

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 664

By: Justice

4  
5  
6 AS INTRODUCED

7 An Act relating to professions and occupations;  
8 creating the Oklahoma Fair Debt Collection Practices  
9 Act; providing short title; defining terms;  
10 prohibiting certain actions without licensure as a  
11 debt collector; providing for application for  
12 licensure; authorizing certain licensure; stating  
13 what a license as an entity and as an individual  
14 entitles; requiring certain notification; providing  
15 for replacement of certain responsible individual;  
16 providing for expiration of license under certain  
17 circumstances; requiring certain investigation before  
18 hiring certain employees; providing for transfer and  
19 assignment of a license and acquisition of control of  
20 a licensee; defining term; making licensee liable for  
21 certain damages caused by employees; making license  
22 valid for certain period; providing for reapplication  
23 of license after certain denial; providing for  
24 renewal of license; requiring display of license;  
requiring licensee to designate and maintain a  
principle place of business, specify the address and  
make certain notification of change of address;  
providing for address change on license; providing  
for certain fees; providing for promulgation of  
certain rules; providing certain penalties;  
authorizing certain applications for certain orders  
to enjoin or restrain; authorizing certain actions by  
a court; providing certain requirements for  
acquisition of certain location information about a  
consumer; providing restrictions on a debt  
collector's communication with a consumer under  
certain circumstances; prohibiting a debt collector  
to communicate with certain persons under certain  
circumstances; requiring a debt collector to cease  
communication with a consumer under certain  
circumstances; providing exceptions; stating when

1 certain notice is complete; defining term;  
2 prohibiting certain conduct by a debt collector;  
3 prohibiting the use of certain misrepresentation or  
4 means in the collection of any debt; prohibiting the  
5 use of certain unfair or unconscionable means in the  
6 collection of any debt; requiring a debt collector to  
7 provide a consumer certain written notice concerning  
8 a debt within certain time frame; providing  
9 exceptions; providing contents of such notice;  
10 providing for dispute of certain debt by a consumer;  
11 requiring cessation of certain collections until  
12 certain information is mailed to the consumer;  
13 authorizing continuation of certain collections under  
14 certain circumstances; construing language;  
15 prohibiting certain communication from being treated  
16 as initial communication for certain purpose;  
17 prohibiting the sending or delivery of certain  
18 required forms or notices not related to the  
19 collection of a debt to be used as a certain initial  
20 communication; prohibiting a debt collector from  
21 applying certain payment to certain debt; requiring a  
22 debt collector to apply certain payment in accordance  
23 with a consumer's direction; providing for venue of  
24 certain legal actions by a debt collector; construing  
language; making it unlawful to design, compile and  
furnish certain deceptive forms for certain purpose;  
providing penalty; providing for certain civil  
liability; providing certain factors to be considered  
by a court; providing exceptions; providing time  
frame for certain actions; requiring licensee to  
maintain certain records for certain period; making  
records available to the Administrator; authorizing  
Administrator to make certain investigations;  
authorizing Administrator to impose certain  
sanctions; requiring cause to be established upon  
clear and convincing evidence for commission of  
certain actions; creating the Oklahoma Fair Debt  
Collection Practices Revolving Fund; providing for  
appropriation, budgeting, expenditure and purpose of  
fund; providing for certain payments from fund;  
providing for codification; and providing an  
effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified  
3 in the Oklahoma Statutes as Section 3150 of Title 59, unless there  
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Oklahoma Fair  
6 Debt Collection Practices Act."

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 3150.1 of Title 59, unless there  
9 is created a duplication in numbering, reads as follows:

10 As used in the Oklahoma Fair Debt Collection Practices Act:

11 1. "Administrator" means the Administrator of Consumer Credit;

12 2. "Commission" means the Commission on Consumer Credit;

13 3. "Communication" means the conveying of information regarding  
14 a debt directly or indirectly to any person through any medium;

15 4. "Consumer" means any natural person obligated or allegedly  
16 obligated to pay any debt;

17 5. "Creditor" means any person who offers or extends credit  
18 creating a debt or to whom a debt is owed, but such term does not  
19 include any person to the extent that he receives an assignment or  
20 transfer of a debt in default solely for the purpose of facilitating  
21 collection of such debt for another;

