

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1430

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4
5
6 AS INTRODUCED

7 An Act relating to consumer debt collection; creating
8 the Bartmann Bill for Ethical Debt Collection;
9 providing short title; defining terms; creating
10 certain consent; prohibiting debt buyers from certain
11 contact; requiring specified format for certain
12 agreements; establishing prohibited methods for
13 attempting to collect debts; stating exception;
14 requiring certain disclosure in certain actions;
15 requiring inclusion of certain information in certain
16 complaint; requiring provision of certain evidence;
17 authorizing dismissal of certain action under
18 specified circumstances; establishing burden of
19 proof; establishing procedures for verification of
20 certain debts; establishing liability for certain
21 acts; providing for certain damages; authorizing
22 award of certain costs and fees; establishing
23 exceptions to certain liability; establishing
24 jurisdiction for certain action; requiring certain
license; establishing powers of licensing authority;
providing for enforcement by licensing authority;
authorizing certain administrative actions;
authorizing delegation of certain authority;
requiring certain bond; authorizing certain action to
enforce certain claims; requiring transfer of certain
information; providing for noncodification; providing
for codification; and providing an effective date.

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

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

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

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

6 As used in this act:

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

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

10 3. "Consumer debt" means an obligation, or an alleged
11 obligation, primarily for personal, family, or household purposes
12 and arising from a transaction or alleged transaction, but not
13 including loans secured by real estate or real property.

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

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

19 6. "Debt buyer" means any person engaged in the business of
20 purchasing delinquent or charged-off consumer debt for less than face
21 value, whether it collects the debt itself or hires a third party for
22 collection or an attorney-at-law for litigation in order to collect
23 such debt. Debt buyer includes a person acting on behalf of a debt
24 buyer.

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

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

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

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

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

13 12. "Delinquency date" shall mean the date of the last payment
14 under the terms of the agreement, after which the debt was never
15 brought current.

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

18 14. "Verification" shall mean delivery to the consumer of
19 documentation from the files of the original creditor that reasonably
20 establishes the facts of the existence of the debt and the identity of
21 the consumer. Such documentation may include, but is not limited to,
22 a properly executed sworn affidavit signed by an officer or certified
23 copies of mailed statements or other computer records reflecting the
24 name and mailing address of the consumer, the original account number,

1 the date the original credit account was opened, the delinquency date
2 to the original creditor, and the date the debt was classified as
3 charge-off.

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

7 A. Debt buyers are subject to the requirements of 15 U.S.C.
8 1692(c). Debt buyers shall not make any communication that purports
9 or gives the impression to be from an attorney if it is not an
10 attorney admitted to do business in this state. Debt buyers, by
11 establishing telephonic contact with the consumer, grant explicit
12 consent to the recording of phone calls by the consumer, but shall
13 not make any communication to a consumer whenever the debt buyer has
14 been notified by the consumer's attorney that the attorney
15 represents the consumer.

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

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

4 A. A debt buyer shall not:

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

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

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

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

17 b. reasonable verification of the amount of the debt
18 allegedly owed by the debtor. For purposes of this
19 subparagraph, reasonable documentation shall include
20 documentation of the name of the original creditor as
21 would have been known to the consumer, the name and
22 address of the consumer as appearing on the original
23 creditor's records, the original consumer account
24 number, a copy of the contract or other documentation

1 evidencing the consumer debt, and an itemized
2 accounting of the amount claimed to be owed, including
3 all fees and charges;

4 4. Bring suit or initiate an arbitration proceeding against the
5 consumer without first giving the debtor written notice of the
6 intent to file a legal action at least thirty (30) days in advance
7 of filing. The written notice shall include the name, address and
8 telephone number of the debt buyer, the name of the original
9 creditor as would have been known to the consumer, the name and
10 address of the consumer as appearing on the original creditor's
11 records, the original consumer account number, a copy of the
12 contract or other documentation evidencing the consumer debt, and an
13 itemized accounting of the amount claimed to be owed, including all
14 fees and charges;

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

- 17 a. using or threatening to use violence or other criminal
18 means to cause harm to a person or property of a
19 person,
- 20 b. accusing falsely or threatening to accuse falsely a
21 person of fraud or other claim,
- 22 c. representing or threatening to represent to any person
23 other than the consumer that a consumer is willfully
24 refusing to pay a consumer debt when the debt is in

1 dispute and the consumer has notified in writing the
2 debt buyer of the dispute,

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

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

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

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

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

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

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

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

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

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

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

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

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

22 e. representing that a consumer debt may or will be
23 increased by the addition of interest, attorney fees,
24 investigation fees, service fees, or other charges if

1 a written contract or statute does not authorize the
2 additional fees or charges;

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

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

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

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

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

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

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

21 a. a short statement, written in simple language,
22 describing the nature of the underlying consumer debt
23 and the consumer transaction from which it is derived,
24

- 1 b. reasonable verification of the amount of the debt
2 allegedly owed by the debtor. For purposes of this
3 subdivision, reasonable documentation shall include
4 documentation of the name of the original creditor as
5 would have been known to the consumer, the name and
6 address of the consumer as appearing on the original
7 creditor's records, the original consumer account
8 number, a copy of the contract or other documentation
9 evidencing the consumer debt, and an itemized
10 accounting of the amount claimed to be owed, including
11 all fees and charges,
- 12 c. valid documentation that the debt buyer is the owner
13 of the specific debt instrument or account at issue
14 and setting forth the names of any and all previous
15 owners,
- 16 d. a statement that the consumer debt is not past the
17 statute of limitation.

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

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

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

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

7 a. a copy of the contract or other writing evidencing the
8 original debt, signed by the consumer. If a claim is
9 based on a debt for which a signed writing evidencing
10 the original debt does not exist, then copies of
11 documents demonstrating that the debt was incurred by
12 the defendant,

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

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

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:

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

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

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

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

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

13 5. The date the original credit account was opened;

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

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

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

21 B. Pending receipt of the documentation described in Subsection
22 1, the debt buyer shall cease all communication and collection
23 activity on the consumer debt.

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

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

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

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

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

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

22 C. A debt buyer shall not be held liable in any action brought
23 under this title if the debt collector shows by a preponderance of
24 evidence that the violation was not intentional and resulted from a

1 bona fide error notwithstanding the maintenance of procedures
2 reasonably adopted to avoid such error.

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

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

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

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

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

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

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

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

10 a. submission of financial statements that demonstrate a
11 minimum net worth of One Hundred Thousand Dollars
12 (\$100,000.00),

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

16 c. submission of a background questionnaire from the debt
17 buyer and background questionnaire from owners and
18 principal officers of the debt buyer;

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

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

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

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

7 (1) submission of a background questionnaire,

8 (2) submission of a criminal background
9 investigation.

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

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

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

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

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

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

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

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

5 5. Orders to cease and desist activities;

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

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

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

13 A debt buyer may not engage in debt collection until the debt
14 buyer has obtained a surety bond of Fifty Thousand Dollars
15 (\$50,000.00) issued by a surety company authorized to do business in
16 this state. The bond shall be held by the licensing authority, and
17 shall be in favor of any person who is damaged by a violation of
18 this act.

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

22 A person who claims against a bond for a violation of this act
23 may maintain an action against the debt buyer and against the
24 surety. The aggregate liability of the surety to all persons

1 damaged by a violation of this title may not exceed the amount of
2 the bond.

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

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

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

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