

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2630

4
5 By: Representative Bond
6
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For An Act To Be Entitled

9 AN ACT TO ELIMINATE ABUSIVE DEBT COLLECTION
10 PRACTICES BY DEBT COLLECTORS AND TO PROTECT
11 CONSUMERS AGAINST DEBT COLLECTION ABUSES; TO
12 INCORPORATE PROVISIONS OF THE FAIR DEBT
13 COLLECTION PRACTICES ACT; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO ELIMINATE ABUSIVE DEBT COLLECTION
16 PRACTICES BY DEBT COLLECTORS AND TO
17 PROTECT CONSUMERS AGAINST DEBT
18 COLLECTION ABUSES AND TO INCORPORATE
19 PROVISIONS OF THE FAIR DEBT COLLECTION
20 PRACTICES ACT.
21
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 17-24-101 is amended to read as follows:
27 17-24-101. Definitions.

28 As used in this chapter, ~~unless the context otherwise requires,:~~

29 (1) "Board" means the State Board of Collection Agencies;

30 (2) "Communication" means the conveying of information regarding
31 a debt directly or indirectly to any person through any medium;

32 ~~(1)(3) "Collection agency" means any person, who works with or~~
33 ~~employs one (1) or more other persons, or any partnership, corporation,~~
34 limited liability company, or association which that engages in the
35 collection or solicitation of delinquent accounts, bills, or other forms of
36 indebtedness, or any person, partnership, corporation, limited liability



1 company, or association using a fictitious name or any name other than their
 2 own in the collection of their own accounts receivable, ~~or any person,~~
 3 ~~partnership, corporation, or association which solicits claims for~~
 4 ~~collection.~~;

5 (4) "Consumer" means any natural person obligated or allegedly
 6 obligated to pay any debt;

7 (5) "Creditor" means any person who offers or extends credit
 8 creating a debt or to whom a debt is owed, but does not include any person to
 9 the extent that he or she receives an assignment or transfer of a debt in
 10 default solely for the purpose of facilitating collection of the debt for
 11 another;

12 (6) "Debt" means any obligation or alleged obligation of a
 13 consumer to pay money arising out of a transaction in which the money,
 14 property, insurance, or services which are the subject of the transaction are
 15 primarily for personal, family, or household purposes, whether or not the
 16 obligation has been reduced to judgment;

17 (7)(A) "Debt collector" means any person who uses any
 18 instrumentality of interstate commerce or the mails in any business the
 19 principal purpose of which is the collection of any debts, or who regularly
 20 collects or attempts to collect, directly or indirectly, debts owed or due or
 21 asserted to be owed or due another.

22 (B) Notwithstanding the exclusion provided by subdivision
 23 (7)(D)(vi) of this section, "debt collector" includes any creditor who, in
 24 the process of collecting his or her own debts, uses any name other than his
 25 or her own which would indicate that a third person is collecting or
 26 attempting to collect the debts.

27 (C) For the purpose of § 17-24-504(6), "debt collector"
 28 also includes any person who uses any instrumentality of interstate commerce
 29 or the mails in any business the principal purpose of which is the
 30 enforcement of security interests.

31 (D) "Debt collector" does not include:

32 (i) Any officer or employee of a creditor while in
 33 the name of the creditor collecting debts for the creditor;

34 (ii) Any person while acting as a debt collector for
 35 another person, both of whom are related by common ownership or affiliated by
 36 corporate control if:

1 (a) The person acting as a debt collector does
2 so only for persons to whom it is so related or affiliated; and

3 (b) The principal business of the person is
4 not the collection of debts;

5 (iii) Any officer or employee of the United States
6 or any state to the extent that collecting or attempting to collect any debt
7 is in the performance of his or her official duties;

8 (iv) Any person while serving or attempting to serve
9 legal process on any other person in connection with the judicial enforcement
10 of any debt;