22 6. "Debt" means any obligation or alleged obligation of a  
23 consumer to pay money arising out of a transaction in which the  
24 money, property, insurance, or services which are the subject of the

1 transaction are primarily for personal, family, or household  
2 purposes, whether or not such obligation has been reduced to  
3 judgment;

4 7. "Debt collector" means any person who uses any  
5 instrumentality of interstate commerce or the mails in any business  
6 the principal purpose of which is the collection of any debts, or  
7 who regularly collects or attempts to collect, directly or  
8 indirectly, debts owed or due or asserted to be owed or due another.  
9 Notwithstanding the exclusion provided by subparagraph f of this  
10 paragraph, the term includes any creditor who, in the process of  
11 collecting his own debts, uses any name other than his own which  
12 would indicate that a third person is collecting or attempting to  
13 collect such debts. For the purpose of paragraph 6 of Section 11 of  
14 this act, such term also includes any person who uses any  
15 instrumentality of interstate commerce or the mails in any business  
16 the principal purpose of which is the enforcement of security  
17 interests. The term does not include:

- 18 a. any officer or employee of a creditor while, in the  
19 name of the creditor, collecting debts for such  
20 creditor,  
21 b. any person while acting as a debt collector for  
22 another person, both of whom are related by common  
23 ownership or affiliated by corporate control, if the  
24 person acting as a debt collector does so only for

1 persons to whom it is so related or affiliated and if  
2 the principal business of such person is not the  
3 collection of debts,

4 c. any officer or employee of the United States or any  
5 state to the extent that collecting or attempting to  
6 collect any debt is in the performance of his official  
7 duties,

8 d. any person while serving or attempting to serve legal  
9 process on any other person in connection with the  
10 judicial enforcement of any debt,

11 e. any nonprofit organization which, at the request of  
12 consumers, performs bona fide consumer credit  
13 counseling and assists consumers in the liquidation of  
14 their debts by receiving payments from such consumers  
15 and distributing such amounts to creditors, and

16 f. any person collecting or attempting to collect any  
17 debt owed or due or asserted to be owed or due another  
18 to the extent such activity:

19 (1) is incidental to a bona fide fiduciary obligation  
20 or a bona fide escrow arrangement,

21 (2) concerns a debt which was originated by such  
22 person,

23 (3) concerns a debt which was not in default at the  
24 time it was obtained by such person, or

1 (4) concerns a debt obtained by such person as a  
2 secured party in a commercial credit transaction  
3 involving the creditor;

4 8. "Location information" means a consumer's place of residence  
5 and his telephone number at such place, or his place of employment;

6 9. "Person" means an individual, corporation, company, limited  
7 liability company, partnership, association or similar legal entity;  
8 and

9 10. "State" means any state, territory, or possession of the  
10 United States, the District of Columbia, the Commonwealth of Puerto  
11 Rico or any political subdivision of any of the foregoing.

12 SECTION 3. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 3150.2 of Title 59, unless there  
14 is created a duplication in numbering, reads as follows:

15 No person shall act as a debt collector in this state without  
16 obtaining and maintaining a license under the Oklahoma Fair Debt  
17 Collection Practices Act.

18 SECTION 4. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 3150.3 of Title 59, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. 1. A person may make application to the Administrator of  
22 Consumer Credit for a debt collector license.

23 2. Application for a debt collector license shall be made upon  
24 forms prescribed by the Administrator.

1           3. Upon approval by the Administrator of the application and  
2 payment of the license fee provided for in this section, the  
3 Administrator shall issue to the applicant a license which shall  
4 authorize the applicant to act as a debt collector.

5           4. If a licensee is a corporation, company, limited liability  
6 company, partnership, association or similar legal entity, the  
7 license issued entitles all officers, directors, members, partners,  
8 trustees and employees of such a licensed entity to engage in the  
9 business of a debt collector if one officer, director, member,  
10 partner, employee or trustee of such an entity is designated in the  
11 license as the individual responsible for the entity's actions under  
12 this act. If a licensee is an individual, the license entitles all  
13 employees of the licensee to engage in the business of debt  
14 collection.

15           5. A licensee shall notify the Administrator that its  
16 responsible individual will cease to be in active management of the  
17 activities of the licensee within ten (10) days of knowledge of that  
18 fact. The licensee has ninety (90) days after the notification is  
19 received by the Administrator within which to replace the  
20 responsible individual with a qualified replacement and to notify  
21 the Administrator of the replacement. If the license is not placed  
22 under active management of a qualified responsible individual and if  
23 notice is not given to the Administrator within the ninety-day  
24 period, the license shall expire.

