



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
SB2456

Introduced 2/3/2004, by Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

30 ILCS 210/2	from Ch. 15, par. 152
225 ILCS 425/8d new	
225 ILCS 425/9	from Ch. 111, par. 2012

Amends the Illinois State Collection Act of 1986. Provides that the debt collection and write-off provisions of this Act shall not apply to the Illinois Supreme Court or the Illinois circuit courts in the collection of unpaid court fines and fees. Amends the Collection Agency Act. Provides that, at the time a past due account is forwarded to a third-party collector, units of Illinois State or local government or the judiciary may provide for the imposition of a collection fee added to any amounts past due. Provides that the collection fee is to be collected under a contract.

LRB093 20572 AMC 46382 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning collections.

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

4 Section 5. The Illinois State Collection Act of 1986 is
5 amended by changing Section 2 as follows:

6 (30 ILCS 210/2) (from Ch. 15, par. 152)

7 Sec. 2. This Act applies to all accounts or claims owed to
8 "State agencies", as that term is defined in the Illinois State
9 Auditing Act, except that the debt collection and write-off
10 provisions of this Act shall not apply to the Illinois State
11 Scholarship Commission in the administration of its student
12 loan programs nor to the Illinois Supreme Court nor the
13 Illinois circuit courts in the collection of unpaid court fines
14 and fees. To the extent that some other statute prescribes
15 procedures for collection of particular types of accounts or
16 claims owed to State agencies in conflict with the provisions
17 of this Act, such other statute shall continue in full force
18 and effect. The debt collection and write-off provisions of
19 this Act may be utilized by the General Assembly, the Supreme
20 Court and the several courts of this State, and the
21 constitutionally elected State Officers, at their discretion.
22 However reporting requirements established by the comptroller
23 shall be followed by all State agencies. The provisions of this
24 Act shall be utilized at all times by all departments,
25 agencies, divisions, and offices under the jurisdiction of the
26 Governor.

27 (Source: P.A. 85-814.)

28 Section 10. The Collection Agency Act is amended by
29 changing Section 9 and by adding Section 8d as follows:

30 (225 ILCS 425/8d new)

1 (Section scheduled to be repealed on January 1, 2006)

2 Sec. 8d. Collection fees. At the time a past due account is
3 forwarded to a third-party collector, units of Illinois State
4 or local government or the judiciary may provide for the
5 imposition of a collection fee added to any amounts past due.
6 This collection fee shall be in addition to any other amounts
7 owed to such units of State or local government or the
8 judiciary. The collection fee is to be collected under a
9 contract authorized by this Section. The person or entity
10 liable for any amounts to be collected under the contract is
11 liable for the collection fee. The collection fee may be
12 collected under the contract in addition to the other amounts
13 due. The amount of the collection fee is the amount provided by
14 the contract, whether a specified amount or an amount
15 contingent on the amount collected or another factor, for
16 compensation of the person with whom the contract is made and
17 any court costs or attorney's fees incurred in collecting the
18 amount owed to the State, units of local government or the
19 judiciary within Illinois.

20 (225 ILCS 425/9) (from Ch. 111, par. 2012)

21 (Section scheduled to be repealed on January 1, 2006)

22 Sec. 9. (a) The Department may refuse to issue or renew, or
23 may revoke, suspend, place on probation, reprimand or take
24 other disciplinary action as the Department may deem proper,
25 including fines not to exceed \$1,000 per licensee per
26 complaint, for any one or any combination of the following
27 causes:

28 (1) Violations of this Act or of the rules promulgated
29 hereunder.

30 (2) Conviction of the collection agency or the
31 principals of the agency of any crime under the laws of any
32 U.S. jurisdiction which is a felony, a misdemeanor an
33 essential element of which is dishonesty, or of any crime
34 which directly relates to the practice of the profession.

35 (3) Making any misrepresentation for the purpose of

1 obtaining a license or certificate.

2 (4) Habitual or excessive use or addiction to alcohol,
3 narcotics, stimulants or any other chemical agent or drug
4 which results in the inability to practice with reasonable
5 judgment, skill, or safety by any of the principals of a
6 collection agency.

7 (5) Discipline by another U.S. jurisdiction or foreign
8 nation, if at least one of the grounds for the discipline
9 is the same or substantially equivalent to those set forth
10 in this Act.

11 (6) A finding by the Department that the licensee,
12 after having his license placed on probationary status, has
13 violated the terms of probation.

14 (7) Practicing or attempting to practice under a name
15 other than the name as shown on his or her license or any
16 other legally authorized name.

17 (8) A finding by the Federal Trade Commission that a
18 licensee violated the Federal Fair Debt and Collection Act
19 or its rules.

20 (9) Failure to file a return, or to pay the tax,
21 penalty or interest shown in a filed return, or to pay any
22 final assessment of tax, penalty or interest, as required
23 by any tax Act administered by the Illinois Department of
24 Revenue until such time as the requirements of any such tax
25 Act are satisfied.

26 (10) Using or threatening to use force or violence to
27 cause physical harm to a debtor, his family or his
28 property.

29 (11) Threatening to instigate an arrest or criminal
30 prosecution where no basis for a criminal complaint
31 lawfully exists.

32 (12) Threatening the seizure, attachment or sale of a
33 debtor's property where such action can only be taken
34 pursuant to court order without disclosing that prior court
35 proceedings are required.

36 (13) Disclosing or threatening to disclose information

1 adversely affecting a debtor's reputation for credit
2 worthiness with knowledge the information is false.

