

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1618

By: Easley

AS INTRODUCED

An Act relating to consumer credit; creating the Uniform Consumer Credit Code - Fair Debt Collection Practices article; providing short title; specifying application of provisions; defining terms; specifying certain requirements with respect to communications from debt collectors; prohibiting such communications under certain circumstances; providing exceptions; prohibiting debt collector from engaging in certain conduct or using certain representation or means to collect or attempt to collect a debt; requiring certain notice and specifying contents thereof; providing procedures in case of disputed debt or other circumstances; prohibiting certain construction; providing remedies for violations; providing for enforcement; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-101 of Title 14A, unless there is created a duplication in numbering, reads as follows:

This article shall be known and may be cited as the Uniform Consumer Credit Code - Fair Debt Collection Practices.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-102 of Title 14A, unless there is created a duplication in numbering, reads as follows:

This article applies to persons who in this state make or solicit consumer credit sales, consumer leases, and consumer loans, or who directly collect payments from or enforce rights against debtors arising from the sales, leases, or loans previously specified wherever they are made.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-103 of Title 14A, unless there is created a duplication in numbering, reads as follows:

As used in this article:

(1) The term "Administrator" means the Administrator of Consumer Affairs as provided in Part 5 of Article 6 of this title.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "debt collector" means a person who directly or indirectly engages in debt collection.

(5) The term "location information" means a consumer's place of abode and the consumer's telephone number at such place, or the consumer's place of employment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-104 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A debt collector shall not communicate with any person other than the consumer except for the limited purpose of acquiring location information. The debt collector shall:

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

(2) Not state that such consumer owes any debt;

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

(4) Not communicate by post card;

(5) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-105 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt:

(a) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(b) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such 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 unless the attorney consents to direct communication with the consumer; or

- (c) at the consumer's place of employment if the consumer requests that no such communication be made at the place of employment or the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(2) COMMUNICATION WITH THE CONSUMER IN PERSON. A debt collector may not make a personal visit to the consumer regardless of the consumer's location, more than once every sixty (60) days.

(3) COMMUNICATION WITH THIRD PARTIES. Except as provided in Section 4 of this act, without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, the consumer'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.

(4) CEASING COMMUNICATION. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except:

- (a) to advise the consumer that the debt collector's further efforts are being terminated;
  - (b) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor;
- or

(c) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(5) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-106 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency.

(4) The advertisement for sale of any debt to coerce payment of the debt.

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

(6) The placement of telephone calls without meaningful disclosure of the caller's identity.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-107 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of:

- (a) the character, amount, or legal status of any debt; or
- (b) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

- (a) lose any claim or defense to payment of the debt; or
- (b) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect, or to refinance any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-108 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five (5) days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten (10) nor less than three (3) business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true propose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.



(6) Taking or threatening to take any judicial or nonjudicial action to effect dispossession or disablement of property if:

- (a) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
- (b) there is no present intention to take possession of the property; or
- (c) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his or her business name if such name does not indicate that the debt collector is in the debt collection business.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-109 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) Within five (5) days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing:

- (a) the amount of the debt;
- (b) the name of the creditor to whom the debt is owed;
- (c) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (d) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that

the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector;

- (e) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor; and
- (f) a statement that, at any time during the communication between the debt collector and the consumer, the consumer may direct the debt collector to cease further communication with the consumer, in which event no further communication shall be permitted except as set forth in subsection (3) of Section 5 of this act.

(2) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-110 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) A violation of this article shall be deemed an unfair or deceptive act or practice in violation of the Oklahoma Consumer Protection Act (the "Act"), Section 751 et seq. of Title 15 of the Oklahoma Statutes, and the consumer shall have a private right of action for such violation.

(2) In determining the amount of liability based on a violation of this article, the court shall apply the provisions of Section 761.1 of Title 15 of the Oklahoma Statutes. In determining aggravating circumstances under subsection B of Section 761.1 of Title 15 of the Oklahoma Statutes, the court shall further take into consideration:

- (a) the frequency and persistence of noncompliance by the debt collector;
- (b) the nature of such noncompliance; and
- (c) the extent to which such noncompliance was intentional.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-111 of Title 14A, unless there is created a duplication in numbering, reads as follows:

Compliance with this article shall be enforced by the Administrator, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency. For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this article shall be deemed an unfair or deceptive act or practice in violation of that Act.

SECTION 12. This act shall become effective November 1, 2002.