1       6. A licensee shall not employ any person unless the licensee  
2 conducts a reasonable background investigation of the employee  
3 before hiring the employee.

4       7. A license may be transferred and assigned and control of a  
5 licensee may be acquired through a stock purchase or other device  
6 with the prior written consent of the Administrator. Written  
7 consent shall not be given if the Administrator finds that any of  
8 the grounds for denial, revocation or suspension of a license as set  
9 forth in this act are applicable to the acquiring person. For  
10 purposes of this paragraph, "control" means the power to vote more  
11 than twenty percent (20%) of outstanding voting shares of a licensed  
12 corporation, partnership, association or trust.

13       8. The licensee is liable for any damage caused by any  
14 employees while acting within the scope of employment as an employee  
15 of the licensee.

16       B. A license issued under this act shall be valid for a period  
17 of one (1) year, unless otherwise revoked or suspended by the  
18 Administrator.

19       C. An applicant who has been denied a license may not reapply  
20 for the license for sixty (60) days from the date of the previous  
21 application.

22       D. A licensee shall pay the renewal fee as provided in this  
23 section on or before December 31 of each year. Licenses not renewed  
24 by December 31 will expire. A person may renew an expired license

1 by paying the late renewal fee and making application for renewal in  
2 the manner prescribed by the Administrator.

3 E. A licensee shall prominently display the debt collector  
4 license in the office of the debt collector.

5 F. Every licensed debt collector shall designate and maintain a  
6 principal place of business for the transaction of business. The  
7 license shall specify the address of the principal place of  
8 business. If the address of the licensee is changed, the licensee  
9 shall immediately notify the Administrator of the change and the  
10 Administrator shall endorse the change of address on the license for  
11 a fee as provided in this section.

12 G. 1. Initial and renewal license fees shall be Two Hundred  
13 Dollars (\$200.00).

14 2. Late renewal license fees shall be Four Hundred Dollars  
15 (\$400.00).

16 3. A fee of Twenty-five Dollars (\$25.00) shall be charged for a  
17 duplicate license, returned checks and any license changes.

18 SECTION 5. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 3150.4 of Title 59, unless there  
20 is created a duplication in numbering, reads as follows:

21 The Administrator of Consumer Credit, upon approval by the  
22 Commission on Consumer Credit, may promulgate rules to implement the  
23 provisions of the Oklahoma Fair Debt Collection Practices Act.

24

1           SECTION 6.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3150.5 of Title 59, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. In addition to any other penalties provided by law, any  
5 person without a license as required by the Oklahoma Fair Debt  
6 Collection Practices Act who engages in the business of a debt  
7 collector or who willingly and knowingly violates any provision of  
8 the Oklahoma Fair Debt Collection Practices Act, upon conviction,  
9 shall be guilty of a misdemeanor which shall be punishable by a fine  
10 of not more than One Thousand Dollars (\$1,000.00) for each  
11 violation. Each violation shall be a separate offense under this  
12 section.

13           B. In addition to any civil or criminal actions authorized by  
14 law, the Administrator of Consumer Credit, the Attorney General or  
15 the appropriate district attorney may apply to the district court in  
16 the county in which a violation of the Oklahoma Fair Debt Collection  
17 Practices Act has allegedly occurred for an order enjoining or  
18 restraining the person from continuing the acts specified in the  
19 complaint. The court may grant any temporary or permanent  
20 injunction or restraining order, without bond, as it deems just and  
21 proper.

