

[First Reprint]

ASSEMBLY, No. 2493

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MARCH 10, 2008

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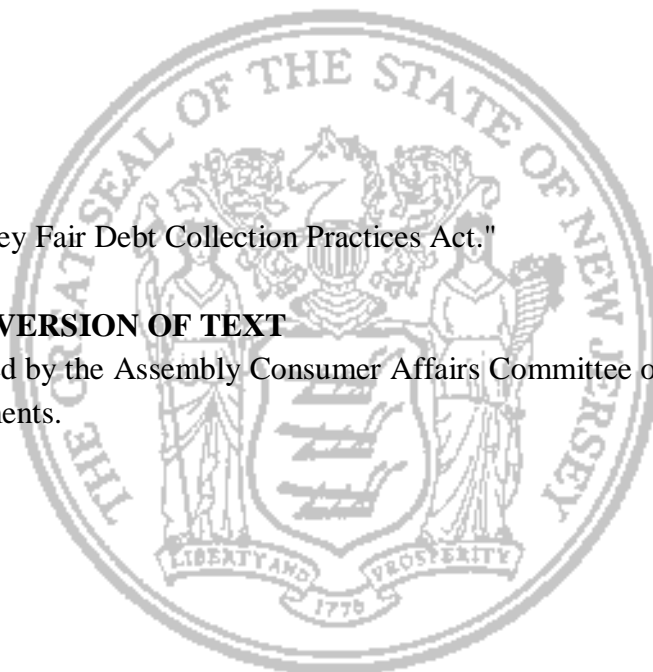
Assemblyman L.Smith, Assemblywoman Rodriguez and Assemblyman Ramos

SYNOPSIS

"New Jersey Fair Debt Collection Practices Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Consumer Affairs Committee on June 4, 2009,
with amendments.



(Sponsorship Updated As Of: 6/16/2009)

1 AN ACT concerning debt collection practices and supplementing
2 P.L.1960, c.39 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "New Jersey
8 Fair Debt Collection Practices Act."

9

10 2. The Legislature hereby finds and declares that:

11 a. The ability of consumers to obtain credit depends upon the
12 ability of creditors to collect just and owing debts.

13 b. There is substantial evidence of the use of abusive,
14 deceptive, and unfair debt collection practices by many debt
15 collectors.

16 c. Abusive, deceptive and unfair collection practices may
17 constitute invasions of personal privacy, and may result in adverse
18 social consequences such as family instability, the loss of jobs or
19 employment opportunity and damage of reputation in the
20 community; additionally, such conduct may undermine the public
21 confidence which is essential to the continued functioning of the
22 banking and credit system and sound extensions of credit to
23 consumers.

24 d. Consumers will benefit through new a State law to
25 complement the federal statutes governing abusive, deceptive and
26 unfair collection practices, which will provide greater incentive for
27 debt collectors to act honestly and fairly with due regard to the
28 rights of debtors, and greater accountability when they fail to do so.

29 e. It is the purpose of this act to prohibit debt collectors from
30 engaging in abusive, deceptive and unfair collection practices in the
31 collection of debts arising from consumer transactions, and the
32 provisions hereof should be liberally construed.

33

34 3. As used in this act:

35 "Consumer" means a natural person.

36 "Consumer reporting agency" means any person which, for
37 monetary fees, dues, or on a cooperative nonprofit basis, regularly
38 engages, in whole or in part, in the practice of assembling or
39 evaluating consumer credit information or other information on
40 consumers for the purpose of furnishing consumer reports to third
41 parties, and which uses any means or facility for the purpose of
42 preparing or furnishing consumer reports.

43 "Consumer transaction" means a transaction pursuant to which a
44 consumer becomes obligated to pay for goods, services or anything

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACO committee amendments adopted June 4, 2009.

1 of value, including money, used primarily for personal, family or
2 household purposes. A consumer transaction shall not include
3 leases of real property.

4 "Credit" means the right granted by a person to a consumer to
5 defer payment of a debt, to incur debt and defer its payment, or
6 purchase property or services and defer payment.

7 "Creditor" means a person who extends credit to consumers in
8 connection with consumer transactions.

9 "Debt" means any obligation or alleged obligation to pay money
10 directly or indirectly arising out of a consumer transaction. The
11 term "debt" shall include, but is not limited to a check, as defined in
12 subsection f. of section N.J.S.12A:3-104, given in a consumer
13 transaction.

