



House of Representatives

General Assembly

File No. 282

January Session, 2013

Substitute House Bill No. 6173

House of Representatives, April 2, 2013

The Committee on Banks reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE REFORM OF DEBT COLLECTION PRACTICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-645 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 As used in sections 36a-645 to 36a-647, inclusive, as amended by this
4 act, sections 3 to 5, inclusive, and section 42-150aa, as amended by this
5 act, unless the context otherwise requires:

6 (1) "Consumer debtor" means any natural person residing in this
7 state who owes a debt to a creditor.

8 (2) "Creditor" means (A) any person to whom a debt is owed by a
9 consumer debtor and such debt results from a transaction occurring in
10 the ordinary course of such person's business, or (B) any person to
11 whom such debt is assigned. "Creditor" includes a debt buyer, as
12 defined in subdivision (4) of this section, but shall not include a

13 consumer collection agency, as defined in section 36a-800, or any
14 department or agency of the United States, this state, any other state,
15 or any political subdivision thereof.

16 (3) "Debt" means an obligation or alleged obligation arising out of a
17 transaction in which the money, property, goods or services which are
18 the subject of the transaction are for personal, family or household
19 purposes, whether or not such obligation has been reduced to
20 judgment.

21 (4) "Debt buyer" means a person or entity that (A) is engaged in the
22 business of purchasing delinquent debt, including, but not limited to,
23 delinquent or charged-off consumer loans or consumer credit
24 accounts, for collection purposes, or (B) receives assignments of claims
25 for collection purposes from a person or entity that purchased
26 delinquent debt, including, but not limited to, delinquent or charged-
27 off consumer loans or consumer credit accounts, whether it collects the
28 debt itself or hires a third party for collection or an attorney for
29 representation in a cause of action to collect such debt.

30 (5) "Original creditor" means the last person or entity, identified by
31 the name it uses in its dealings with a consumer, that extended credit
32 to the consumer for the purchase of goods or services, for the lease of
33 goods, or as a loan of money.

34 Sec. 2. Section 36a-646 of the general statutes is repealed and the
35 following is substituted in lieu thereof (*Effective October 1, 2013*):

36 (a) No creditor shall use any abusive, harassing, fraudulent,
37 deceptive or misleading representation, device or practice to collect or
38 attempt to collect any debt.

39 (b) No debt buyer shall bring suit or initiate an arbitration
40 proceeding against a consumer debtor or otherwise attempt to collect
41 on a debt:

42 (1) When the debt buyer knows or reasonably should know that
43 such collection is barred by the applicable statute of limitations;

44 (2) Without (A) proof that the debt buyer is the owner of the specific
45 debt instrument or account at issue, and (B) verification of the amount
46 of the debt allegedly owed by the consumer debtor. For purposes of
47 this subdivision, "verification" includes documentation of the name of
48 the original creditor, the name and address of the consumer debtor as
49 appearing on the original creditor's records, the original creditor's
50 account number for the consumer debtor, a copy of the contract or
51 other document evidencing the debt and an itemized accounting of the
52 amount claimed to be owed, including all fees and charges; or

53 (3) Without first giving the consumer debtor written notice of the
54 intent to file a legal action not less than thirty days in advance of filing
55 such action. The written notice shall include the name, address and
56 telephone number of the debt buyer, the name of the original creditor,
57 the original creditor's account number for the consumer debtor, a copy
58 of the contract or other document evidencing the debt and an itemized
59 accounting of all amounts claimed to be owed.

60 (c) No debt buyer shall fail to comply with sections 3 to 5, inclusive,
61 of this act.

62 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) In any cause of action
63 initiated by a debt buyer against a consumer debtor, the debt buyer
64 shall, not later than two days after the return date, or, in the case of a
65 small claims matter, not later than ten days prior to the answer date,
66 mail or deliver to the consumer debtor the following materials with
67 delivery confirmation:

68 (1) A copy of the contract or other writing evidencing the original
69 debt, which shall contain a written or electronic signature of the
70 consumer debtor. If a claim is based on credit card debt and no such
71 signed writing evidencing the original debt ever existed, then the debt
72 buyer shall attach copies of documents generated when the credit card
73 was used;

74 (2) A copy of the assignment or other writing establishing that the
75 debt buyer is the owner of the debt. If the debt has been assigned more

76 than once, the debt buyer shall attach each assignment or other writing
77 evidencing the transfer of ownership and establishing an unbroken
78 chain of ownership. Each assignment or other writing evidencing
79 transfer of ownership shall contain the original account number of the
80 debt purchased and clearly show the consumer debtor's name
81 associated with such account number; and

