Sponsored by:
Senator JEFF VAN DREW
District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS
"New Jersey Fair Debt Collection Practices Act."

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning debt collection practices and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

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

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

2. The Legislature hereby finds and declares that:
   a. The ability of consumers to obtain credit depends upon the ability of creditors to collect just and owing debts.
   b. There is substantial evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.
   c. Abusive, deceptive and unfair collection practices may constitute invasions of personal privacy, and may result in adverse social consequences such as family instability, the loss of jobs or employment opportunity and damage of reputation in the community; additionally, such conduct may undermine the public confidence which is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers.
   d. Consumers will benefit through new a State law to complement the federal statutes governing abusive, deceptive and unfair collection practices, which will provide greater incentive for debt collectors to act honestly and fairly with due regard to the rights of debtors, and greater accountability when they fail to do so.
   e. It is the purpose of this act to prohibit debt collectors from engaging in abusive, deceptive and unfair collection practices in the collection of debts arising from consumer transactions, and the provisions hereof should be liberally construed.

3. As used in this act:
   "Consumer" means a natural person.
   "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility for the purpose of preparing or furnishing consumer reports.
   "Consumer transaction" means a transaction pursuant to which a consumer becomes obligated to pay for goods, services or anything of value, including money, used primarily for personal, family or household purposes. A consumer transaction shall not include leases of real property.
"Credit" means the right granted by a person to a consumer to defer payment of a debt, to incur debt and defer its payment, or purchase property or services and defer payment.

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

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

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

"Debt collector" means any person who by any direct or indirect action, conduct, or practice, collects or attempts to collect a debt that is owed or due, or alleged to be owed by or due from a debtor in this State as a result of a consumer transaction. The term "debt collector" includes, but is not limited to, an attorney, and any person working under the direction or control of an attorney, who regularly collects or attempts to collect, directly or indirectly, a debt that is owed or due, or alleged to be owed by or due from a debtor in this State as a result of a consumer transaction. The term "debt collector" does not include: any officer or employee of the United States or any state, or agencies or instrumentalities of any state, to the extent that collecting or attempting to collect a debt is in the performance of any official duties; or any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt.

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

4. a. A debt collector shall not communicate with a debtor in connection with the collection of any debt under any of the following circumstances, unless the debtor has given prior written consent directly to the debt collector for that communication, or a court of competent jurisdiction has given express permission for that communication:

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

(2) If the debt collector knows that the debtor is represented by an attorney with respect to that debt and has knowledge of, or can readily ascertain, that 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 the debtor's attorney is informed by the debtor, of the debtor's express consent to the debt collector's direct communication with the debtor; or
(3) At the debtor's place of employment, except that:
   (a) The debt collector may send a single letter to the debtor at
       the debtor's place of employment if the debt collector has been
       unable to locate the debtor at the debtor's residence; and
   (b) The debt collector may telephone the debtor at the debtor's
       place of employment if the debt collector has been unable to contact
       the debtor at his residence, provided that:
       (i) the debt collector does not know or have reason to know that
           the debtor's employer prohibits the debtor from receiving a non-
           emergency, non-employment related communication;
       (ii) the debtor has not informed the debt collector that he does
           not wish the debt collector to communicate or attempt to
           communicate with him at his place of employment; and
       (iii) the debt collector does not inform the employer of the nature
           of the call.
   b. In no event shall the debt collector make more than one
      telephone call per month to the debtor at his place of employment
      unless the debtor affirmatively indicates in writing that the debt
      collector is to call the debtor at the debtor's place of employment.
      For the purposes of this subsection, any language in any instrument
      creating the debt which purports to authorize phone calls at the
      debtor's place of employment shall not be considered an affirmative
      indication that the debtor desires the debt collector to call him at his
      place of employment.
   c. A debt collector shall not communicate with the debtor by
      means of a written communication, including on an envelope, which
      readily displays or conveys to any person, other than the recipient
      debtor, any information about the debtor's debt or that uses any
      language or symbol that indicates that the debt collector is in the
      debt collection business or that the communication relates to the
      collection of a debt.
   d. If a debtor notifies a debt collector in writing that the debtor
      refuses to pay a debt or that the debtor wishes the debt collector to
      cease further communication with the debtor, the debt collector
      shall not communicate further with the debtor with respect to that
      debt, except:
      (1) To advise the debtor that the debt collector's further efforts
          are being terminated;
      (2) To notify the debtor that the debt collector or creditor may
          invoke specified remedies which are ordinarily invoked by the debt
          collector or creditor; or
      (3) Where applicable, to notify the debtor that the debt collector
          or creditor intends to invoke a specified remedy.

5. a. A debt collector shall not, unless the debtor has given
   prior written consent directly to the debt collector prior written
   consent for that communication, or a court of competent jurisdiction
   has given express permission for such communication:
(1) Communicate information regarding a debt to any member of the debtor's family, other than the debtor's spouse or the parents or guardians of the debtor who is either a minor or who resides in the same household with that parent or guardian, prior to obtaining a judgment against the debtor, except where the purpose of the communication is to locate the debtor.

