ENGROSSED SENATE
BILL NO. 1430 By: Stanislawski and Shortey of the Senate

and

Martin (Steve) of the House

[consumer debt collection - Bartmann Bill for Ethical Debt Collection - noncodification - codification - effective date]

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known as the "Bartmann Bill for Ethical Debt Collection".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 171 of Title 24, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Consumer" means an individual who has a consumer debt;

2. "Communication" means the conveying of information regarding a debt to any person through any medium;

3. "Consumer debt" means an obligation, or an alleged obligation, primarily for personal, family, or household purposes

and arising from a transaction or alleged transaction, but not including loans secured by real estate or real property;

4. "Creditor" means a party, other than a consumer, to a transaction or alleged transaction involving one or more consumers;

5. "Debt collection" means an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are alleged to be due a creditor;

6. "Debt buyer" means any person, partnership, limited liability company, corporation or other corporate entity recognized under Oklahoma law, engaged in the business of purchasing delinquent or charged-off consumer debt for less than face value, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt. Debt buyer includes a person acting on behalf of a debt buyer;

7. "Collection employee" means any employee of a debt buyer who directly contacts consumers attempting to collect any debt owed or due or asserted to be owed or due another;

8. "Licensing authority" means the Oklahoma State Department of Consumer Credit;

9. "Debt collection license" means authorizations issued by the licensing authority engage in debt collection;

10. "Attorney general" means the properly elected chief legal officer and his designees;

11. "Statute of limitation" means the maximum length of time following the first default on a debt after which collection activity or legal proceedings may not be initiated;

12. "Delinquency date" means the date of the last payment under the terms of the agreement, after which the debt was never brought current;

13. "Charge-off date" means the date that the original creditor treated the debt as uncollectable for accounting purposes; and

14. "Verification" means delivery to the consumer of documentation from the files of the original creditor that reasonably establishes the facts of the existence of the debt and the identity of the consumer. Such documentation may include, but is not limited to, a properly executed sworn affidavit signed by an officer or certified copies of mailed statements or other computer records reflecting the name and mailing address of the consumer, the original account number, the date the original credit account was opened, the delinquency date to the original creditor, and the date the debt was classified as charge-off.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 172 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. Debt buyers are subject to the requirements of 15 U.S.C. 1692(c). Debt buyers shall not make any communication that purports or gives the impression to be from an attorney if it is not an

attorney admitted to do business in this state. Debt buyers, by establishing telephonic contact with the consumer, grant explicit consent to the recording of phone calls by the consumer, but shall not make any communication to a consumer whenever the debt buyer has been notified by the consumer's attorney that the attorney represents the consumer.

B. All settlement agreements between debt buyers and a consumer shall be in writing. Such writing shall conspicuously show the amount and date paid, the name of the entity paid, the account number issued by the charge-off creditor, and the remaining balance owing, if any. If a debt buyer accepts a payment in full or as a full and final compromise of the consumer debt, a final statement that complies with this subsection shall be provided within fifteen (15) calendar days.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 173 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. A debt buyer shall not:

1. Attempt collection of any amount where the debt buyer knows, or reasonably should know, that the statute of limitation has expired;

2. Bring suit, or initiate arbitration or any other legal proceeding, to collect a consumer debt where the debt buyer knows,

or reasonably should know, that the statute of limitation has expired;

3. Bring suit or initiate an arbitration proceeding against the consumer without:

a. valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue, and

b. reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subparagraph, reasonable documentation shall include documentation of the name of the original creditor as would have been known to the consumer, the name and address of the consumer as appearing on the original creditor's records, the original consumer account number, a copy of the contract or other documentation evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges;

4. Bring suit or initiate an arbitration proceeding against the consumer without first giving the debtor written notice of the intent to file a legal action at least thirty (30) days in advance of filing. The written notice shall include the name, address and telephone number of the debt buyer, the name of the original creditor as would have been known to the consumer, the name and

address of the consumer as appearing on the original creditor's records, the original consumer account number, a copy of the contract or other documentation evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges;

5. Use threats, coercion, or attempts to coerce that employ any of the following practices:

a. using or threatening to use violence or other criminal means to cause harm to a person or property of a person,

b. accusing falsely or threatening to accuse falsely a person of fraud or other claim,

c. representing or threatening to represent to any person other than the consumer that a consumer is willfully refusing to pay a consumer debt when the debt is in dispute and the consumer has notified in writing the debt buyer of the dispute,

d. threatening to sell or assign to another the obligation of the consumer and falsely representing that the result of the sale or assignment would be that the consumer would lose a defense to the consumer debt or would be subject to illegal collection attempts,

e. threatening that the debtor will be arrested for nonpayment of a consumer debt,

f. threatening to file a charge, complaint, or criminal action against a debtor when the debtor has not violated a criminal law,

g. threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of a person's property without proper court proceedings; or

h. threatening to take any action prohibited by law;