82 (3) An itemization of the amount of damages sought, including:

83 (A) The amount owed for the purchase of goods or services or for
84 the lease of goods or the amount of credit extended;

85 (B) Interest, fees and charges imposed by the original creditor;

86 (C) Any interest, fees or charges imposed by any debt buyer or other
87 assignee of the debt;

88 (D) Attorney's fees;

89 (E) Any other fees, costs or charges sought or imposed;

90 (F) The amount and date of the last payment before default or
91 charge-off, whichever is later;

92 (G) Each payment credited to the debt after default or charge-off;
93 and

94 (H) The amount the debt buyer paid for the account.

95 (b) If the consumer debtor appears for trial on the scheduled trial
96 date, the debt buyer either fails to appear or is not prepared to proceed
97 to trial and the court does not find good cause for a continuance, the
98 court shall enter judgment for the consumer debtor and dismiss the
99 debt buyer's action with prejudice. Notwithstanding any other law to
100 the contrary, the court may award the consumer debtor costs and
101 attorney's fees, including lost wages and other related expenses.

102 (c) If the debt buyer fails to deliver the documents required under
103 subsection (a) of this section, the debt buyer shall not be entitled to a

104 default judgment against the consumer debtor.

105 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) Prior to entry of a
106 judgment or order against a consumer debtor in a cause of action
107 initiated by a debt buyer, the debt buyer shall file:

108 (1) A statement of compliance with section 3 of this act;

109 (2) An authenticated copy of the contract or other writing
110 evidencing the original debt, which shall contain the consumer
111 debtor's written or electronic signature. If a claim is based on credit
112 card debt and no such signed writing evidencing the original debt ever
113 existed, then the debt buyer shall attach authenticated copies of
114 documents generated when the credit card was used;

115 (3) Evidence sufficient to establish the amount and nature of the
116 debt by business records that satisfy the requirements of section 52-180
117 of the general statutes, which shall include:

118 (A) The original creditor's name;

119 (B) The original creditor's account number for the consumer debtor;

120 (C) The amount of the original debt;

121 (D) An itemization of charges and fees claimed to be owed;

122 (E) The original charge-off balance or, if the balance has not been
123 charged off, an explanation of how the balance was calculated;

124 (F) An itemization of post charge-off additions, if applicable;

125 (G) The date of the last payment;

126 (H) The amount of interest claimed and the basis for the interest
127 charged;

128 (I) The amount the debt buyer paid for the consumer debtor's
129 account; and

130 (J) A statement of the applicable statute of limitations period and the
131 filing date of the cause of action;

132 (4) An affidavit containing a statement that the debt buyer is the
133 sole current owner of the debt, which shall include or be accompanied
134 by (A) a chronological listing of the name of all prior owners of the
135 debt and the date of each transfer or ownership of the debt, beginning
136 with the name of the original creditor; and (B) a contract of sale and
137 exhibits that transferred ownership of the debt to the debt buyer;

138 (5) Evidence sufficient to establish an unbroken chain of ownership
139 by business records that satisfy the requirements of section 52-180 of
140 the general statutes. Such evidence shall include (A) an affidavit by the
141 original creditor of the facts constituting the debt, the default in
142 payment, the sale or assignment of the debt, authenticated contract of
143 sale and exhibits and the amount due at the time of sale or assignment;
144 (B) for each subsequent assignment or sale of the debt to another
145 entity, including an entity related by common ownership or affiliated
146 by corporate control, an affidavit authenticating the attached contract
147 of sale and exhibits of the debt by the debt seller or assignor,
148 completed by the seller or assignor; and (C) proof that each assignment
149 or other writing evidencing transfer of ownership contains the original
150 account number of the debt purchased and clearly shows the
151 consumer debtor's name associated with such account number; and

152 (6) An affidavit that states that the time period during which the
153 debt buyer may bring suit or initiate an arbitration proceeding to
154 collect the debt under the applicable statute of limitations, or any
155 extension of the time period available under the statute of limitations,
156 has not expired.

157 (b) In any action on a debt, if a debt buyer seeks a judgment or an
158 order against the debtor and has not complied with the requirements
159 of this section, the court shall not enter a judgment for the debt buyer
160 and shall dismiss the action with or without prejudice.