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

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

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

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

(3) Not communicate with any person more than once, unless requested to do so by that person or unless the debt collector reasonably believes that the earlier response of that 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 written communication that displays or conveys that the debt collector is in the debt collection business or that the communication relates to the collection of a debt.

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

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

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

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

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

e. Except as provided in this section, a debt collector shall 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 debt collector, unless the debtor has given prior written consent directly to the debt collector for that communication, or a court of competent
jurisdiction has given express permission for that communication, or the communication is reasonably necessary to effectuate a post-judgment judicial remedy.

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

(1) The amount of the debt owed to the creditor, separately stating any additional fees and charges;
(2) The name of the creditor to whom the debt is owed;
(3) A statement that unless the debtor, within 30 days after receipt of the notice, disputes the validity of the debt or any portion of the debt, the debt will be assumed to be valid by the debt collector;
(4) A statement that if the debtor notifies the debt collector in writing within the 30-day period that the debt, or any portion of the debt, is disputed, the debt collector 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; and
(5) A statement that, upon the debtor's written request within the 30-day period, the debt collector will provide the debtor with the name and address of the original creditor, if different from the current creditor.

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

c. A debt collector shall cease collection activities until completion of the review required by subsection e. of this section, upon receipt from a debtor of 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, consisting of either:

(1) The Federal Trade Commission's standardized ID Theft Affidavit as established pursuant to section 609 (e) (2) (B) (ii) (I) of the federal "Fair Credit Reporting Act," Pub.L.91-508 (15 U.S.C. s.1681g (e) (2) (b) (ii) (I), or
(2) 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 debtor. The statement shall contain, or be accompanied by, 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) Specific facts supporting the claim of identity theft, if available.
(c) Any explanation showing that the debtor did not incur the debt.
(d) Any available correspondence disputing the debt after transaction information has been provided to the debtor.
(e) Documentation of the residence of the debtor at the time the alleged debt was incurred.
(f) 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.
(g) 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.
(h) An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.
(i) The certification required pursuant to this paragraph shall be sufficient if it is in substantially the following form:

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

___________________________" (Date and Place) (Signature)

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

d. If a debtor notifies a debt collector orally that he is a victim of identity theft, the debt collector shall notify the debtor, in writing, that the debtor's claim must be in writing. If a debtor notifies a debt collector in writing that he is a victim of identity theft, but omits information required pursuant to subsection c. of this section, then the debt collector must:

(1) Cease collection activities; or
(2) 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 ID Theft Affidavit.

e. Upon receipt of the complete statement and information required by subsection c. 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 in his file or
from the creditor, and shall determine whether the information
establishes that the debtor is not responsible for the specific debt in
question. The debt collector shall notify the debtor in writing of
that determination and the basis for it. If the debt collector makes a
good faith determination that the information failed to establish that
the debtor is not responsible for the specific debt in question, the
debt collector may recommence debt collection activities.
Recommencement of debt collection activities without making a
determination that the information does not establish the debtor's
responsibility for the specific debt in question, or if that
determination was not made in good faith, shall constitute a
violation of this act.

f. No inference or presumption that the debt is valid or invalid,
or that the debtor is liable or not liable for the debt, shall arise from
the determination of the debt collector after the review described in
subsection e. of this section. The exercise or non-exercise of rights
under this section shall not be deemed a waiver of any other right or
defense of the debtor or debt collector.

g. A debt collector who ceases collection activities under this
section shall do all of the following:

(1) If the debt collector has furnished adverse information to a
consumer credit reporting agency, notify the agency to delete that
information; and

(2) Notify the creditor that debt collection activities have been
terminated.

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

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

7. a. A debt collector shall not engage in any conduct, the
natural consequence of which is to harass, oppress, intimidate or
abuse any person in connection with the collection of a debt.

b. A debt collector shall not use any false, deceptive or
misleading representation or means in connection with the
collection of any debt.

c. A debt collector shall not use unfair or unconscionable
means to collect or attempt to collect any debt.

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

e. A debt collector shall not report to a consumer reporting
agency any credit or debt information regarding overdue medical
expenses owed by a parent for a minor child if the debt collector is
notified orally or in writing of the existence of a court order or
administrative order identifying another person as the party
responsible for payment of medical expenses for that minor child. In addition, a report may not be made until after the debt collector has notified, or made a good faith effort to notify, the responsible party of that party's obligation to pay the overdue medical expenses. The debt collector may request reasonable verification of the order, including requesting a certified copy of the order.

f. Notwithstanding the provisions of section 1 of P.L.1993, c.379 (C.2A:32A-1), a debt collector shall not threaten criminal proceedings or other legal action if the debt collector does not intend to pursue such action.

g. A debt collector shall not collect any amount, including interest, fees, charges, or expenses, incidental to the principal obligation, unless that amount is expressly authorized by the agreement creating the debt or permitted by law.