14 "Debtor" means a person who owes a debt arising out of a
15 consumer transaction.

16 "Debt collector" means any person who by any direct or indirect
17 action, conduct, or practice, collects or attempts to collect ¹for
18 another,¹ a debt that is owed or due, or alleged to be owed by or due
19 from a debtor in this State as a result of a consumer transaction. The
20 term "debt collector" includes, but is not limited to, an attorney, and
21 any person working under the direction or control of an attorney,
22 who regularly collects or attempts to collect, directly or indirectly, a
23 debt that is owed or due, or alleged to be owed by or due from a
24 debtor in this State as a result of a consumer transaction. ¹The term
25 "debt collector" includes any creditor who, in the process of
26 collecting his own debts, uses any name other than his own which
27 would indicate that a third person is collecting or attempting to
28 collect such debts.¹ The term "debt collector" does not include:
29 any officer or employee of the United States or any state, or
30 agencies or instrumentalities of any state, to the extent that
31 collecting or attempting to collect a debt is in the performance of
32 any official duties ¹including a private entity contracted to act on
33 behalf of a state agency or instrumentality in the collection of a
34 state debt; any person commencing or engaged in litigation to
35 collect a debt while acting within the scope of that litigation or
36 effecting a judicial remedy ordered pursuant to that litigation¹ ; or
37 any person while serving or attempting to serve legal process on
38 any other person in connection with the judicial enforcement of any
39 debt.

40 "Person" means an individual, corporation, trust, partnership,
41 incorporated or unincorporated association or any other legal entity.

42
43 4. a. A debt collector shall not communicate with a debtor in
44 connection with the collection of any debt under any of the
45 following circumstances, unless the debtor has given prior written
46 consent directly to the debt collector for that communication, or a

1 court of competent jurisdiction has given express permission for
2 that communication:

3 (1) At any time or place known or which should be known to be
4 inconvenient to the debtor. In the absence of knowledge of
5 circumstances to the contrary, it shall be presumed that the
6 convenient time for communicating with a debtor is after 8 a.m. and
7 before 9 p.m., local time at the debtor's location;

8 (2) If the debt collector knows that the debtor is represented by
9 an attorney with respect to that debt and has knowledge of, or can
10 readily ascertain, that attorney's name and address, unless the
11 attorney fails to respond within a reasonable period of time to a
12 communication from the debt collector or 'unless' the debtor's
13 attorney '[is informed by the debtor, of the debtor's express
14 consent] consents' to the debt collector's direct communication
15 with the debtor; or

16 (3) At the debtor's place of employment, except that:

17 (a) The debt collector may send a single letter to the debtor at the
18 debtor's place of employment if the debt collector has been unable
19 to locate the debtor at the debtor's residence 'and does not know or
20 have reason to know that the debtor's employer prohibits the debtor
21 from receiving such communication'; and

22 (b) The debt collector may telephone the debtor at the debtor's
23 place of employment if the debt collector has been unable to contact
24 the debtor at his residence, provided that:

25 (i) the debt collector does not know or have reason to know that
26 the debtor's employer prohibits the debtor from receiving a non-
27 emergency, non-employment related communication;

28 (ii) the debtor has not informed the debt collector that he does
29 not wish the debt collector to communicate or attempt to
30 communicate with him at his place of employment; and

31 (iii) the debt collector does not inform the employer of the nature
32 of the call.

33 b. In no event shall the debt collector make more than one
34 telephone call per month to the debtor at his place of employment
35 'as may be authorized under subparagraph (b) of paragraph (3) of
36 subsection a. of this section' unless the debtor affirmatively
37 indicates in writing that the debt collector is to call the debtor at the
38 debtor's place of employment. For the purposes of this subsection,
39 any language in any instrument creating the debt which purports to
40 authorize phone calls at the debtor's place of employment shall not
41 be considered an affirmative indication that the debtor desires the
42 debt collector to call him at his place of employment.

43 c. A debt collector shall not communicate with the debtor by
44 means of a written communication, including on an envelope, which
45 readily displays or conveys to any person, other than the recipient
46 debtor, any information about the debtor's debt or that uses any
47 language or symbol that indicates that the debt collector is in the

1 debt collection business or that the communication relates to the
2 collection of a debt.