161 (c) If the debt buyer is the prevailing party in any action to collect on

162 a debt, any interest on the judgment shall be at a maximum rate of
163 interest equal to the weekly average one-year constant maturity yield
164 of United States Treasury securities, as published by the Board of
165 Governors of the Federal Reserve System, for the calendar week
166 preceding the date of the judgment. No other rate of interest on the
167 judgment shall be permitted, including the rate provided for in the
168 contract or other writing evidencing the original debt.

169 Sec. 5. (NEW) (*Effective October 1, 2013*) (a) On and after October 1,
170 2013, a debt buyer shall commence any action for the collection of debt,
171 including, but not limited to, a cause of action for breach of contract,
172 account stated or open account, not later than three years from the date
173 of the accrual of the cause of action, which shall be the later of the date
174 of charge-off or one hundred eighty days after the last regular
175 payment on the debt, notwithstanding the provisions of any applicable
176 statute of limitations, unless such statute of limitations provides for a
177 shorter limitations period.

178 (b) Notwithstanding any other provisions of any other law, if a debt
179 has been charged-off or if there has not been any payment on a debt
180 for more than one hundred eighty days, any subsequent payment
181 toward such debt shall not extend the three-year limitations period set
182 forth in subsection (a) of this section or bar the consumer debtor from
183 asserting any defenses to the collection of such debt.

184 (c) When the three-year limitations period set forth in subsection (a)
185 of this section has expired, the right to collect the debt is extinguished
186 along with any remedies available to the debt buyer pursuant to a
187 cause of action for the collection of such debt.

188 Sec. 6. Section 36a-647 of the general statutes is repealed and the
189 following is substituted in lieu thereof (*Effective October 1, 2013*):

190 (a) The commissioner may adopt such regulations in accordance
191 with the provisions of chapter 54 as may be necessary to carry out the
192 purposes of sections 36a-645 to 36a-647, inclusive, as amended by this
193 act, and sections 3 to 5, inclusive, of this act, including, but not limited

194 to, specifying those acts which are deemed to be in violation of section
195 36a-646.

196 (b) The commissioner may receive and investigate complaints and
197 may receive assurances of voluntary compliance with the provisions of
198 sections 36a-645 to 36a-647, inclusive, as amended by this act, and
199 sections 3 to 5, inclusive, of this act, or forward such complaints to the
200 appropriate prosecuting officials at the commissioner's discretion. No
201 action taken by the commissioner against a creditor in accordance with
202 section 36a-50 relieves the creditor from civil liability.

203 (c) Whenever the commissioner has reason to believe that any
204 person has violated, is violating or is about to violate any provision of
205 sections 36a-645 to 36a-647, inclusive, as amended by this act, or
206 sections 3 to 5, inclusive, of this act, or any regulation adopted under
207 this section, the commissioner may take action against such person in
208 accordance with sections 36a-50 and 36a-52.

209 (d) Nothing contained in sections 36a-645 to 36a-647, inclusive, as
210 amended by this act, shall be construed as a limitation upon the power
211 or authority of the state, the Attorney General or the commissioner to
212 seek administrative, legal or equitable relief as provided by other
213 statutes or at common law.

214 Sec. 7. Section 36a-648 of the general statutes is repealed and the
215 following is substituted in lieu thereof (*Effective October 1, 2013*):

216 (a) A creditor, as defined in section 36a-645, who [uses any abusive,
217 harassing, fraudulent, deceptive or misleading representation, device
218 or practice to collect or attempt] violates section 36a-646, as amended
219 by this act, or the regulations adopted pursuant to section 36a-647, as
220 amended by this act, while collecting or attempting to collect a debt [in
221 violation of section 36a-646 or the regulations adopted pursuant to
222 section 36a-647] shall be liable to a person who is harmed by such
223 conduct in an amount equal to the sum of: (1) Any actual damages
224 sustained by such person, (2) if such person is an individual, such
225 additional damages as the court may award, not less than five hundred

226 dollars per violation and not to exceed [one] five thousand dollars per
227 violation, [and] (3) in the case of a class action, the amount for each
228 named plaintiff as could be recovered under subdivision (2) of this
229 subsection and an amount as the court may determine for each other
230 class member, not exceeding the amount per person that could be
231 recovered under subdivision (2) of this subsection, and (4) in the case
232 of any successful action to enforce liability under the provisions of this
233 subsection, the costs of the action and [, in the discretion of the court,]
234 a reasonable attorney's fee as determined by the court.