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

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


10. This act shall take effect immediately.

STATEMENT

This bill establishes the "New Jersey Fair Debt Collection Practices Act." Generally, the bill eliminates abusive practices in the collection of consumer debts, promotes fair debt collection and provides consumers with an avenue for disputing and obtaining validation of debt information in order to ensure that information's accuracy. The bill creates guidelines under which debt collectors may conduct business, defines rights of consumers involved with debt collectors, and prescribes penalties and remedies for violations of the bill.

The bill defines a "debt collector" as any person who by any direct or indirect action, conduct, or practice, collects or attempts to collect an obligation that is owed or due, or alleged to be owed by or due from a debtor in this State as a result of a consumer transaction. The term "debt collector" includes, but is not limited to, an attorney, and any person working under the direction or control of an attorney, who regularly collects or attempts to collect, directly or indirectly, a debt that is owed or due, or alleged to be owed by or due from a debtor in this State as a result of a consumer transaction;
but does not include: any officer or employee of the United States
or any state, or agencies or instrumentalities of any state, to the
extent that collecting or attempting to collect a debt is in the
performance of any official duties; or any person while serving or
attempting to serve legal process on any other person in connection
with the judicial enforcement of any debt.

The bill prohibits, with limited exceptions, a debt collector from
communicating with a debtor under the following circumstances:

- At any time or place known or should be known to be
  inconvenient to the debtor, presumed to be no earlier than 8
  a.m. and no later than 9 p.m., local time at the debtor's
  location;
- If the debt collector knows that the debtor is represented by
  an attorney with respect to that debt and can readily
  ascertain that attorney's name and address; or
- At the debtor's place of employment, except that:
  o The debt collector may send a single letter to the
    debtor at the debtor's place of employment if the debt
    collector has been unable to locate the debtor at the
    debtor's residence; and
  o The debt collector may telephone the debtor at the
    debtor's place of employment if the debt collector has
    been unable to contact the debtor at his residence.

The bill also prohibits a debt collector from communicating with
the debtor by means of a written communication, including on an
envelope, which readily displays or conveys to any person, other
than the recipient debtor, any information about the debtor's debt or
that uses any language or symbol that indicates that the debt
collector is in the debt collection business or that the
communication relates to the collection of a debt.

The bill also prohibits, with limited exceptions, a debt collector
from communicating:

- Information regarding a debt to any member of the debtor's
  family prior to obtaining a judgment against the debtor,
  except where the purpose of the communication is to locate
  the debtor; and
- To any person, any list of debtors that discloses the nature or
  existence of a debt, commonly known as "deadbeat lists," or
  in advertising any debt for sale, by naming the debtor.

The bill does allow a debt collector to communicate with any
person other than the debtor for the purpose of acquiring location
information about the debtor, provided that the debt collector meets
certain requirements, including, but not limited to, identifying
himself and not stating that the debtor owes any debt.
The bill also requires that, within five days after the initial communication with a debtor, a debt collector must, unless the following information is contained in the initial communication or the debtor has paid the debt, send the debtor a written notice containing: the amount of the debt owed to the creditor; the name of the creditor to whom the debt is owed; a statement that unless the debtor, within 30 days after receipt of the notice, disputes the validity of the debt or any portion of the debt, the debt will be assumed to be valid by the debt collector; a statement that if the debtor notifies the debt collector in writing within the 30-day period that the debt, or any portion of the debt, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the debtor; and a statement that, upon the debtor's written request within the 30-day period, the debt collector will provide the debtor with the name and address of the original creditor, if different from the current creditor.

The bill also requires a debt collector to stop all collection activities upon receipt from a debtor of 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, consisting of either: the Federal Trade Commission's standardized ID Theft Affidavit, or 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 debtor.

The bill prohibits a debt collector from:

- Engaging in any conduct, the natural consequence of which is to harass, oppress, intimidate or abuse any person in connection with the collection of a debt;
- Using any false, deceptive or misleading representation or means in connection with the collection of any debt;
- Using unfair or unconscionable means to collect or attempt to collect any debt;
- Reporting solely in his own name any credit or debt information to a consumer reporting agency;
- Reporting to a consumer reporting agency any credit or debt information regarding overdue medical expenses owed by a parent for a minor child if the debt collector is notified orally or in writing of the existence of a court order or administrative order identifying another person as the party responsible for payment of medical expenses for that minor child;
- Threatening criminal proceedings or other legal action if the debt collector does not intend to pursue such action; and
- Collecting any amount, including interest, fees, charges, or expenses, incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law.
A violation of this bill's provisions is an unlawful practice and a
violation of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et
seq.). Violations of the consumer fraud act are punishable by a
monetary penalty of not more than $10,000 for a first offense and
not more than $20,000 for any subsequent offense. In addition, a
violation may result in cease and desist orders issued by the
Attorney General, and the awarding of treble damages, attorneys’
fees and costs of suit to the injured party.

The bill also provides that a violation of the federal “Fair Debt
constitutes a violation of this bill.