11 (v) Any nonprofit organization that at the request
12 of consumers, performs bona fide consumer credit counseling and assists
13 consumers in the liquidation of their debts by receiving payments from the
14 consumers and distributing the amounts received to creditors; and

15 (vi) Any person collecting or attempting to collect
16 any debt owed or due or asserted to be owed or due another to the extent the
17 activity:

18 (a) Is incidental to a bona fide fiduciary
19 obligation or a bona fide escrow arrangement;

20 (b) Concerns a debt which was originated by
21 the person;

22 (c) Concerns a debt which was not in default
23 at the time it was obtained by the person; or

24 (d) Concerns a debt obtained by the person as
25 a secured party in a commercial credit transaction involving the creditor;
26 and

27 (8) "Location information" means a consumer's place of abode and
28 his or her telephone number at the place, or his or her place of employment.

29
30 SECTION 2. Arkansas Code § 17-24-102 is amended to read as follows:
31 17-24-102. Exemptions.

32 (a) The licensing provisions of this chapter shall not be applicable
33 to:

- 34 (1) Regular employees of a single creditor;
- 35 (2) Banks;
- 36 (3) Trust companies;

1 shall:

2 (1) Identify himself or herself, state that the debt collector
 3 is confirming or correcting location information concerning the consumer,
 4 and, only if expressly requested, identify the debt collector's employer;

5 (2) Not state that the consumer owes any debt;

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

10 (4) Not communicate by post card;

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

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

21

22 17-24-502. Communication in connection with debt collection.

23 (a) Without the prior consent of the consumer given directly to the
 24 debt collector or the express permission of a court of competent
 25 jurisdiction, a debt collector may not communicate with a consumer in
 26 connection with the collection of any debt:

27 (1)(A) At any unusual time or place or a time or place known or
 28 which should be known to be inconvenient to the consumer.

29 (B) In the absence of knowledge of circumstances to the
 30 contrary, a debt collector shall assume that the convenient time for
 31 communicating with a consumer is after 8:00 a.m. and before 9:00 p.m. local
 32 time at the consumer's location;

33 (2) If the debt collector knows the consumer is represented by
 34 an attorney with respect to the debt and has knowledge of or can readily
 35 ascertain the attorney's name and address, unless the attorney fails to
 36 respond within a reasonable period of time to a communication from the debt

1 collector or unless the attorney consents to direct communication with the
 2 consumer; or

3 (3) At the consumer's place of employment if the debt collector
 4 knows or has reason to know that the consumer's employer prohibits the
 5 consumer from receiving the communication.

6 (b) Except as provided in § 17-24-501, without the prior consent of
 7 the consumer given directly to the debt collector or the express permission
 8 of a court of competent jurisdiction or as reasonably necessary to effectuate
 9 a postjudgment judicial remedy, a debt collector may not communicate in
 10 connection with the collection of any debt with any person other than the
 11 consumer, his or her attorney, a consumer reporting agency if otherwise
 12 permitted by law, the creditor, the attorney of the creditor, or the attorney
 13 of the debt collector.

14 (c)(1) If a consumer notifies a debt collector in writing that the
 15 consumer refuses to pay a debt or that the consumer wishes the debt collector
 16 to cease further communication with the consumer, the debt collector shall
 17 not communicate further with the consumer with respect to the debt except:

18 (A) To advise the consumer that the debt collector's
 19 further efforts are being terminated;

20 (B) To notify the consumer that the debt collector or
 21 creditor may invoke specified remedies that are ordinarily invoked by the
 22 debt collector or creditor; or

23 (C) If applicable, to notify the consumer that the debt
 24 collector or creditor intends to invoke a specified remedy.

25 (2) If the notice from the consumer is made by mail,
 26 notification shall be complete upon receipt.

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

30
 31 17-24-503. Harassment or abuse.

32 (a) A debt collector shall not engage in any conduct the natural
 33 consequence of which is to harass, oppress, or abuse any person in connection
 34 with the collection of a debt.