22           SECTION 7.           NEW LAW           A new section of law to be codified  
23 in the Oklahoma Statutes as Section 3150.6 of Title 59, unless there  
24 is created a duplication in numbering, reads as follows:

1 Any debt collector communicating with any person other than the  
2 consumer for the purpose of acquiring location information about the  
3 consumer shall:

4 1. Identify himself, state that he is confirming or correcting  
5 location information concerning the consumer, and, only if expressly  
6 requested, identify his employer;

7 2. Not state that such consumer owes any debt;

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

13 4. Not communicate by postcard;

14 5. Not use any language or symbol on any envelope or in the  
15 contents of any communication effected by the mail or telegram that  
16 indicates that the debt collector is in the debt collection business  
17 or that the communication relates to the collection of a debt; and

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

1           SECTION 8.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3150.7 of Title 59, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. Without the prior consent of the consumer given directly to  
5 the debt collector or the express permission of a court of competent  
6 jurisdiction, a debt collector may not communicate with a consumer  
7 in connection with the collection of any debt:

8           1. At any unusual time or place or a time or place known or  
9 which should be known to be inconvenient to the consumer. In the  
10 absence of knowledge of circumstances to the contrary, a debt  
11 collector shall assume that the convenient time for communicating  
12 with a consumer is after 8 a.m. and before 9 p.m., local time at the  
13 consumer's location;

14           2. If the debt collector knows the consumer is represented by  
15 an attorney with respect to such debt and has knowledge of, or can  
16 readily ascertain, such attorney's name and address, unless the  
17 attorney fails to respond within a reasonable period of time to a  
18 communication from the debt collector or unless the attorney  
19 consents to direct communication with the consumer; or

20           3. At the consumer's place of employment if the debt collector  
21 knows or has reason to know that the consumer's employer prohibits  
22 the consumer from receiving such communication.

23           B. Except as provided in Section 11 of this Act, without the  
24 prior consent of the consumer given directly to the debt collector,

1 or the express permission of a court of competent jurisdiction, or  
2 as reasonably necessary to effectuate a postjudgment judicial  
3 remedy, a debt collector may not communicate, in connection with the  
4 collection of any debt, with any person other than the consumer, his  
5 attorney, a consumer reporting agency if otherwise permitted by law,  
6 the creditor, the attorney of the creditor or the attorney of the  
7 debt collector.

8 C. If a consumer notifies a debt collector in writing that the  
9 consumer refuses to pay a debt or that the consumer wishes the debt  
10 collector to cease further communication with the consumer, the debt  
11 collector shall not communicate further with the consumer with  
12 respect to such debt, except:

13 1. To advise the consumer that the debt collector's further  
14 efforts are being terminated;

15 2. To notify the consumer that the debt collector or creditor  
16 may invoke specified remedies which are ordinarily invoked by such  
17 debt collector or creditor; or

18 3. Where applicable, to notify the consumer that the debt  
19 collector or creditor intends to invoke a specified remedy.

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

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

1           SECTION 9.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3150.8 of Title 59, unless there  
3 is created a duplication in numbering, reads as follows:

4           A debt collector may not engage in any conduct the natural  
5 consequence of which is to harass, oppress or abuse any person in  
6 connection with the collection of a debt. Such conduct shall  
7 include, but not be limited to:

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

10           2. The use of obscene or profane language or language the  
11 natural consequence of which is to abuse the hearer or reader;

12           3. The publication of a list of consumers who allegedly refuse  
13 to pay debts, except to a consumer reporting agency or to persons  
14 meeting the requirements of 15 U.S.C., Section 1681a or 15 U.S.C.,  
15 Section 1681b(3);

16           4. The advertisement for sale of any debt to coerce payment of  
17 the debt;

18           5. Causing a telephone to ring or engaging any person in  
19 telephone conversation repeatedly or continuously with intent to  
20 annoy, abuse or harass any person at the called number; and

21           6. Except as provided in Section 7 of this act, the placement  
22 of telephone calls without meaningful disclosure of the caller's  
23 identity.

24

1           SECTION 10.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3150.9 of Title 59, unless there  
3 is created a duplication in numbering, reads as follows:

4           A debt collector may not use any false, deceptive or misleading  
5 representation or means in connection with the collection of any  
6 debt. Such conduct shall include, but not be limited to:

7           1. The false representation or implication that the debt  
8 collector is vouched for, bonded by or affiliated with the United  
9 States or any state, including the use of any badge, uniform or  
10 facsimile thereof;

11           2. The false representation of:

12               a. the character, amount, or legal status of any debt, or

13               b. any services rendered or compensation which may be  
14 lawfully received by any debt collector for the  
15 collection of a debt;

16           3. The false representation or implication that any individual  
17 is an attorney or that any communication is from an attorney;

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

23           5. The threat to take any action that cannot legally be taken  
24 or that is not intended to be taken;