3 d. If a debtor notifies a debt collector in writing that the debtor
4 refuses to pay a debt or that the debtor wishes the debt collector to
5 cease further communication with the debtor, the debt collector
6 shall not communicate further with the debtor with respect to that
7 debt, except:

8 (1) To advise the debtor that the debt collector's further efforts
9 are being terminated;

10 (2) To notify the debtor that the debt collector or creditor may
11 invoke specified remedies which are ordinarily invoked by the debt
12 collector or creditor; or

13 (3) Where applicable, to notify the debtor that the debt collector
14 or creditor intends to invoke a specified remedy.

15 'If such notice from the debtor is made by mail, notification shall
16 be complete upon receipt.'
17

18 5. a. A debt collector shall not, unless the debtor has given prior
19 written consent directly to the debt collector prior written consent
20 for that communication, or a court of competent jurisdiction has
21 given express permission for such communication:

22 (1) Communicate information regarding a debt to any member of
23 the debtor's family, other than the debtor's spouse '[or],' the
24 parents or guardians of the debtor who is either a minor or who
25 resides in the same household with that parent or guardian, 'or an
26 adult child living in the same household and managing the affairs of
27 a parent who is the debtor,' prior to obtaining a judgment against
28 the debtor, except where the purpose of the communication is to
29 locate the debtor.

30 (2) Communicate to any person any list of debtors that discloses
31 the nature or existence of a debt, commonly known as "deadbeat
32 lists," or in advertising any debt for sale, by naming the debtor.

33 b. A debt collector may communicate with any person other than
34 the debtor for the purpose of acquiring location information about
35 the debtor, provided that the debt collector shall:

36 (1) Identify himself; state that he is acquiring, confirming or
37 correcting location information concerning the debtor; and, only if
38 expressly requested, identify his employer;

39 (2) Not state that the debtor owes any debt;

40 (3) Not communicate with any person more than once, unless
41 requested to do so by that person or unless the debt collector
42 reasonably believes that the earlier response of that person is
43 erroneous or incomplete and that the person now has correct or
44 complete location information;

45 (4) Not communicate by postcard;

46 (5) Not use any language or symbol on any envelope or in the
47 contents of any written communication that displays or conveys that

1 the debt collector is in the debt collection business or that the
2 communication relates to the collection of a debt.

3 c. A debt collector may, without the prior written consent of the
4 debtor or the debtor's attorney:

5 (1) Communicate in writing with the debtor's employer for the
6 limited purpose of locating the debtor; or

7 (2) Communicate orally or in writing with the debtor's employer
8 for the limited purpose of verifying the debtor's employment.

9 If the debt collector receives no response from the employer
10 within 15 days, the debt collector may make additional attempts to
11 contact the employer, but not more than once in a seven-day period.

12 d. After a debt collector knows the debtor is represented by an
13 attorney with regard to the subject debt and has knowledge of, or
14 can readily ascertain, that attorney's name and address, the debt
15 collector shall not communicate with any person other than that
16 attorney, unless the attorney fails to respond within a reasonable
17 period of time to communication from the debt collector.

18 e. Except as provided in this section, a debt collector shall not
19 communicate, in connection with the collection of any debt, with
20 any person other than the debtor, the debtor's attorney, a consumer
21 reporting agency if otherwise permitted by law, the creditor, the
22 attorney of the creditor or the attorney of the debt collector, unless
23 the debtor has given prior written consent directly to the debt
24 collector for that communication, or a court of competent
25 jurisdiction has given express permission for that communication,
26 or the communication is reasonably necessary to effectuate a post-
27 judgment judicial remedy.

28

29 6. a. Within five days after the initial communication with a
30 debtor in connection with the collection of any debt, a debt collector
31 shall, unless the following information is contained in the initial
32 communication or the debtor has paid the debt, send the debtor a
33 written notice containing:

34 (1) The amount of the debt owed to the creditor, separately
35 stating any additional fees and charges;

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

37 (3) A statement that unless the debtor, within 30 days after
38 receipt of the notice, disputes the validity of the debt or any portion
39 of the debt, the debt will be assumed to be valid by the debt
40 collector;

41 (4) A statement that if the debtor notifies the debt collector in
42 writing within the 30-day period that the debt, or any portion of the
43 debt, is disputed, the debt collector will obtain verification of the
44 debt or a copy of a judgment against the debtor and a copy of the
45 verification or judgment will be mailed to the debtor by the debt
46 collector; and

47 (5) A statement that, upon the debtor's written request within the
48 30-day period, the debt collector will provide the debtor with the

1 name and address of the original creditor, if different from the
2 current creditor.