35 (b) Without limiting the general application of subsection (a) of this
 36 section, the following conduct is a violation of this section:

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

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

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

7 (4) The advertisement for sale of any debt to coerce payment of
 8 the debt;

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

12 (6) Except as provided in § 17-24-501, the placement of
 13 telephone calls without meaningful disclosure of the caller's identity.

14
 15 17-24-504. False or misleading representations.

16 (a) A debt collector shall not use any false, deceptive, or misleading
 17 representation or means in connection with the collection of any debt.

18 (b) Without limiting the general application of subsection (a) of this
 19 section, the following conduct is a violation of this section:

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

23 (2) The false representation of:

24 (A) The character, amount, or legal status of any debt; or

25 (B) Any services rendered or compensation that may be
 26 lawfully received by any debt collector for the collection of a debt;

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

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

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

36 (6) The false representation or implication that a sale,

1 referral, or other transfer of any interest in a debt shall cause the
 2 consumer to:

3 (A) Lose any claim or defense to payment of the debt; or

4 (B) Become subject to any practice prohibited by this
 5 subchapter;

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

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

11 (9) The use or distribution of any written communication that
 12 simulates or is falsely represented to be a document authorized, issued, or
 13 approved by any court, official, or agency of the United States or any state,
 14 or that creates a false impression as to its source, authorization, or
 15 approval;

16 (10) The use of any false representation or deceptive means to
 17 collect or attempt to collect any debt or to obtain information concerning a
 18 consumer;

19 (11) The failure to disclose in the initial written
 20 communication with the consumer and, in addition, if the initial
 21 communication with the consumer is oral in the initial oral communication,
 22 that the debt collector is attempting to collect a debt and that any
 23 information obtained will be used for that purpose;

24 (12) The failure to disclose in a communication after the
 25 initial communication that the communication is from a debt collector, except
 26 that this subdivision (12) shall not apply to a formal pleading made in
 27 connection with a legal action;

28 (13) The false representation or implication that accounts have
 29 been turned over to innocent purchasers for value;

30 (14) The false representation or implication that documents are
 31 legal process;

32 (15) The use of any business, company, or organization name
 33 other than the true name of the debt collector's business, company, or
 34 organization;

35 (16) The false representation or implication that documents are
 36 not legal process forms or do not require action by the consumer; or

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

3
4 17-24-505. Unfair practices.

5 (a) A debt collector shall not use unfair or unconscionable means to
6 collect or attempt to collect any debt.

7 (b) Without limiting the general application of subsection (a) of this
8 section, the following conduct is a violation of this section:

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

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

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

21 (4) Depositing or threatening to deposit any postdated check or
22 other postdated payment instrument prior to the date on the check or
23 instrument;

24 (5) Causing charges, including, but not limited to, collect
25 telephone calls and telegram fees, to be made to any person for
26 communications by concealment of the true purpose of the communication;

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

29 (A) No present right exists to possession of the property
30 claimed as collateral through an enforceable security interest;

31 (B) No present intention exists to take possession of the
32 property; or

33 (C) The property is exempt by law from the dispossession
34 or disablement;

35 (7) Communicating with a consumer regarding a debt by post card;
36 or

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

6
7 17-24-506. Validation of debts.

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

13 (1) The amount of the debt;

14 (2) The name of the creditor to whom the debt is owed;

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

18 (4) A statement that if the consumer notifies the debt collector
19 in writing within the thirty-day period that the debt or any portion thereof
20 is disputed the debt collector will obtain verification of the debt or a copy
21 of a judgment against the consumer and a copy of the verification or judgment
22 will be mailed to the consumer by the debt collector; and

23 (5) A statement that upon the consumer's written request within
24 the thirty-day period the debt collector will provide the consumer with the
25 name and address of the original creditor if different from the current
26 creditor.

