

1 **SENATE FLOOR VERSION**

2 February 21, 2012

3 As Amended

4 SENATE BILL NO. 1430

By: Stanislawski of the Senate

and

Martin (Steve) of the House

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

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

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

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

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

18 As used in this act:

- 19 1. "Consumer" means an individual who has a consumer debt.
- 20 2. "Communication" means the conveying of information regarding  
21 a debt to any person through any medium.
- 22 3. "Consumer debt" means an obligation, or an alleged  
23 obligation, primarily for personal, family, or household purposes

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

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

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

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

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

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

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

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

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1 11. "Statute of limitation" shall mean the maximum length of time  
2 following the first default on a debt after which collection activity  
3 or legal proceedings may not be initiated.

4 12. "Delinquency date" shall mean the date of the last payment  
5 under the terms of the agreement, after which the debt was never  
6 brought current.

7 13. "Charge-off date" shall mean the date that the original  
8 creditor treated the debt as uncollectable for accounting purposes.

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

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

22 A. Debt buyers are subject to the requirements of 15 U.S.C.  
23 1692(c). Debt buyers shall not make any communication that purports  
24 or gives the impression to be from an attorney if it is not an

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

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

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

18 A. A debt buyer shall not:

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

22 2. Bring suit, or initiate arbitration or any other legal  
23 proceeding, to collect a consumer debt where the debt buyer knows,  
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1 or reasonably should know, that the statute of limitation has  
2 expired;

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

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

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

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

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

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

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

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

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

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

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

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

6 g. threatening that non-payment of a consumer debt will  
7 result in the seizure, repossession, or sale of a  
8 person's property without proper court proceedings; or

9 h. threatening to take any action prohibited by law;

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

13 7. Attempt to contact the consumer by telephone or cell phone  
14 more often than two times during any 24-hour period;

15 8. Engage the consumer or any person in conversation more often  
16 than one time during any 24-hour period unless the consumer or  
17 person gives consent; or

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

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

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- 1           b.    failing to maintain a comprehensive employment history  
2                   for all persons employed or previously employed who  
3                   attempt to collect consumer debt for the debt buyer,  
4           c.    representing falsely that the debt buyer has  
5                   information or something of value for the consumer in  
6                   order to solicit or discover information about the  
7                   consumer,  
8           d.    representing falsely that a debt buyer or collection  
9                   employee is vouched for, bonded by, or affiliated  
10                  with, or is an instrumentality, agent, or official of  
11                  this state or an agency of the federal, state or local  
12                  government, or  
13           e.    representing that a consumer debt may or will be  
14                   increased by the addition of interest, attorney fees,  
15                   investigation fees, service fees, or other charges if  
16                   a written contract or statute does not authorize the  
17                   additional fees or charges;

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

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

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



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

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

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

11           2. The complaint shall include all of the following:

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

15           b. reasonable verification of the amount of the debt  
16           allegedly owed by the debtor. For purposes of this  
17           subdivision, reasonable documentation shall include  
18           documentation of the name of the original creditor as  
19           would have been known to the consumer, the name and  
20           address of the consumer as appearing on the original  
21           creditor's records, the original consumer account  
22           number, a copy of the contract or other documentation  
23           evidencing the consumer debt, and an itemized  
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1 accounting of the amount claimed to be owed, including  
2 all fees and charges,

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

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

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

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

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

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

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

1 documents demonstrating that the debt was incurred by  
2 the defendant,

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

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

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

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

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

19 g. the date of last payment, if any,

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

22 i. the alleged date of default.

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

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

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

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

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

13 A. Upon receipt of a written request for verification from a  
14 consumer, the debt buyer shall within 180 calendar days provide to  
15 the consumer:

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

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

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

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

- 1        5. The date the original credit account was opened;
- 2        6. The date of first default to the original creditor;
- 3        7. The date the debt was classified as charge-off;
- 4        8. A copy of the contract or other document evidencing the
- 5 consumer's agreement to the debt, or if the claim is based on debt
- 6 for which no such signed writing evidencing the original agreement
- 7 exists, then copies of documents demonstrating that the debt was
- 8 incurred by the person receiving the written statement.

9        B. Pending receipt of the documentation described in Subsection  
10 1, the debt buyer shall cease all communication and collection  
11 activity on the consumer debt.

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

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

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

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

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

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

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

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

22          E. An action to enforce any liability created by this title may  
23 be brought in any appropriate court of competent jurisdiction  
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1 without regard to the amount in controversy within one year from the  
2 date on which the violation occurs.

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

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

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

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

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

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

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

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

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

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

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

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

15                   (1)  submission of a background questionnaire,

16                   (2)  submission of a criminal background  
17                                investigation.

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

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



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

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

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

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

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

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

14 5. Orders to cease and desist activities;

15 6. Orders to discharge the consumer's debt;

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

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

22 A debt buyer may not engage in debt collection until the debt  
23 buyer has obtained a surety bond of Fifty Thousand Dollars  
24 (\$50,000.00) issued by a surety company authorized to do business in

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

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

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

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

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-14-12 - DO  
20 PASS, As Amended and Coauthored.

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