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

- 4           a. lose any claim or defense to payment of the debt, or
- 5           b. become subject to any practice prohibited by this  
6           section;

7       7. The false representation or implication that the consumer  
8 committed any crime or other conduct in order to disgrace the  
9 consumer;

10       8. Communicating or threatening to communicate to any person  
11 credit information which is known or which should be known to be  
12 false, including the failure to communicate that a disputed debt is  
13 disputed;

14       9. The use or distribution of any written communication which  
15 simulates or is falsely represented to be a document authorized,  
16 issued or approved by any court, official, or agency of the United  
17 States or any state, or which creates a false impression as to its  
18 source, authorization or approval;

19       10. The use of any false representation or deceptive means to  
20 collect or attempt to collect any debt or to obtain information  
21 concerning a consumer;

22       11. The failure to disclose in the initial written  
23 communication with the consumer and, in addition, if the initial  
24 communication with the consumer is oral, in that initial oral

1 communication, that the debt collector is attempting to collect a  
2 debt and that any information obtained will be used for that  
3 purpose, and the failure to disclose in subsequent communications  
4 that the communication is from a debt collector, except that this  
5 paragraph shall not apply to a formal pleading made in connection  
6 with a legal action;

7 12. The false representation or implication that accounts have  
8 been turned over to innocent purchasers for value;

9 13. The false representation or implication that documents are  
10 legal process;

11 14. The use of any business, company or organization name other  
12 than the true name of the debt collector's business, company or  
13 organization;

14 15. The false representation or implication that documents are  
15 not legal process forms or do not require action by the consumer;  
16 and

17 16. The false representation or implication that a debt  
18 collector operates or is employed by a consumer reporting agency as  
19 defined by 15 U.S.C., Section 1681a(f).

20 SECTION 11. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 3150.10 of Title 59, unless  
22 there is created a duplication in numbering, reads as follows:

23

24

1 A debt collector may not use unfair or unconscionable means to  
2 collect or attempt to collect any debt. Such conduct shall include,  
3 but not be limited to:

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

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

14 3. The solicitation by a debt collector of any postdated check  
15 or other postdated payment instrument for the purpose of threatening  
16 or instituting criminal prosecution;

17 4. Depositing or threatening to deposit any postdated check or  
18 other postdated payment instrument prior to the date on such check  
19 or instrument;

20 5. Causing charges to be made to any person for communications  
21 by concealment of the true purpose of the communication. Such  
22 charges include, but are not limited to, collect telephone calls and  
23 telegram fees;

24

1           6. Taking or threatening to take any nonjudicial action to  
2 effect dispossession or disablement of property if:

3           a. there is no present right to possession of the  
4           property claimed as collateral through an enforceable  
5           security interest,

6           b. there is no present intention to take possession of  
7           the property, or

8           c. the property is exempt by law from such dispossession  
9           or disablement;

10          7. Communicating with a consumer regarding a debt by postcard;  
11 or

12          8. Using any language or symbol, other than the debt  
13 collector's address, on any envelope when communicating with a  
14 consumer by use of the mail or by telegram, except that a debt  
15 collector may use his business name if such name does not indicate  
16 that he is in the debt collection business.

17          SECTION 12.        NEW LAW        A new section of law to be codified  
18 in the Oklahoma Statutes as Section 3151.11 of Title 59, unless  
19 there is created a duplication in numbering, reads as follows:

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

1 1. The amount of the debt;

2 2. The name of the creditor to whom the debt is owed;

3 3. A statement that unless the consumer, within thirty (30)  
4 days after receipt of the notice, disputes the validity of the debt,  
5 or any portion thereof, the debt will be assumed to be valid by the  
6 debt collector;

7 4. A statement that if the consumer notifies the debt collector  
8 in writing within the thirty-day period that the debt, or any  
9 portion thereof, is disputed, the debt collector will obtain  
10 verification of the debt or a copy of a judgment against the  
11 consumer and a copy of such verification or judgment will be mailed  
12 to the consumer by the debt collector; and

13 5. A statement that, upon the consumer's written request within  
14 the thirty-day period, the debt collector will provide the consumer  
15 with the name and address of the original creditor, if different  
16 from the current creditor.

