

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Collection Agency Act is amended by changing Sections 2, 2.03, and 3 and by adding Sections 9.1, 9.2, 9.3, 9.4, and 9.7 as follows:

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

(Section scheduled to be repealed on January 1, 2016)

Sec. 2. Definitions. In this Act:

"Consumer credit transaction" means a transaction between a natural person and another person in which property, service, or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes.

"Consumer debt" or "consumer credit" means money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.

"Creditor" means a person who extends consumer credit to a debtor.

"Debt" means money, property, or their equivalent which is due or owing or alleged to be due or owing from a natural person to another person.

"Debt collection" means any act or practice in connection with the collection of consumer debts.

"Debt collector", "collection agency", or "agency" means any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection.

"Debtor" means a natural person from whom a debt collector seeks to collect a consumer debt that is due and owing or alleged to be due and owing from such person.

"Department" means Division of Professional Regulation within the Department of Financial and Professional Regulation.

"Director" means the Director of the Division of Professional Regulation within the Department of Financial and Professional Regulation.

"Person" means a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association, or other similar entity. ~~Unless the context clearly requires otherwise, the following terms have the meanings ascribed to them in Sections 2.01 through 2.02.~~

(Source: P.A. 78-1248.)

(225 ILCS 425/2.03) (from Ch. 111, par. 2005)

(Section scheduled to be repealed on January 1, 2016)

Sec. 2.03. This Act does not apply to persons whose collection activities are confined to and are directly related

to the operation of a business other than that of a collection agency, and specifically does not include the following:

1. Banks, including trust departments, affiliates, and subsidiaries thereof, fiduciaries, and financing and lending institutions (except those who own or operate collection agencies);
2. Abstract companies doing an escrow business;
3. Real estate brokers when acting in the pursuit of their profession;
4. Public officers and judicial officers acting under order of a court;
5. Licensed attorneys at law;
6. Insurance companies;
7. Credit unions, including affiliates and subsidiaries thereof;
8. Loan and finance companies;
9. Retail stores collecting their own accounts;
10. Unit Owner's Associations established under the Condominium Property Act, and their duly authorized agents, when collecting assessments from unit owners; and
11. Any person or business under contract with a creditor to notify the creditor's debtors of a debt using only the creditor's name.

(Source: P.A. 89-387, eff. 1-1-96.)

(225 ILCS 425/3) (from Ch. 111, par. 2006)

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

Sec. 3. A person, association, partnership, corporation, or other legal entity acts as a collection agency when he or it:

(a) Engages in the business of collection for others of any account, bill or other indebtedness;

(b) Receives, by assignment or otherwise, accounts, bills, or other indebtedness from any person owning or controlling 20% or more of the business receiving the assignment, with the purpose of collecting monies due on such account, bill or other indebtedness;

(c) Sells or attempts to sell, or gives away or attempts to give away to any other person, other than one registered under this Act, any system of collection, letters, demand forms, or other printed matter where the name of any person, other than that of the creditor, appears in such a manner as to indicate, directly or indirectly, that a request or demand is being made by any person other than the creditor for the payment of the sum or sums due or asserted to be due;

(d) Buys accounts, bills or other indebtedness ~~with recourse~~ and engages in collecting the same; or

(e) Uses a fictitious name in collecting its own accounts, bills, or debts with the intention of conveying to the debtor that a third party has been employed to make such collection.

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

(225 ILCS 425/9.1 new)

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

Sec. 9.1. Communication with persons other than debtor.

(a) Any debt collector or collection agency communicating with any person other than the debtor for the purpose of acquiring location information about the debtor shall:

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

(2) not state that the consumer owes any debt;

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

(4) not communicate by postcard;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by mail or telegram that indicates that the debt collector or collection agency is in the debt collection business or that the communication relates to the collection of a debt;
and

(6) after the debt collector or collection agency knows the debtor is represented by an attorney with regard to the subject debt and has knowledge of or can readily ascertain the attorney's name and address, not communicate with any person other than the attorney, unless the attorney fails to respond within a reasonable period of time, not less than 30 days, to communication from the debt collector or collection agency.

(225 ILCS 425/9.2 new)

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

Sec. 9.2. Communication in connection with debt collection.

(a) Without the prior consent of the debtor given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction, a debt collector or collection agency may not communicate with a debtor in connection with the collection of any debt in any of the following circumstances:

(1) At any unusual time, place, or manner that is known or should be known to be inconvenient to the debtor. In the absence of knowledge of circumstances to the contrary, a debt collector or collection agency shall assume that the convenient time for communicating with a debtor is after 8 o'clock a.m. and before 9 o'clock p.m. local time at the debtor's location.

(2) If the debt collector or collection agency knows the debtor is represented by an attorney with respect to such debt and has knowledge of or can readily ascertain, the attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the debtor.

(3) At the debtor's place of employment, if the debt collector or collection agency knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication.

(b) Except as provided in Section 9.1 of this Act, without the prior consent of the debtor given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector or collection agency may not communicate, in connection with the collection of any debt, with any person other than the debtor, the debtor's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection agency.

(c) If a debtor notifies a debt collector or collection agency in writing that the debtor refuses to pay a debt or that the debtor wishes the debt collector or collection agency to cease further communication with the debtor, the debt collector

or collection agency may not communicate further with the debtor with respect to such debt, except to perform any of the following tasks:

(1) Advise the debtor that the debt collector's or collection agency's further efforts are being terminated.