6. Use outrageous language such as profanity, racial or ethnic slurs or other derogatory remarks the natural consequence of which is to abuse the hearer or reader;

7. Attempt to contact the consumer by telephone or cell phone more often than two times during any twenty-four-hour period;

8. Engage the consumer or any person in conversation more often than one time during any twenty-four-hour period unless the consumer or person gives consent; or

9. Use a fraudulent, deceptive, or misleading representation that employs the following practices:

a. using a name other than that of the true business or professional or the true personal or legal name of the debt buyer or collection employee while engaged in debt collection,

b. failing to maintain a comprehensive employment history for all persons employed or previously employed who attempt to collect consumer debt for the debt buyer,

c. representing falsely that the debt buyer has information or something of value for the consumer in order to solicit or discover information about the consumer,

d. representing falsely that a debt buyer or collection employee is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of this state or an agency of the federal, state or local government, or

e. representing that a consumer debt may or will be increased by the addition of interest, attorney fees, investigation fees, service fees, or other charges if a written contract or statute does not authorize the additional fees or charges;

B. This section does not prohibit a debt buyer from:

1. Threatening to institute civil lawsuits to collect the consumer debt provided that the debt is not past the statute of limitations; or

2. Exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 174 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. If a legal collection action is brought on behalf of a debt buyer on a consumer debt:

1. The debt buyer shall disclose clearly and conspicuously on the face of the complaint that the plaintiff is a debt buyer and that the debt buyer is duly licensed under this title and shall contain the name and number, if any, of the license and governmental agency that issued it;

2. The complaint shall include all of the following:

a. a short statement, written in simple language, describing the nature of the underlying consumer debt and the consumer transaction from which it is derived,

b. reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subdivision, reasonable documentation shall include documentation of the name of the original creditor as would have been known to the consumer, the name and address of the consumer as appearing on the original creditor's records, the original consumer account number, a copy of the contract or other documentation evidencing the consumer debt, and an itemized

accounting of the amount claimed to be owed, including all fees and charges,

c. valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue and setting forth the names of any and all previous owners,

d. a statement that the consumer debt is not past the statute of limitation.

B. Prior to the entry of a judgment against a consumer, including a default judgment:

1. The debt buyer shall clearly and conspicuously disclose to the court that it is a debt buyer and that the debt buyer is duly licensed under this title and the name and number, if any, of the license and governmental agency that issued it;

2. The debt buyer shall provide admissible evidence to the court to establish the amount and nature of the debt and the identity of the consumer;

3. For the purposes of this section, the only evidence sufficient to establish the amount and nature of the debt shall be properly authenticated business records including the following:

a. a copy of the contract or other writing evidencing the original debt, signed by the consumer. If a claim is based on a debt for which a signed writing evidencing the original debt does not exist, then copies of

documents demonstrating that the debt was incurred by the defendant,

b. a copy of a writing, including, but not limited, to the bill of sale, evidencing that the debt buyer is the sole current owner of the debt and showing from which entity the debt was acquired. If the debt has been sold more than once after being charged-off, admissible evidence shall be provided to establish an unbroken chain of ownership interests. Each writing shall contain the original account number of the debt sold or purchased, which may be redacted for security purposes,

c. the account number at the time of charge-off,

d. the name of the charge-off creditor as would have been known to the consumer,

e. the account balance at the time of charge-off,

f. an itemization of post-charge-off fees and charges claimed to be owed,

g. the date of last payment, if any,

h. the amount of interest claimed and the basis for the interest charged, and

i. the alleged date of default;

4. In any action on a consumer debt, if the debt buyer seeks a default judgment and has not complied with the requirements of this

section, the court shall not enter a default judgment for the debt buyer and may, in its discretion, dismiss the action with or without prejudice;

5. In any action on a consumer debt, the debt buyer shall have the burden of pleading and proving that the debt has not past the statute of limitation; and

6. In any action on a consumer debt, the debt buyer's attorney shall have the burden of proving that the defendant was served notice of the litigation.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt of a written request for verification from a consumer, the debt buyer shall within one hundred eighty (180) calendar days provide to the consumer:

1. The amount of the debt allegedly owed by the consumer, including an itemized accounting of all post-charge-off fees and charges;

2. The name of the creditor as would have been known to the consumer at the time of charge-off;

3. The name and address of the consumer as it appeared on the charge-off creditor's records;

4. The charge-off creditor's account number associated with the debt;

5. The date the original credit account was opened;

6. The date of first default to the original creditor;

7. The date the debt was classified as charge-off; and

8. A copy of the contract or other document evidencing the consumer's agreement to the debt, or if the claim is based on debt for which no such signed writing evidencing the original agreement exists, then copies of documents demonstrating that the debt was incurred by the person receiving the written statement.