3 b. If the debtor notifies the debt collector in writing within the
4 30-day period described in subsection a. of this section that the
5 debt, or any portion of the debt, is disputed or that the debtor
6 requests the name and address of the original creditor, the debt
7 collector shall cease collection of the debt or any disputed portion
8 of the debt, until the debt collector obtains the name and address of
9 the original creditor and verification of the debt or a copy of the
10 judgment and mails them to the debtor. If the debt collector cannot
11 produce the required verification or copy of the judgment, it shall
12 cease all collection activities.

13 c. A debt collector 'and creditor' shall cease collection
14 activities until completion of the review required by subsection e. of
15 this section, upon receipt from a debtor of the debtor's written
16 statement that the debtor claims to be the victim of identity theft
17 with respect to the specific debt being collected by the debt
18 collector 'or the creditor', consisting of 'a copy of a police report,
19 including the case number, that the debtor shall have filed with a
20 federal, state, or local law enforcement agency reporting the claim
21 of identity theft and' either:

22 (1) The Federal Trade Commission's standardized ID Theft
23 Affidavit as established pursuant to section 609 (e) (2) (B) (ii) (I) of
24 the federal "Fair Credit Reporting Act," Pub.L.91-508 (15 U.S.C.
25 s.1681g (e) (2) (b) (ii) (I), or

26 (2) A written statement that certifies that the representations are
27 true, correct, and contain no material omissions of fact to the best
28 knowledge and belief of the debtor. The statement shall contain, or
29 be accompanied by, the following, to the extent that an item listed
30 below is relevant to the debtor's allegation of identity theft with
31 respect to the debt in question:

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

33 (b) Specific facts supporting the claim of identity theft, if
34 available.

35 (c) Any explanation showing that the debtor did not incur the
36 debt.

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

39 (e) Documentation of the residence of the debtor at the time the
40 alleged debt was incurred.

41 (f) A telephone number for contacting the debtor concerning any
42 additional information or questions, or direction that further
43 communications to the debtor be in writing only, with the mailing
44 address specified in the statement.

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

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

3 (i) The certification required pursuant to this paragraph shall be
4 sufficient if it is in substantially the following form:

5 "I certify the representations made are true and correct, and
6 contain no material omissions of fact. I further certify that the
7 copies of all documents attached to this certificate are true, correct
8 and complete copies of the original documents. I am aware that if
9 any of the foregoing statements made by me are willfully false, I am
10 subject to punishment.

11 _____" (Date and Place) (Signature)

12 A debtor submitting the affidavit or certification who declares as
13 true any material matter pursuant to this subsection that he knows to
14 be false is guilty of a disorderly persons offense.

15 d. If a debtor notifies a debt collector 'or a creditor' orally that
16 he is a victim of identity theft, the debt collector 'or the creditor, as
17 the case may be.' shall notify the debtor, in writing, that the
18 debtor's claim must be in writing. If a debtor notifies a debt
19 collector 'or a creditor' in writing that he is a victim of identity
20 theft, but omits information required pursuant to subsection c. of
21 this section, then the debt collector 'or a creditor' must:

22 (1) Cease collection activities; or

23 (2) Provide written notice to the debtor of the additional
24 information that is required or send the debtor a copy of the Federal
25 Trade Commission's ID Theft Affidavit.

26 e. Upon receipt of the complete statement and information
27 required by subsection c. of this section, the debt collector 'or the
28 creditor' shall review and consider all of the information provided
29 by the debtor and other information available to the debt collector
30 '[in his file or from the creditor] or the creditor', and shall
31 determine whether the information establishes that the debtor is not
32 responsible for the specific debt in question. The debt collector 'or
33 the creditor' shall notify the debtor in writing of that determination
34 and the basis for it. If the debt collector 'or the creditor' makes a
35 good faith determination that the information failed to establish that
36 the debtor is not responsible for the specific debt in question, the
37 debt collector 'or the creditor' may recommence debt collection
38 activities. Recommencement of debt collection activities without
39 making a determination that the information does not establish the
40 debtor's responsibility for the specific debt in question, or if that
41 determination was not made in good faith, shall constitute a
42 violation of this act.