27 (b) If the consumer notifies the debt collector in writing within the
28 thirty-day period described in subsection (a) of this section that the debt
29 or any portion thereof is disputed or that the consumer requests the name and
30 address of the original creditor, the debt collector shall cease collection
31 of the debt or any disputed portion until:

32 (1) The debt collector obtains verification of the debt or a
33 copy of a judgment or the name and address of the original creditor; and

34 (2) A copy of the verification or judgment or name and address
35 of the original creditor is mailed to the consumer by the debt collector.

36 (c) The failure of a consumer to dispute the validity of a debt under

1 this section may not be construed by any court as an admission of liability
 2 by the consumer.

3
 4 17-24-507. Multiple debts.

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

10
 11 17-24-508. Legal actions by debt collectors.

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

14 (1) In the case of an action to enforce an interest in real
 15 property securing the consumer's obligation, bring the action only in the
 16 county in which the real property is located; or

17 (2) In the case of an action not described in subdivision (a)(1)
 18 of this section, bring the action only in the county:

19 (A) In which the consumer signed the contract sued upon;
 20 or

21 (B) In which the consumer resides at the commencement of
 22 the action.

23 (b) Nothing in this subchapter shall be construed to authorize the
 24 bringing of legal actions by debt collectors.

25
 26 17-24-509. Furnishing certain deceptive forms.

27 (a) It is unlawful to design, compile, or furnish any form knowing
 28 that the form would be used to create the false belief in a consumer that a
 29 person other than the creditor of the consumer is participating in the
 30 collection of or in an attempt to collect a debt the consumer allegedly owes
 31 the creditor if, in fact, the person is not so participating.

32 (b) Any person who violates this section shall be liable to the same
 33 extent and in the same manner as a debt collector is liable under § 17-24-510
 34 for failure to comply with a provision of this subchapter.

35
 36 17-24-510. Civil liability.

1 (a) Except as otherwise provided by this section, any debt collector
 2 that fails to comply with any provision of this subchapter with respect to
 3 any person is liable to the person in an amount equal to the sum of:

4 (1) Any actual damage sustained by the person as a result of the
 5 failure;

6 (2)(A) In the case of any action by an individual, additional
 7 damages as the court may allow but not exceeding one thousand dollars
 8 (\$1,000); or

9 (B) In the case of a class action:

10 (i) The amount for each named plaintiff that could
 11 be recovered under subdivision (a)(2)(A) of this section; and

12 (ii) The amount that the court may allow for all
 13 other class members, without regard to a minimum individual recovery, not to
 14 exceed the lesser of five hundred thousand dollars (\$500,000) or one percent
 15 (1%) of the net worth of the debt collector; and

16 (3)(A) In the case of any successful action to enforce the
 17 liability under this section, the costs of the action together with a
 18 reasonable attorney's fee as determined by the court.

19 (B) Based upon a finding by the court that an action under
 20 this section was brought in bad faith and for the purpose of harassment, the
 21 court may award to the defendant attorney's fees reasonable in relation to
 22 the work expended and costs.

23 (b) In determining the amount of liability in any action under
 24 subsection (a) of this section, the court shall consider among other relevant
 25 factors:

26 (1) In any individual action under subsection (a)(2)(A) of this
 27 section, the frequency and persistence of noncompliance by the debt
 28 collector, the nature of the noncompliance, and the extent to which the
 29 noncompliance was intentional; or

30 (2) In any class action under subsection (a)(2)(B) of this
 31 section, the frequency and persistence of noncompliance by the debt
 32 collector, the nature of the noncompliance, the resources of the debt
 33 collector, the number of persons adversely affected, and the extent to which
 34 the debt collector's noncompliance was intentional.

35 (c) A debt collector may not be held liable in any action brought
 36 under this subchapter if the debt collector shows by a preponderance of the

1 evidence that the violation was not intentional and resulted from a bona fide
2 error notwithstanding the maintenance of procedures reasonably adapted to
3 avoid the error.

4 (d) An action to enforce any liability created by this subchapter may
5 be brought in any appropriate court of competent jurisdiction within one (1)
6 year from the date on which the violation occurs.

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