

SENATE, No. 1988

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JUNE 16, 2008

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.



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
45 of value, including money, used primarily for personal, family or
46 household purposes. A consumer transaction shall not include
47 leases of real property.

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

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

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

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

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

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

30

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

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

42 (2) If the debt collector knows that the debtor is represented by
43 an attorney with respect to that debt and has knowledge of, or can
44 readily ascertain, that attorney's name and address, unless the
45 attorney fails to respond within a reasonable period of time to a
46 communication from the debt collector or the debtor's attorney is
47 informed by the debtor, of the debtor's express consent to the debt
48 collector's direct communication with the debtor; or

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

2 (a) The debt collector may send a single letter to the debtor at
3 the debtor's place of employment if the debt collector has been
4 unable to locate the debtor at the debtor's residence; and

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

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

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

14 (iii) the debt collector does not inform the employer of the nature
15 of the call.

16 b. In no event shall the debt collector make more than one
17 telephone call per month to the debtor at his place of employment
18 unless the debtor affirmatively indicates in writing that the debt
19 collector is to call the debtor at the debtor's place of employment.
20 For the purposes of this subsection, any language in any instrument
21 creating the debt which purports to authorize phone calls at the
22 debtor's place of employment shall not be considered an affirmative
23 indication that the debtor desires the debt collector to call him at his
24 place of employment.

25 c. A debt collector shall not communicate with the debtor by
26 means of a written communication, including on an envelope, which
27 readily displays or conveys to any person, other than the recipient
28 debtor, any information about the debtor's debt or that uses any
29 language or symbol that indicates that the debt collector is in the
30 debt collection business or that the communication relates to the
31 collection of a debt.

32 d. If a debtor notifies a debt collector in writing that the debtor
33 refuses to pay a debt or that the debtor wishes the debt collector to
34 cease further communication with the debtor, the debt collector
35 shall not communicate further with the debtor with respect to that
36 debt, except:

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

39 (2) To notify the debtor that the debt collector or creditor may
40 invoke specified remedies which are ordinarily invoked by the debt
41 collector or creditor; or

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

44
45 5. a. A debt collector shall not, unless the debtor has given
46 prior written consent directly to the debt collector prior written
47 consent for that communication, or a court of competent jurisdiction
48 has given express permission for such communication:

1 (1) Communicate information regarding a debt to any member
2 of the debtor's family, other than the debtor's spouse or the parents
3 or guardians of the debtor who is either a minor or who resides in
4 the same household with that parent or guardian, prior to obtaining
5 a judgment against the debtor, except where the purpose of the
6 communication is to locate the debtor.

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

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

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

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

17 (3) Not communicate with any person more than once, unless
18 requested to do so by that person or unless the debt collector
19 reasonably believes that the earlier response of that person is
20 erroneous or incomplete and that the person now has correct or
21 complete location information;

22 (4) Not communicate by postcard;

23 (5) Not use any language or symbol on any envelope or in the
24 contents of any written communication that displays or conveys that
25 the debt collector is in the debt collection business or that the
26 communication relates to the collection of a debt.

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

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

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

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

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

42 e. Except as provided in this section, a debt collector shall not
43 communicate, in connection with the collection of any debt, with
44 any person other than the debtor, the debtor's attorney, a consumer
45 reporting agency if otherwise permitted by law, the creditor, the
46 attorney of the creditor or the attorney of the debt collector, unless
47 the debtor has given prior written consent directly to the debt
48 collector for that communication, or a court of competent

1 jurisdiction has given express permission for that communication,
2 or the communication is reasonably necessary to effectuate a post-
3 judgment judicial remedy.

4

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

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

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

13 (3) A statement that unless the debtor, within 30 days after
14 receipt of the notice, disputes the validity of the debt or any portion
15 of the debt, the debt will be assumed to be valid by the debt
16 collector;

17 (4) A statement that if the debtor notifies the debt collector in
18 writing within the 30-day period that the debt, or any portion of the
19 debt, is disputed, the debt collector will obtain verification of the
20 debt or a copy of a judgment against the debtor and a copy of the
21 verification or judgment will be mailed to the debtor by the debt
22 collector; and

23 (5) A statement that, upon the debtor's written request within the
24 30-day period, the debt collector will provide the debtor with the
25 name and address of the original creditor, if different from the
26 current creditor.