17 B. If the consumer notifies the debt collector in writing  
18 within the thirty-day period described in subsection A of this  
19 section that the debt, or any portion thereof, is disputed, or that  
20 the consumer requests the name and address of the original creditor,  
21 the debt collector shall cease collection of the debt, or any  
22 disputed portion thereof, until the debt collector obtains  
23 verification of the debt or a copy of a judgment, or the name and  
24 address of the original creditor, and a copy of such verification or

1 judgment, or name and address of the original creditor, is mailed to  
2 the consumer by the debt collector. Collection activities and  
3 communications that do not otherwise violate this section may  
4 continue during the thirty-day period referred to in subsection A of  
5 this section unless the consumer has notified the debt collector in  
6 writing that the debt, or any portion of the debt, is disputed or  
7 that the consumer requests the name and address of the original  
8 creditor. Any collection activities and communication during the  
9 thirty-day period may not overshadow or be inconsistent with the  
10 disclosure of the consumer's right to dispute the debt or request  
11 the name and address of the original creditor.

12 C. The failure of a consumer to dispute the validity of a debt  
13 under this section may not be construed by any court as an admission  
14 of liability by the consumer.

15 D. A communication in the form of a formal pleading in a civil  
16 action shall not be treated as an initial communication for purposes  
17 of subsection A of this section.

18 E. The sending or delivery of any form or notice which does not  
19 relate to the collection of a debt and is expressly required by the  
20 Internal Revenue Code of 1986 or any provision of federal or state  
21 law relating to notice of data security breach or privacy, or any  
22 regulation prescribed under any such provision of law, shall not be  
23 treated as an initial communication in connection with debt  
24 collection for purposes of this section.

1 SECTION 13. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3151.12 of Title 59, unless  
3 there is created a duplication in numbering, reads as follows:

4 If any consumer owes multiple debts and makes any single payment  
5 to any debt collector with respect to the debts, the debt collector  
6 may not apply the payment to any debt which is disputed by the  
7 consumer and, where applicable, shall apply the payment in  
8 accordance with the consumer's directions.

9 SECTION 14. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 3151.13 of Title 59, unless  
11 there is created a duplication in numbering, reads as follows:

12 A. Any debt collector who brings any legal action on a debt  
13 against any consumer shall:

14 1. In the case of an action to enforce an interest in real  
15 property securing the consumer's obligation, the proper venue to  
16 bring such action shall be the district court where such real  
17 property is located; or

18 2. In the case of an action not described in paragraph 1 of  
19 this section, the proper venue shall be the district court:

- 20 a. in which such consumer signed the contract sued upon,  
21 or  
22 b. in which such consumer resides at the commencement of  
23 the action.

24

1 B. Nothing in this section shall be construed to create any new  
2 right of action.

3 SECTION 15. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 3151.14 of Title 59, unless  
5 there is created a duplication in numbering, reads as follows:

6 A. It is unlawful to design, compile and furnish any form  
7 knowing that the form would be used to create the false belief in a  
8 consumer that a person other than the creditor of the consumer is  
9 participating in the collection of or in an attempt to collect a  
10 debt the consumer allegedly owes the creditor, when in fact the  
11 person is not so participating.

12 B. Any person who violates this section shall be liable to the  
13 same extent and in the same manner as a debt collector is liable  
14 under Section 16 of this act for failure to comply with a provision  
15 of this act.

16 SECTION 16. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 3151.15 of Title 59, unless  
18 there is created a duplication in numbering, reads as follows:

19 A. Except as otherwise provided by this section, any debt  
20 collector who fails to comply with any provision of this act with  
21 respect to any person is liable to such person in an amount equal to  
22 the sum of:

23 1. Any actual damage sustained by such person as a result of  
24 such failure;

1        2.    a.    in the case of any action by an individual, such  
2                    additional damages as the court may allow, but not  
3                    exceeding One Thousand Dollars (\$1,000.00), or

4                    b.    in the case of a class action:

5                    (1)   such amount for each named plaintiff as could be  
6                    recovered under subparagraph a of paragraph 2 of  
7                    subsection A of this section, and

8                    (2)   such amount as the court may allow for all other  
9                    class members, without regard to a minimum  
10                   individual recovery, not to exceed the lesser of  
11                   Five Hundred Thousand Dollars (\$500,000.00) or  
12                   one percent (1%) of the net worth of the debt  
13                   collector; and

14        3.    In the case of any successful action to enforce the  
15    foregoing liability, the costs of the action, together with a  
16    reasonable attorney fee as determined by the court. On a finding by  
17    the court that an action under this subsection was brought in bad  
18    faith and for the purpose of harassment, the court may award to the  
19    defendant reasonable attorney fees.