235 (b) If a creditor violates section 36a-646, as amended by this act, or
236 the regulations adopted pursuant to section 36a-647, as amended by
237 this act, neither the creditor nor any other person who may legally seek
238 to collect on a claim brought pursuant to subsection (a) of this section
239 shall be allowed to collect any interest, service charge, attorney's fees,
240 collection costs, delinquency charge or any other fees or charges
241 otherwise legally chargeable to the consumer debtor on such claim. A
242 creditor who is not a debt buyer may recover from the consumer
243 debtor the amount of the original claim or obligation.

244 [(b)] (c) In determining the amount of liability in an action brought
245 pursuant to subsection (a) of this section, the trier of fact shall consider,
246 among other relevant factors, the frequency and persistence of
247 noncompliance by the creditor, the nature of such noncompliance and
248 the extent to which such noncompliance was intentional. In any class
249 action brought pursuant to subsection (a) of this section, the trier of
250 fact shall also consider the resources of the creditor and the number of
251 persons adversely affected by such noncompliance.

252 [(c)] (d) A creditor may not be held liable in an action brought under
253 this section if the creditor shows by a preponderance of the evidence
254 that the violation was not intentional and resulted from a bona fide
255 error, notwithstanding the maintenance of procedures reasonably
256 adopted by the creditor to avoid any such error.

257 [(d)] (e) An action to enforce liability under this section may be
258 brought in any court of competent jurisdiction not later than one year

259 after the date on which the violation occurs.

260 Sec. 8. Subsection (a) of section 37-3a of the general statutes is
261 repealed and the following is substituted in lieu thereof (*Effective*
262 *October 1, 2013*):

263 (a) Except as provided in sections 37-3b, 37-3c, [and] 52-192a and
264 section 4 of this act, interest at the rate of ten per cent a year, and no
265 more, may be recovered and allowed in civil actions or arbitration
266 proceedings under chapter 909, including actions to recover money
267 loaned at a greater rate, as damages for the detention of money after it
268 becomes payable. Judgment may be given for the recovery of taxes
269 assessed and paid upon the loan, and the insurance upon the estate
270 mortgaged to secure the loan, whenever the borrower has agreed in
271 writing to pay such taxes or insurance or both. Whenever the maker of
272 any contract is a resident of another state or the mortgage security is
273 located in another state, any obligee or holder of such contract,
274 residing in this state, may lawfully recover any agreed rate of interest
275 or damages on such contract until it is fully performed, not exceeding
276 the legal rate of interest in the state where such contract purports to
277 have been made or such mortgage security is located.

278 Sec. 9. Section 42-150aa of the general statutes is amended by adding
279 subsection (c) as follows (*Effective October 1, 2013*):

280 (NEW) (c) If the attorney's fees sought pursuant to subsection (b) of
281 this section are for services rendered to an assignee or a debt buyer, as
282 defined in section 36a-645, as amended by this act, the holder of a
283 contract or lease subject to the provisions of this section shall provide
284 all of the following materials setting forth the party's obligation to pay
285 attorney's fees to the court before the court may enforce such
286 provisions:

287 (1) A copy of the contract or other writing evidencing the original
288 debt, which shall contain a written or electronic signature of the
289 defendant. If a claim is based on credit card debt and no such signed
290 writing evidencing the original debt ever existed, then the holder shall

291 attach copies of documents generated when the credit card was used;
292 and

293 (2) A copy of the assignment or other writing establishing that the
294 plaintiff is the owner of the debt. If the debt has been assigned more
295 than once, the holder shall attach each assignment or other writing
296 evidencing transfer of ownership and establishing an unbroken chain
297 of ownership. Each assignment or other writing evidencing transfer of
298 ownership shall contain the original account number of the debt
299 purchased and shall clearly show the debtor's name associated with
300 such account number.

301 Sec. 10. Subsection (c) of section 52-352a of the general statutes is
302 repealed and the following is substituted in lieu thereof (*Effective*
303 *October 1, 2013*):

304 (c) "Exempt" means, unless otherwise specified, not subject to any
305 dispossession or taking, including any form of process or court order
306 for the purpose of debt collection;

307 Sec. 11. Subsection (a) of section 52-576 of the general statutes is
308 repealed and the following is substituted in lieu thereof (*Effective*
309 *October 1, 2013*):

310 (a) No action for an account, or on any simple or implied contract,
311 or on any contract in writing, shall be brought but within six years
312 after the right of action accrues, except as provided in subsection (b) of
313 this section and section 5 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	36a-645
Sec. 2	<i>October 1, 2013</i>	36a-646
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	36a-647