43 f. No inference or presumption that the debt is valid or invalid,
44 or that the debtor is liable or not liable for the debt, shall arise from
45 the determination of the debt collector 'or the creditor' after the
46 review described in subsection e. of this section. The exercise or

1 non-exercise of rights under this section shall not be deemed a
2 waiver of any other right or defense of the debtor or debt collector.

3 g. A debt collector 'or creditor' who ceases collection activities
4 under this section shall do all of the following:

5 (1) If the debt collector 'or creditor' has furnished adverse
6 information to a consumer credit reporting agency, notify the
7 agency '~~to delete~~' that '~~information~~ debt collection activities
8 have been terminated'; and

9 (2) '~~Notify~~ In the case of a debt collector, notify' the creditor
10 that debt collection activities have been terminated.

11 h. A debt collector who has possession of documents that the
12 debtor is entitled to request from a creditor is authorized to provide
13 those documents to the debtor.

14 i. The failure of a debtor to dispute the validity of a debt under
15 this section may not be construed by any court as an admission of
16 liability by the debtor.

17

18 7. a. '~~A~~ No' debt collector 'or creditor' shall '~~not~~' engage
19 in any conduct, the natural consequence of which is to harass,
20 oppress, intimidate or abuse any person in connection with the
21 collection of a debt.

22 b. '~~A~~ No' debt collector 'or creditor' shall '~~not~~' use any
23 false, deceptive or misleading representation or means in
24 connection with the collection of any debt.

25 c. '~~A~~ No' debt collector 'or creditor' shall '~~not~~' use unfair
26 or unconscionable means to collect or attempt to collect any debt.

27 d. '~~A~~ debt collector shall not report solely in his own name any
28 credit or debt information to a consumer reporting agency.

29 e. '~~A~~ No' debt collector 'or creditor' shall '~~not~~' report to a
30 consumer reporting agency any credit or debt information regarding
31 overdue medical expenses owed by a parent for a minor child if the
32 debt collector is notified orally or in writing of the existence of a
33 court order or administrative order identifying another person as the
34 party responsible for payment of medical expenses for that minor
35 child. In addition, a report may not be made until after the debt
36 collector has notified, or made a good faith effort to notify, the
37 responsible party of that party's obligation to pay the overdue
38 medical expenses. The debt collector may request reasonable
39 verification of the order, including requesting a certified copy of the
40 order.

41 '~~f.~~ e.' Notwithstanding the provisions of section 1 of
42 P.L.1993, c.379 (C.2A:32A-1), '~~a~~ no' debt collector 'or creditor'
43 shall '~~not~~' threaten criminal proceedings or other legal action if
44 the debt collector 'or creditor, as the case may be' does not intend
45 to pursue such action.

1 ~~'[g.] f.'~~ ~~'[A] No'~~ debt collector ~~'or creditor'~~ shall ~~'[not]'~~
2 collect any amount, including interest, fees, charges, or expenses,
3 incidental to the principal obligation, unless that amount is
4 expressly authorized by the agreement creating the debt or
5 permitted by law.

6

7 8. The director shall promulgate rules and regulations pursuant
8 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
9 1 et seq.) necessary to effectuate the purposes of this act.

10

11 9. a. It is an unlawful practice and a violation of P.L.1960,
12 c.39 (C.56:8-1 et seq.) to violate any provision of this act.

13 b. A violation of the federal "Fair Debt Collection Practices
14 Act," Pub.L.95-109 (15 U.S.C.s.1692 et seq.) also constitutes a
15 violation of this act.

16 'c. In lieu of the remedies provided by section 7 of P.L.1971,
17 c.247 (C.56:8-19), a debtor aggrieved by a debt collector who
18 violates any provision of P.L. , c. (C.) (pending before the
19 Legislature as this bill) shall be entitled to payment from the debt
20 collector in an amount equal to any actual damages sustained by the
21 debtor as a result of the violation or a civil penalty of \$1,000,
22 whichever is greater, together with reasonable attorney's fees and
23 court costs and such amount of punitive damages as the court may
24 allow. This may be recoverable by the debtor in a civil action in a
25 court of competent jurisdiction or as part of a counterclaim by the
26 debtor against the debt collector who aggrieved the debtor.'

27

28 10. This act shall take effect immediately.