(2) Notify the debtor that the collection agency or creditor may invoke specified remedies that are ordinarily invoked by such collection agency or creditor.

(3) Notify the debtor that the collection agency or creditor intends to invoke a specified remedy.

If such notice from the debtor is made by mail, notification shall be complete upon receipt. (d) For the purposes of this Section, "debtor" includes the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator.

(225 ILCS 425/9.3 new)

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

Sec. 9.3. Validation of debts.

(a) Within 5 days after the initial communication with a debtor in connection with the collection of any debt, a debt collector or collection agency shall, unless the following information is contained in the initial communication or the debtor has paid the debt, send the debtor a written notice with each of the following disclosures:

(1) The amount of the debt.

(2) The name of the creditor to whom the debt is owed.

(3) That, unless the debtor, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency.

(4) That, if the debtor notifies the debt collector or collection agency in writing within the 30-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the debtor and a copy of the verification or judgment will be mailed to the debtor by the debt collector or collection agency.

(5) That upon the debtor's written request within the 30-day period, the debt collector or collection agency will provide the debtor with the name and address of the original creditor, if different from the current creditor. If the disclosures required under this subsection (a) are placed on the back of the notice, the front of the notice shall contain a statement notifying debtors of that fact.

(b) If the debtor notifies the debt collector or collection agency in writing within the 30-day period set forth in paragraph (3) of subsection (a) of this Section that the debt, or any portion thereof, is disputed or that the debtor requests the name and address of the original creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector

or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of the verification or judgment or name and address of the original creditor to the debtor.

(c) The failure of a debtor to dispute the validity of a debt under this Section shall not be construed by any court as an admission of liability by the debtor.

(225 ILCS 425/9.4 new)

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

Sec. 9.4. Debt collection as a result of identity theft.

(a) Upon receipt from a debtor of all of the following information, a debt collector or collection agency must cease collection activities until completion of the review provided in subsection (d) of this Section:

(1) A copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime for the specific debt being collected by the debt collector.

(2) The debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector, including (i) a Federal Trade Commission's Affidavit of Identity Theft, (ii) an Illinois Attorney General ID Theft Affidavit, or (iii) a written statement that certifies that the representations are true, correct, and contain no

material omissions of fact to the best knowledge and belief of the person submitting the certification. This written statement must contain or be accompanied by, each of the following, to the extent that an item listed below is relevant to the debtor's allegation of identity theft with respect to the debt in question:

(A) A statement that the debtor is a victim of identity theft.

(B) A copy of the debtor's driver's license or identification card, as issued by this State.

(C) Any other identification document that supports the statement of identity theft.

(D) Specific facts supporting the claim of identity theft, if available.

(E) Any explanation showing that the debtor did not incur the debt.

(F) Any available correspondence disputing the debt after transaction information has been provided to the debtor.

(G) Documentation of the residence of the debtor at the time of the alleged debt, which may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor and showing that the debtor lived at another residence at the time the debt was incurred.

(H) A telephone number for contacting the debtor

concerning any additional information or questions or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement.

(I) To the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible.

(J) An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.

(b) A written certification submitted pursuant to item (iii) of paragraph (2) of subsection (a) of this Section shall be sufficient if it is in substantially the following form:

"I certify that the representations made are true, correct, and contain no material omissions of fact known to me.

(Signature)

(Date)"

(c) If a debtor notifies a debt collector or collection agency orally that he or she is a victim of identity theft, the debt collector or collection agency shall notify the debtor orally or in writing, that the debtor's claim must be in writing. If a debtor notifies a debt collector or collection

agency in writing that he or she is a victim of identity theft, but omits information required pursuant to this Section, if the debt collector or collection agency does not cease collection activities, the debt collector or collection agency must provide written notice to the debtor of the additional information that is required or send the debtor a copy of the Federal Trade Commission's Affidavit of Identity Theft form.

(d) Upon receipt of the complete statement and information described in subsection (a) of this Section, the debt collector shall review and consider all of the information provided by the debtor and other information available to the debt collector or collection agency in its file or from the creditor. The debt collector or collection agency may recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. The debt collector or collection agency must notify the consumer in writing of that determination and the basis for that determination before proceeding with any further collection activities. The debt collector's or collection agency's determination shall be based on all of the information provided by the debtor and other information available to the debt collector or collection agency in its file or from the creditor.

(e) No inference or presumption that the debt is valid or invalid or that the debtor is liable or not liable for the debt

may arise if the debt collector or collection agency decides after the review described in subsection (d) to cease or recommence the debt collection activities. The exercise or non-exercise of rights under this Section is not a waiver of any other right or defense of the debtor or debt collector.

(f) A debt collector or collection agency that (i) ceases collection activities under this Section, (ii) does not recommence those collection activities, and (iii) furnishes adverse information to a consumer credit reporting agency, must notify the consumer credit reporting agency to delete that adverse information.

(225 ILCS 425/9.7 new)

Sec. 9.7. Enforcement under the Consumer Fraud and Deceptive Business Practices Act. The Attorney General may enforce the knowing violation of Section 9 (except for items (1) through (9) and (19) of subsection (a)), 9.1, 9.2, 9.3, or 9.4 of this Act as an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

(225 ILCS 425/2.01 rep.)

(225 ILCS 425/2.02 rep.)

Section 10. The Collection Agency Act is amended by repealing Sections 2.01 and 2.02.

Section 99. Effective date. This Act takes effect January 1, 2008.