Sec. 7	<i>October 1, 2013</i>	36a-648
Sec. 8	<i>October 1, 2013</i>	37-3a(a)
Sec. 9	<i>October 1, 2013</i>	42-150aa
Sec. 10	<i>October 1, 2013</i>	52-352a(c)
Sec. 11	<i>October 1, 2013</i>	52-576(a)

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill which requires revisions to regulations concerning debt collection results in no fiscal impact to the Department of Banking as they have expertise in this field.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sHB 6173*****AN ACT CONCERNING THE REFORM OF DEBT COLLECTION PRACTICES.*****SUMMARY:**

This bill brings debt buyers under the state's laws regulating creditors and gives the banking commissioner the same regulatory power over them. Under the bill a "debt buyer" is a person or entity that professionally purchases delinquent debt or consumer credit accounts for collection purposes.

The bill establishes procedural requirements for debt buyer actions to collect debts. It:

1. sets a three-year statute of limitations for actions brought by debt buyers;
2. establishes prerequisites for debt buyers bringing suit or initiating an arbitration proceeding against a consumer debtor or otherwise attempting to collect a debt; and
3. requires debt buyers to provide certain documents to the (a) consumer debtor before trial, (b) court prior to the issuance of a judgment or an order, and (c) court to recover attorney's fees.

The bill prohibits debt buyers from using fraudulent and abusive debt collection practices and increases the penalties for violations by all creditors, including debt buyers. It also expands the factors that can be considered when determining damages in a class action case.

The law exempts certain properties, such as necessary apparel and foodstuffs, from any form of process or court order for debt collection. The bill expands this protection to also prohibit any dispossession or

taking of these properties for debt collection.

EFFECTIVE DATE: October 1, 2013

§ 1 — DEFINITIONS

Creditor

Under current law, “creditor” means (1) any person to whom a consumer debtor owes debt due to a transaction in the debtor’s ordinary course of business, or (2) any person to whom debt is assigned. “Creditor” does not include a consumer collection agency or any federal or state department, agency, or political subdivision. The bill expands the definition of “creditor” to include a “debt buyer” and provides the banking commissioner with the same power to regulate them.

Debt Buyer

The bill defines a “debt buyer” as a person or entity that:

1. is in the business of purchasing delinquent debt, including, (a) delinquent or charged-off (debt seller considers it a loss) consumer loans or (b) consumer credit accounts, for collection purposes or
2. receives assignments of claims for collection purposes from a person or entity that purchased delinquent debt, including, (a) delinquent or charged-off consumer loans or (b) consumer credit accounts, whether it collects the debt itself or hires a third party for collection or an attorney for representation in a cause of action to collect such debt.

Original creditor

The bill defines an “original creditor” as the last person or entity, identified by the name it uses in its dealings with a consumer, that extended credit to the consumer for the purchase of goods or services, for the lease of goods, or as a loan of money.

§§ 5 & 11 — STATUTE OF LIMITATIONS

Unless applicable provisions in the law provide for a shorter period, the bill requires a debt buyer to start a debt collection action within three years from the date of charge-off or 180 days after the last regular payment on the debt, whichever is later. If a debt has been charged-off or if there has not been any payment on it for more than 180 days, a subsequent payment does not extend the three-year limitations period or bar the consumer debtor from asserting any defenses to the collection.

Under the bill, when the three-year limitations period expires, the right to collect the debt and any remedies for the debt buyer are no longer available.

§ 2 — PREREQUISITES FOR DEBT BUYER ACTIONS

This bill prohibits debt buyers from bringing suit or initiating an arbitration proceeding against a consumer debtor or otherwise attempting to collect a debt if it knows, or reasonably should know, that the collection is barred by the statute of limitations. Before proceeding, the debt buyer must have (1) proof that it owns the specific debt instrument or account at issue, and (2) documented verification of the amount of the debt allegedly owed by the consumer debtor.

The bill requires the debt buyer to give the consumer debtor written notice of the intent to file a legal action at least 30 days in advance. The notice must include the name, address, and telephone number of the debt buyer, the name of the original creditor, the original creditor's account number for the consumer debtor, a copy of the contract or other document proving the debt, and an itemized accounting of all amounts claimed to be owed.

The bill also requires debt buyers to comply with the new judicial and procedural requirements it establishes for debt buyers.