27 b. If the debtor notifies the debt collector in writing within the
28 30-day period described in subsection a. of this section that the
29 debt, or any portion of the debt, is disputed or that the debtor
30 requests the name and address of the original creditor, the debt
31 collector shall cease collection of the debt or any disputed portion
32 of the debt, until the debt collector obtains the name and address of
33 the original creditor and verification of the debt or a copy of the
34 judgment and mails them to the debtor. If the debt collector cannot
35 produce the required verification or copy of the judgment, it shall
36 cease all collection activities.

37 c. A debt collector shall cease collection activities until
38 completion of the review required by subsection e. of this section,
39 upon receipt from a debtor of the debtor's written statement that the
40 debtor claims to be the victim of identity theft with respect to the
41 specific debt being collected by the debt collector, consisting of
42 either:

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

47 (2) A written statement that certifies that the representations are
48 true, correct, and contain no material omissions of fact to the best

1 knowledge and belief of the debtor. The statement shall contain, or
2 be accompanied by, the following, to the extent that an item listed
3 below is relevant to the debtor's allegation of identity theft with
4 respect to the debt in question:

- 5 (a) A statement that the debtor is a victim of identity theft.
- 6 (b) Specific facts supporting the claim of identity theft, if
7 available.
- 8 (c) Any explanation showing that the debtor did not incur the
9 debt.
- 10 (d) Any available correspondence disputing the debt after
11 transaction information has been provided to the debtor.
- 12 (e) Documentation of the residence of the debtor at the time the
13 alleged debt was incurred.
- 14 (f) A telephone number for contacting the debtor concerning
15 any additional information or questions, or direction that further
16 communications to the debtor be in writing only, with the mailing
17 address specified in the statement.
- 18 (g) To the extent the debtor has information concerning who
19 may have incurred the debt, the identification of any person whom
20 the debtor believes is responsible.
- 21 (h) An express statement that the debtor did not authorize the
22 use of the debtor's name or personal information for incurring the
23 debt.
- 24 (i) The certification required pursuant to this paragraph shall be
25 sufficient if it is in substantially the following form:
26 "I certify the representations made are true and correct, and
27 contain no material omissions of fact. I further certify that the
28 copies of all documents attached to this certificate are true, correct
29 and complete copies of the original documents. I am aware that if
30 any of the foregoing statements made by me are willfully false, I am
31 subject to punishment.

32 _____" (Date and Place) (Signature)

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

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

- 42 (1) Cease collection activities; or
- 43 (2) Provide written notice to the debtor of the additional
44 information that is required or send the debtor a copy of the Federal
45 Trade Commission's ID Theft Affidavit.

46 e. Upon receipt of the complete statement and information
47 required by subsection c. of this section, the debt collector shall
48 review and consider all of the information provided by the debtor

1 and other information available to the debt collector in his file or
2 from the creditor, and shall determine whether the information
3 establishes that the debtor is not responsible for the specific debt in
4 question. The debt collector shall notify the debtor in writing of
5 that determination and the basis for it. If the debt collector makes a
6 good faith determination that the information failed to establish that
7 the debtor is not responsible for the specific debt in question, the
8 debt collector may recommence debt collection activities.
9 Recommencement of debt collection activities without making a
10 determination that the information does not establish the debtor's
11 responsibility for the specific debt in question, or if that
12 determination was not made in good faith, shall constitute a
13 violation of this act.

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

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

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

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

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

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

33

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

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

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

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

44 e. A debt collector shall not report to a consumer reporting
45 agency any credit or debt information regarding overdue medical
46 expenses owed by a parent for a minor child if the debt collector is
47 notified orally or in writing of the existence of a court order or
48 administrative order identifying another person as the party

1 responsible for payment of medical expenses for that minor child.
2 In addition, a report may not be made until after the debt collector
3 has notified, or made a good faith effort to notify, the responsible
4 party of that party's obligation to pay the overdue medical expenses.
5 The debt collector may request reasonable verification of the order,
6 including requesting a certified copy of the order.

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

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

15

16 8. The director shall promulgate rules and regulations pursuant
17 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
18 1 et seq.) necessary to effectuate the purposes of this act.

19

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

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

25

26 10. This act shall take effect immediately.

27

28

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STATEMENT

30

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

40 The bill defines a "debt collector" as any person who by any
41 direct or indirect action, conduct, or practice, collects or attempts to
42 collect an obligation that is owed or due, or alleged to be owed by
43 or due from a debtor in this State as a result of a consumer
44 transaction. The term "debt collector" includes, but is not limited to,
45 an attorney, and any person working under the direction or control
46 of an attorney, who regularly collects or attempts to collect, directly
47 or indirectly, a debt that is owed or due, or alleged to be owed by or
48 due from a debtor in this State as a result of a consumer transaction;

1 but does not include: any officer or employee of the United States
2 or any state, or agencies or instrumentalities of any state, to the
3 extent that collecting or attempting to collect a debt is in the
4 performance of any official duties; or any person while serving or
5 attempting to serve legal process on any other person in connection
6 with the judicial enforcement of any debt.