20        B.    In determining the amount of liability in any action under  
21    subsection A of this section, the court shall consider, among other  
22    relevant factors:

23        1.    In any individual action under subparagraph a of paragraph 2  
24    of subsection A of this section, the frequency and persistence of

1 noncompliance by the debt collector, the nature of such  
2 noncompliance, and the extent to which such noncompliance was  
3 intentional; or

4 2. In any class action under subparagraph b of paragraph 2 of  
5 subsection A of this section, the frequency and persistence of  
6 noncompliance by the debt collector, the nature of such  
7 noncompliance, the resources of the debt collector, the number of  
8 persons adversely affected and the extent to which the debt  
9 collector's noncompliance was intentional.

10 C. A debt collector may not be held liable in any action  
11 brought under this section if the debt collector shows by a  
12 preponderance of evidence that the violation was not intentional and  
13 resulted from a bona fide error notwithstanding the maintenance of  
14 procedures reasonably adapted to avoid any such error.

15 D. An action to enforce any liability created by this act may  
16 be brought in any appropriate court of this state within one (1)  
17 year from the date on which the violation occurs.

18 SECTION 17. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 3151.16 of Title 59, unless  
20 there is created a duplication in numbering, reads as follows:

21 Each licensee shall maintain records concerning any transaction  
22 subject to this act for a period of three (3) years. The licensee  
23 shall make the records available to the Administrator of Consumer  
24 Credit.

1 SECTION 18. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3151.17 of Title 59, unless  
3 there is created a duplication in numbering, reads as follows:

4 A. The Administrator of Consumer Credit may upon his or her own  
5 motion, and shall upon written complaint filed by any person,  
6 investigate the business transactions of any licensee or person  
7 subject to this act, and the Administrator or an independent hearing  
8 examiner, after notice and hearing, may, for any cause as set forth  
9 in subsection B of this section, impose the following sanctions:

10 1. Reprimand;

11 2. Probation for a specified period of time;

12 3. Suspension of license for specified periods of time;

13 4. Revocation of license;

14 5. Imposition of an administrative fine which shall be not less  
15 than One Hundred Dollars (\$100.00) nor more than Two Thousand Five  
16 Hundred Dollars (\$2,500.00)

17 6. Restitution of actual damages suffered by the complaining  
18 person;

19 7. A Cease and Desist Order; or

20 8. Any combination of sanctions as provided for by paragraphs 1  
21 through 7 of this subsection.

22 B. Cause shall be established upon clear and convincing  
23 evidence that any licensee or person subject to this act has  
24 committed any of the following acts:

- 1        1. Making a materially false or fraudulent statement in an  
2 application for license;
- 3        2. Failing to pay the fees or obtain a license as required  
4 under the Oklahoma Fair Debt Collection Practices Act or to comply  
5 with an order lawfully issued pursuant to the Oklahoma Fair Debt  
6 Collection Practices Act;
- 7        3. Having violated any provision of the Oklahoma Fair Debt  
8 Collection Practices Act or any rule promulgated pursuant to the  
9 Oklahoma Fair Debt Collection Practices Act; or
- 10       4. Having been convicted of a felony.

11       SECTION 19.       NEW LAW       A new section of law to be codified  
12 in the Oklahoma Statutes as Section 3151.18 of Title 59, unless  
13 there is created a duplication in numbering, reads as follows:

14       There is hereby created in the State Treasury a revolving fund  
15 for the Commission on Consumer Credit to be designated the "Oklahoma  
16 Fair Debt Collection Practices Revolving Fund". The fund shall  
17 consist of all fees and fines received pursuant to the Oklahoma Fair  
18 Debt Collection Practices Act. The revolving fund shall be a  
19 continuing fund not subject to fiscal year limitations and shall be  
20 under the administrative direction of the Administrator. Monies  
21 accruing to the credit of this fund are hereby appropriated and may  
22 be budgeted and expended by the Administrator upon warrants issued  
23 by the State Treasurer against claims filed as prescribed by law  
24 with the Director of State Finance for approval and payment.

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SECTION 20. This act shall become effective November 1, 2009.

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