§ 3 — COURT ACTION BY DEBT BUYER AGAINST DEBTOR

Pre-trial – Required Documents

The bill requires a debt buyer, in any action against a consumer

debtor, to mail or deliver certain materials to the consumer debtor at least 10 days before the answer date. The materials include:

1. a copy of the contract or other writing showing the original debt, containing a written or electronic signature of the consumer debtor (if a claim is based on credit card debt and no signed writing showing the original debt ever existed, then the debt buyer must attach copies of documents generated when the credit card was used);
2. a copy of the assignment or other writing establishing the debt buyer as the owner of the debt, containing the original account number of the debt purchased and clearly showing the consumer debtor's name associated with such account number (if the debt has been assigned more than once, the debt buyer must attach each assignment or other writing showing the transfer of ownership and establishing an unbroken chain of ownership); and
3. an itemized amount of damages sought, including: (a) the amount owed; (b) interest, fees, and charges imposed by the original creditor; (c) any interest, fees, or charges imposed by any debt buyer or other assignee; (d) attorney's fees; (e) any other fees, costs, or charges sought or imposed; (f) the amount and date of the last payment before default or charge-off, whichever is later; (g) each payment credited to the debt after default or charge-off; and (h) the amount the debt buyer paid for the account.

The bill prohibits a debt buyer from getting a default judgment against a consumer debtor if the debt buyer fails to deliver the required documents.

Trial – Failure to Appear

The bill requires the court to enter judgment for the consumer debtor and dismiss the debt buyer's action with prejudice, if (1) the consumer debtor appears for trial on the scheduled trial date, (2) the

debt buyer either fails to appear or is not prepared to proceed to trial, and (3) the court does not find good cause for a continuance. The bill allows the court to award the consumer debtor costs and attorney's fees, including lost wages and other related expenses.

Required Filings Prior to Judgment or Order

The bill requires the debt buyer, prior to entry of a judgment or order against a consumer debtor, to file:

1. a statement of compliance with the requirement to deliver the documents listed above,
2. an authenticated copy of the contract or other writing showing the original debt,
3. evidence on court admissible business records establishing the amount and nature of the debt,
4. an affidavit of debt ownership with supporting documents,
5. evidence of an unbroken chain of ownership, including affidavits with supporting documents from each of the debt's prior owners, and
6. an affidavit that the statute of limitations has not expired.

The bill prohibits the court from entering judgment for the debt buyer and requires it to dismiss the action with or without prejudice if the debt buyer fails to comply with these filing requirements.

Interest Rates

If a debt buyer prevails in an action, the bill limits the interest rate on a judgment to the weekly average one-year constant maturity yield of United States Treasury securities, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment. No other rate of interest on the judgment is permitted, including the rate provided for in the contract or other writing showing the original debt.

§ 9 — ATTORNEY'S FEES

In lawsuits involving contracts or leases requiring payment of attorney's fees for services to an assignee or debt buyer, the bill requires the contract or lease holder to produce:

1. a copy of the contract or other writing showing the original debt, which must contain a written or electronic signature of the defendant (if a claim is based on credit card debt and no such signed writing showing the original debt ever existed, then the holder must attach copies of documents generated when the credit card was used) and
2. a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt (if the debt has been assigned more than once, the holder must attach each assignment or other writing showing transfer of ownership and establishing an unbroken chain of ownership; each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with such account number).

§§ 7-8 — PENALTIES FOR ABUSIVE OR FRAUDULENT COLLECTION PRACTICES

Current law prohibits a creditor from using any abusive, harassing, fraudulent, deceptive, or misleading representation, device, or practice to collect or attempt to collect a debt. The bill prohibits debt buyers from these same practices and increases the penalties for violations. It changes the additional damages an individual can recover from current law's \$1,000 maximum to between \$500 and \$5,000 per violation. In the case of a class action, it allows the court to award each named plaintiff and each class member an amount up to what each could have recovered on an individual basis.

The bill prohibits a creditor or any person guilty of abusive or fraudulent collection practices from collecting any interest, service charge, attorney's fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the consumer

debtor. It allows a creditor who is not a debt buyer to recover the amount of the original claim or obligation from the consumer debtor.

The law requires the trier of fact in prohibited collection practice cases to consider, among other relevant factors, (1) the frequency and persistence of noncompliance by the creditor, (2) the nature of such noncompliance, and (3) the extent to which such noncompliance was intentional. If the case is a class action, the bill requires the trier to also consider the creditor’s resources and the number of persons adversely affected.

BACKGROUND

Related Bill

sSB 911, reported favorably by the Banks Committee, brings debt buyers within the jurisdiction of the consumer collection agency statutes by amending the definition of “consumer collection agency” to include any person who buys debt that is delinquent or in default and then engages in the business of collecting on such debt.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 11 Nay 6 (03/14/2013)