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

- 9 • At any time or place known or should be known to be
10 inconvenient to the debtor, presumed to be no earlier than 8
11 a.m. and no later than 9 p.m., local time at the debtor's
12 location;
- 13 • If the debt collector knows that the debtor is represented by
14 an attorney with respect to that debt and can readily
15 ascertain that attorney's name and address; or
- 16 • At the debtor's place of employment, except that:
 - 17 ○ The debt collector may send a single letter to the
18 debtor at the debtor's place of employment if the debt
19 collector has been unable to locate the debtor at the
20 debtor's residence; and
 - 21 ○ The debt collector may telephone the debtor at the
22 debtor's place of employment if the debt collector has
23 been unable to contact the debtor at his residence.
24 The debt collector, however, may not make more
25 than one telephone call per month to the debtor at his
26 place of employment.

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

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

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

43 The bill does allow a debt collector to communicate with any
44 person other than the debtor for the purpose of acquiring location
45 information about the debtor, provided that the debt collector meets
46 certain requirements, including, but not limited to, identifying
47 himself and not stating that the debtor owes any debt.

1 The bill also requires that, within five days after the initial
2 communication with a debtor, a debt collector must, unless the
3 following information is contained in the initial communication or
4 the debtor has paid the debt, send the debtor a written notice
5 containing: the amount of the debt owed to the creditor; the name of
6 the creditor to whom the debt is owed; a statement that unless the
7 debtor, within 30 days after receipt of the notice, disputes the
8 validity of the debt or any portion of the debt, the debt will be
9 assumed to be valid by the debt collector; a statement that if the
10 debtor notifies the debt collector in writing within the 30-day period
11 that the debt, or any portion of the debt, is disputed, the debt
12 collector will obtain verification of the debt or a copy of a judgment
13 against the debtor; and a statement that, upon the debtor's written
14 request within the 30-day period, the debt collector will provide the
15 debtor with the name and address of the original creditor, if
16 different from the current creditor.

17 The bill also requires a debt collector to stop all collection
18 activities upon receipt from a debtor of the debtor's written
19 statement that the debtor claims to be the victim of identity theft
20 with respect to the specific debt being collected by the debt
21 collector, consisting of either: the Federal Trade Commission's
22 standardized ID Theft Affidavit, or a written statement that certifies
23 that the representations are true, correct, and contain no material
24 omissions of fact to the best knowledge and belief of the debtor.

25 The bill prohibits a debt collector from:

- 26 • Engaging in any conduct, the natural consequence of which
27 is to harass, oppress, intimidate or abuse any person in
28 connection with the collection of a debt;
- 29 • Using any false, deceptive or misleading representation or
30 means in connection with the collection of any debt;
- 31 • Using unfair or unconscionable means to collect or attempt
32 to collect any debt;
- 33 • Reporting solely in his own name any credit or debt
34 information to a consumer reporting agency;
- 35 • Reporting to a consumer reporting agency any credit or debt
36 information regarding overdue medical expenses owed by a
37 parent for a minor child if the debt collector is notified orally
38 or in writing of the existence of a court order or
39 administrative order identifying another person as the party
40 responsible for payment of medical expenses for that minor
41 child;
- 42 • Threatening criminal proceedings or other legal action if the
43 debt collector does not intend to pursue such action; and
- 44 • Collecting any amount, including interest, fees, charges, or
45 expenses, incidental to the principal obligation, unless the
46 amount is expressly authorized by the agreement creating the
47 debt or permitted by law.

S1988 VAN DREW

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1 A violation of this bill's provisions is an unlawful practice and a
2 violation of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et
3 seq.). Violations of the consumer fraud act are punishable by a
4 monetary penalty of not more than \$10,000 for a first offense and
5 not more than \$20,000 for any subsequent offense. In addition, a
6 violation may result in cease and desist orders issued by the
7 Attorney General, and the awarding of treble damages, attorneys'
8 fees and costs of suit to the injured party.

9 The bill also provides that a violation of the federal "Fair Debt
10 Collection Practices Act," Pub.L.95-109 (15 U.S.C. s.1692 et seq.)
11 constitutes a violation of this bill.