



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5016

Introduced 2/7/2012, by Rep. Lou Lang

#### SYNOPSIS AS INTRODUCED:

225 ILCS 425/2

from Ch. 111, par. 2002

225 ILCS 425/8.5 new

Amends the Collection Agency Act. Defines "charge-off date", "collection agency" or "agency", "debt buyer", and "principal balance" or "charge-off balance". Provides that if a debt buyer commences litigation against a debtor, then the debt buyer shall attach to the complaint an affidavit. Provides that a debt buyer shall be subject to all of the terms, conditions, and requirements of the Act, except that a debt buyer shall not be required to (i) file and maintain in force a surety bond; (ii) maintain a trust account; (iii) procure written authorization to refer the account to an attorney for suit; or (iv) adhere to the assignment for collection criteria. Provides that the Attorney General may enforce against debt buyers specified provisions under the Act as an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. Effective immediately.

LRB097 18247 CEL 63473 b

1 AN ACT concerning regulation.

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

4 Section 5. The Collection Agency Act is amended by changing  
5 Section 2 and by adding Section 8.5 as follows:

6 (225 ILCS 425/2) (from Ch. 111, par. 2002)

7 (Section scheduled to be repealed on January 1, 2016)

8 Sec. 2. Definitions. In this Act:

9 "Charge-off date" means the date on which a receivable is  
10 treated as a loss or expense.

11 "Collection agency" or "agency" means any person engaged in  
12 the business of collecting or receiving for payment for others  
13 of any account, bill, or other indebtedness from a debtor.

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

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

23 "Creditor" means a person who extends consumer credit to a

1 debtor.

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

5 "Debt buyer" means any person whose principal business  
6 activity is purchasing accounts for value and acquiring all  
7 rights in and ownership of a debt.

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

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

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

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

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

23 "Person" means a natural person, partnership, corporation,  
24 limited liability company, trust, estate, cooperative,  
25 association, or other similar entity.

26 "Principal balance" or "charge-off balance" means an

1 account principal and other legally collectible costs,  
2 expenses, and interest that are accrued prior to the charge-off  
3 date, less any payments or settlements.

4 (Source: P.A. 95-437, eff. 1-1-08.)

5 (225 ILCS 425/8.5 new)

6 Sec. 8.5. Debt buyers.

7 (a) The provisions of this Section shall apply to debt  
8 buyers. If a debt buyer commences litigation against a debtor,  
9 then the debt buyer shall attach to the complaint an affidavit  
10 in substantially the following form:

11 "[ CAPTION OF COURT PROCEEDING]  
12 AFFIDAVIT OF ACCOUNT OWNERSHIP

13 I,....., being first duly  
14 sworn upon my oath, depose and state as follows:

15 1. I am an employee of ....., the plaintiff in  
16 this case and a debt buyer as defined in Section 2 of the  
17 Collection Agency Act ("debt buyer").

18 2. I am authorized to execute this affidavit on behalf  
19 of the debt buyer, and I am over the age of 18 and  
20 competent to testify as to the matters contained herein.

21 3. In my capacity as an employee of the debt buyer, I  
22 have access to the records maintained in the ordinary

1 course of business of the debt buyer, including the records  
2 for and relating to the subject account. Those records  
3 include records acquired by the debt buyer at the time it  
4 purchased the account from the transferor and records  
5 generated by the debt buyer relating to the account since  
6 the time it was purchased. I have reviewed or caused to be  
7 reviewed those records relating to the account, and I make  
8 this affidavit based upon that review and my own personal  
9 knowledge of how the records are kept and maintained. The  
10 account records generated by the debt buyer are made at or  
11 near the time of the event, by or from information  
12 transmitted by a person with knowledge of such information.  
13 It is the regular practice of the debt buyer to keep such  
14 records in the ordinary course of its regularly conducted  
15 business activity.

16 4. The debt buyer owns the account that is the subject  
17 of the pending collection action.

18 5. The debt buyer has filed this case within the  
19 applicable statutory period of limitations.

20 6. The records of the debt buyer reflect that [debtor  
21 name(s)], defendant in this case, was issued credit by  
22 [creditor name], with an account number of [redacted  
23 original account number] and that [creditor name], charged  
24 off said account on [charge-off date]. The last payment  
25 received on the debtor's account was on [last payment  
26 date]. There is a balance due and owing to the debt buyer

1 on this account in the amount of [charge-off balance due]  
2 and the debt buyer has not received payment of that balance  
3 due.

4 Further affiant sayeth naught.

5 .....

6 (Signature of Affiant)

7 Print Name:.....

8 Print Title:.....

9 Debt Buyer:.....

10 SUBSCRIBED AND SWORN TO

11 Before me, this.....day of .....,.....

12 .....

13 Notary Public".

14 (b) With respect to its activities as a debt buyer in  
15 pursuing the collection of accounts it owns, a debt buyer shall  
16 be subject to all of the terms, conditions, and requirements of  
17 this Act, except that a debt buyer shall not be required to (i)  
18 file and maintain in force a surety bond under Section 8 of  
19 this Act; (ii) maintain a trust account under Section 8c of  
20 this Act; (iii) procure written authorization to refer the  
21 account to an attorney for suit under Section 8a-1 of this Act;  
22 or (iv) adhere to the assignment for collection criteria under  
23 Section 8b of this Act.

1           (c) The Attorney General may enforce against debt buyers  
2           the provisions identified in Section 9.7 of this Act as an  
3           unlawful practice under the Consumer Fraud and Deceptive  
4           Business Practices Act.

5           Section 99. Effective date. This Act takes effect upon  
6           becoming law.