3 (14) Initiating or threatening to initiate
4 communication with a debtor's employer unless there has
5 been a default of the payment of the obligation for at
6 least 30 days and at least 5 days prior written notice, to
7 the last known address of the debtor, of the intention to
8 communicate with the employer has been given to the
9 employee, except as expressly permitted by law or court
10 order.

11 (15) Communicating with the debtor or any member of the
12 debtor's family at such a time of day or night and with
13 such frequency as to constitute harassment of the debtor or
14 any member of the debtor's family. For purposes of this
15 Section the following conduct shall constitute harassment:

16 (A) Communicating with the debtor or any member of
17 his or her family in connection with the collection of
18 any debt without the prior consent of the debtor given
19 directly to the debt collector, or the express
20 permission of a court of competent jurisdiction, at any
21 unusual time or place or a time or place known or which
22 should be known to be inconvenient to the debtor. In
23 the absence of knowledge of circumstances to the
24 contrary, a debt collector shall assume that the
25 convenient time for communicating with a consumer is
26 after 8 o'clock a.m. and before 9 o'clock p.m. local
27 time at the debtor's location.

28 (B) The threat of publication or publication of a
29 list of consumers who allegedly refuse to pay debts,
30 except to a consumer reporting agency.

31 (C) The threat of advertisement or advertisement
32 for sale of any debt to coerce payment of the debt.

33 (D) Causing a telephone to ring or engaging any
34 person in telephone conversation repeatedly or
35 continuously with intent to annoy, abuse, or harass any
36 person at the called number.

1 (16) Using profane, obscene or abusive language in
2 communicating with a debtor, his or her family or others.

3 (17) Disclosing or threatening to disclose information
4 relating to a debtor's indebtedness to any other person
5 except where such other person has a legitimate business
6 need for the information or except where such disclosure is
7 regulated by law.

8 (18) Disclosing or threatening to disclose information
9 concerning the existence of a debt which the debt collector
10 knows to be reasonably disputed by the debtor without
11 disclosing the fact that the debtor disputes the debt.

12 (19) Engaging in any conduct which the Director finds
13 was intended to cause and did cause mental or physical
14 illness to the debtor or his or her family.

15 (20) Attempting or threatening to enforce a right or
16 remedy with knowledge or reason to know that the right or
17 remedy does not exist.

18 (21) Failing to disclose to the debtor or his or her
19 family the corporate, partnership or proprietary name, or
20 other trade or business name, under which the debt
21 collector is engaging in debt collections and which he or
22 she is legally authorized to use.

23 (22) Using any form of communication which simulates
24 legal or judicial process or which gives the appearance of
25 being authorized, issued or approved by a governmental
26 agency or official or by an attorney at law when it is not.

27 (23) Using any badge, uniform, or other indicia of any
28 governmental agency or official except as authorized by
29 law.

30 (24) Conducting business under any name or in any
31 manner which suggests or implies that a debt collector is
32 bonded if such collector is or is a branch of or is
33 affiliated with any governmental agency or court if such
34 collector is not.

35 (25) Failing to disclose, at the time of making any
36 demand for payment, the name of the person to whom the

1 claim is owed and at the request of the debtor, the address
2 where payment is to be made and the address of the person
3 to whom the claim is owed.

4 (26) Misrepresenting the amount of the claim or debt
5 alleged to be owed.

6 (27) Representing that an existing debt may be
7 increased by the addition of attorney's fees,
8 investigation fees or any other fees or charges when such
9 fees or charges may not legally be added to the existing
10 debt.

11 (28) Representing that the debt collector is an
12 attorney at law or an agent for an attorney if he is not.

13 (29) Except as provided in Section 8d, collecting
14 ~~Collecting~~ or attempting to collect any interest or other
15 charge or fee in excess of the actual debt or claim unless
16 such interest or other charge or fee is expressly
17 authorized by the agreement creating the debt or claim
18 unless expressly authorized by law or unless in a
19 commercial transaction such interest or other charge or fee
20 is expressly authorized in a subsequent agreement. If a
21 contingency or hourly fee arrangement (i) is established
22 under an agreement between a collection agency and a
23 creditor to collect a debt and (ii) is paid by a debtor
24 pursuant to a contract between the debtor and the creditor,
25 then that fee arrangement does not violate this Section
26 unless the fee is unreasonable. The Department shall
27 determine what constitutes a reasonable collection fee.

28 (30) Communicating or threatening to communicate with
29 a debtor when the debt collector is informed in writing by
30 an attorney that the attorney represents the debtor
31 concerning the claim, unless authorized by the attorney. If
32 the attorney fails to respond within a reasonable period of
33 time, the collector may communicate with the debtor. The
34 collector may communicate with the debtor when the attorney
35 gives his consent.

36 (31) Engaging in dishonorable, unethical, or

1 unprofessional conduct of a character likely to deceive,
2 defraud, or harm the public.

3 (b) The Department shall deny any license or renewal
4 authorized by this Act to any person who has defaulted on an
5 educational loan guaranteed by the Illinois State Scholarship
6 Commission; however, the Department may issue a license or
7 renewal if the person in default has established a satisfactory
8 repayment record as determined by the Illinois State
9 Scholarship Commission.

10 No debt collector while collecting or attempting to collect
11 a debt shall engage in any of the Acts specified in this
12 Section, each of which shall be unlawful practice.

13 (Source: P.A. 91-768, eff. 1-1-01.)