B. Pending receipt of the documentation described in Subsection 1, the debt buyer shall cease all communication and collection activity on the consumer debt.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 176 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. Any debt buyer who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of:

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

2. In the case of any action by an individual, such additional damages as the court may allow, but not less than One Thousand Dollars ($1,000.00) or more than Five Thousand Dollars ($5,000.00) for each violation;

3. In determining the amount of liability in any action under this subsection the court shall consider, among other factors, the frequency and persistence of noncompliance by the debt buyer, the nature of the noncompliance, and the extent to which such noncompliance was intentional.

B. In the case of any action to enforce the foregoing liability, the prevailing party shall be entitled to the costs of the action, together with a reasonable attorney fee as determined by the court.

C. A debt buyer shall not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

D. A debt buyer shall not be held liable in any action brought under this title if the debt buyer shows by a preponderance of evidence that the violation was the result of an employee or agent that acted with blatant disregard of rigorous and established policies and procedures implemented by the debt buyer to prevent the violation and to discipline employees and agents for such willful action.

E. An action to enforce any liability created by this title may be brought in any appropriate court of competent jurisdiction

without regard to the amount in controversy within one year from the date on which the violation occurs.

F. On a finding by a court of an action under this section was brought in bad faith or for purposes of harassment; the court shall award the defendant's attorney fees reasonably related to the work performed and costs.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 177 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. A debt buyer may not engage in debt collection unless the debt buyer has obtained a debt buyer license issued by the licensing authority.

B. A collection employee may not engage in debt collection without a collection employee license issued by the licensing authority.

C. The licensing authority shall have the power to issue or deny a debt buyer license to a debt buyer. The licensing authority shall have the power to:

1. Establish procedures for submission of applications and initial issuance of debt buyer licenses, but shall at a minimum require:

a. submission of a business plan that includes the applicant's internal process for ensuring compliance with this title,

b. submission of a background questionnaire from the debt buyer and background questionnaire from owners and principal officers of the debt buyer;

2. Establish procedures for submission of license renewal applications and the renewal of debt buyer licenses;

3. Establish fees for issuance or renewal of licenses, the proceeds of which shall be retained by the licensing authority to cover the costs of administering this title;

4. The licensing authority shall have the power to issue or deny a collection employee license. The licensing authority shall have the power to:

a. establish procedures for submission of applications and initial issuance of collection employee licenses, but shall at a minimum require:

(1) submission of a background questionnaire,

(2) submission of a criminal background investigation, and

b. establish procedures for submission of license renewal applications and the renewal of collection agent licenses.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 178 of Title 24, unless there is created a duplication in numbering, reads as follows:

A. Compliance with this title may be enforced by the Department of Consumer Credit as the licensing authority.

B. The licensing authority is empowered to receive complaints from consumers and to act on those complaints through administrative action, including but not limited to:

1. Assessment of monetary fines, the proceeds of which shall be retained by the licensing authority to cover the costs of administering this title;

2. Revocation of license to do business in the state;

3. Disbarment of specific individuals from the practice of debt collection;

4. Requirement for special disclosures to consumers concerning the debt buyer's history of compliance;

5. Orders to cease and desist activities; and

6. Orders to discharge the consumer's debt.

C. The licensing authority shall have the power to delegate to the Attorney General selected enforcement powers of the licensing authority.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 179 of Title 24, unless there is created a duplication in numbering, reads as follows:

A debt buyer may not engage in debt collection until the debt buyer has obtained a surety bond of Fifty Thousand Dollars ($50,000.00) issued by a surety company authorized to do business in

this state. The bond shall be held by the licensing authority, and shall be in favor of any person who is damaged by a violation of this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 180 of Title 24, unless there is created a duplication in numbering, reads as follows:

A person who claims against a bond for a violation of this act may maintain an action against the debt buyer and against the surety. The aggregate liability of the surety to all persons damaged by a violation of this title may not exceed the amount of the bond.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 181 of Title 24, unless there is created a duplication in numbering, reads as follows:

Debt buyers, upon transfer of the consumer debt to any third party, shall also transfer all information in its possession about the consumer, including any disputes by the consumer.

SECTION 13. This act shall become effective November 1, 2012.

Passed the Senate the 5th day of March, 2012.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

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Presiding Officer of the House
of Representatives