the consumer's employer regarding
40 the consumer's debt unless there has been a default in any
41 payment, in whole or in part, of the debt for at least 30 days and
42 at least 10 days prior notice of the intention so to communicate
43 with the employer has been given to the consumer, except that
44 this subsection (1) shall not apply when the communication is
45 made after a judgment on the consumer's debt, in whole or in
46 part, has been entered against the consumer by the creditor, or
47 where the purpose of the communication is to locate the
48 consumer by the creditor, or where the consumer or his attorney
49 has consented to such communication.

50 (2) Disclosing to any relative or family member of the
51 consumer any information relating to a consumer's debt unless
52 such relative or family is known to the collector to be a member
53 of the same household as the consumer, except through proper
54 legal process or at the express and unsolicited request of the
55 relative or family member.

56 (3) Disclosing any information relating to a consumer's debt
57 by publishing or posting any list of consumers, except for credit-
58 reporting purposes and the publication and distribution of "stop
59 lists" to the point-of-sale locations where credit is extended, or by
60 advertising for sale any claim to enforce payemnt thereof, or in
61 any other manner other than through proper legal process.

62 (4) Using any form of communication to the consumer
63 which ordinarily would be seen by any other person that displays
64 or conveys any information about the alleged debt other than the
65 name, address, and phone number of the debt collector.

66 (d) No debt collector shall collect or attempt to collect debt or
67 obtain information concerning a consumer by any fraudulent,
68 deceptive, or misleading representation in any of the following
69 ways:

70 (1) Using any name, while engaged in debt collection, other
71 than the debt collector's legal name.

72 (2) Failing to disclose in all written communications made
73 to collect or attempt to collect a debt or to obtain or attempt to
74 obtain information about a consumer, that the debt collector is
75 attempting to collect a debt and that any information obtained
76 will be used for that purpose.

77 (3) Falsely representing that the debt collector has in his
78 possession information or something of value for the consumer in
79 order to obtain information about the consumer.

80 (4) Failing to disclose the name of the person to whom the
81 debt is owed at the time of making any demand for money.

82 (5) Intentionally falsely representing the character, extent,
83 or amount of a debt against a consumer or of its status in any
84 legal proceeding.

85 (6) Falsely representing or implying that any debt collector
86 is vouched for, bonded by, affiliated with, or is an instrumentality,
87 agent, or official of any agency of the federal, state, or local
88 government.

89 (7) Using or distributing or selling any written communica-
90 tion which simulates or is falsely represented to be a document
91 authorized, issued, or approved by a court, an official, or any
92 other legally constituted or authorized authority, or which creates
93 a false impression about its source or authorization.

94 (8) Falsely representing that an existing obligation of the
95 consumer may be increased by the addition of attorney's fees,
96 investigation fees, service fees, or any other fees or charges.

97 (9) Falsely representing the status or true nature of the
98 services rendered by the debt collector or his business.

99 (e) No debt collector shall collect or attempt to collect any debt
100 in any of the following ways:

101 (1) Seeking or obtaining any written statement of
102 acknowledgement in any form that specifies the debt is one
103 incurred for necessities of life where the original debt was not in
104 fact incurred for such necessities.

105 (2) Seeking or obtaining any written statement or
106 acknowledgment in any form containing an affirmation of any
107 debt by a consumer who has been declared bankrupt without
108 disclosing the nature and consequences of such affirmation and
109 the fact that the consumer is not legally obligated to make such
110 affirmation.

111 (3) Collecting or attempting to collect from the consumer all
112 or any part of the debt collector's fee or charge for services
113 rendered, or collecting or attempting to collect any interest or
114 other charge, fee, or expense incidental to the principal debt
115 unless such expense is authorized by contract or law.

116 (4) Communicating with a consumer whenever the creditor
117 of the consumer has notified the debt collector that the consumer
118 is represented by an attorney and the attorney's name and address
119 are known unless a written communication from the debt
120 collector to the attorney is unanswered within a reasonable period
121 of time or where the said attorney has consented thereto and the
122 debt collector has confirmed such consent in writing to said
123 attorney.

124 (f) No debt collector shall use, distribute, sell, or prepare for
125 use, any written communication that violates or fails to conform
126 to United States postal laws and regulations.

1 SECTION 4. [*Bona Fide Error.*] No person shall be guilty of a
2 violation of this act if the action complained of resulted from a
3 bona fide error notwithstanding the use of reasonable procedures
4 adopted to avoid such error.

1 SECTION 5. [*Penalties.*] Any person who violates a provision
2 of this act is guilty of a misdemeanor, and upon conviction is
3 punishable by a fine of not less than \$100 nor more than \$500 for
4 each violation. Such misdemeanor charge must be filed within
5 one year of the date of the alleged violation.

1 SECTION 6. [*Civil Remedies.*] Any person may seek injunc-
2 tive relief to prevent or restrain a violation of this act. Any person
3 may maintain an action for actual damages sustained as a result
4 of a violation of this act. A person who successfully maintains
5 such action shall be awarded attorneys' fees reasonable in relation
6 to the amount of work expended and costs. On a finding by the
7 court that an action under this section was brought in bad faith or
8 for purposes of harassment, the court shall award to the
9 defendant attorneys' fees reasonable in relation to the work
10 expended and costs.

1 SECTION 7. [*Other Remedies.*] None of the provisions of this
2 act shall affect or alter any remedies at law or in equity otherwise
3 available to debtors, creditors, government entities, or any other
4 legal entity.

1 SECTION 8. [*Severability.*] [Insert severability clause.]

1 SECTION 9. [*Repeal.*] [Insert repealer clause.]

1 SECTION 10. [*Effective Date.*] [Insert effective date.] July 4,
2 1976.



