



General Assembly

January Session, 2013

**Committee Bill No. 6173**

LCO No. 3740



Referred to Committee on BANKS

Introduced by:  
(BA)

***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 Section 36a-645 of the general statutes is repealed and the  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, unless the context otherwise requires:

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

7 (2) "Creditor" means (A) any person to whom a debt is owed by a  
8 consumer debtor and such debt results from a transaction occurring in  
9 the ordinary course of such person's business, or (B) any person to  
10 whom such debt is assigned. "Creditor" includes a debt buyer, as  
11 defined in subdivision (4) of this section, but shall not include a  
12 consumer collection agency, as defined in section 36a-800, or any  
13 department or agency of the United States, this state, any other state,  
14 or any political subdivision thereof.

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

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

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

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 Section 36a-646 of the general statutes is repealed and the  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

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

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

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

43 (2) Without (A) proof that the debt buyer is the owner of the specific  
44 debt instrument or account at issue, and (B) verification of the amount

45 of the debt allegedly owed by the debtor. For purposes of this  
46 subdivision, "verification" includes documentation of the name of the  
47 original creditor, the name and address of the debtor as appearing on  
48 the original creditor's records, the original creditor's account number  
49 for the debtor, a copy of the contract or other document evidencing the  
50 consumer debt and an itemized accounting of the amount claimed to  
51 be owed, including all fees and charges; or

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

59 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) In any cause of action  
60 initiated by a debt buyer against a consumer debtor, the debt buyer  
61 shall attach all of the following materials to its complaint or claim:

62 (1) A copy of the contract or other writing evidencing the original  
63 debt, which shall contain a signature of the consumer debtor. If a claim  
64 is based on credit card debt and no such signed writing evidencing the  
65 original debt ever existed, then the debt buyer shall attach copies of  
66 documents generated when the credit card was used;

67 (2) A copy of the assignment or other writing establishing that the  
68 debt buyer is the owner of the debt. If the debt has been assigned more  
69 than once, the debt buyer shall attach each assignment or other writing  
70 evidencing the transfer of ownership and establishing an unbroken  
71 chain of ownership. Each assignment or other writing evidencing  
72 transfer of ownership shall contain the original account number of the  
73 debt purchased and clearly show the debtor's name associated with  
74 such account number; and

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

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

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

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

81 (D) Attorney's fees;

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

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

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

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

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

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

98 (1) An authenticated copy of the contract or other writing  
99 evidencing the original debt, which shall contain the debt buyer's  
100 signature. If a claim is based on credit card debt and no such signed  
101 writing evidencing the original debt ever existed, then the debt buyer  
102 shall attach authenticated copies of documents generated when the  
103 credit card was used;

104 (2) Evidence sufficient to establish the amount and nature of the  
105 debt by business records that satisfy the requirements of section 52-180  
106 of the general statutes, which shall include:

107 (A) The original creditor's name;

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

109 (C) The amount of the original debt;

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

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

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

114 (G) The date of the last payment;

115 (H) The amount of interest claimed and the basis for the interest  
116 charged;

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

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

120 (3) An affidavit containing a statement that the debt buyer is the  
121 sole current owner of the debt, which shall include or be accompanied  
122 by (A) a chronological listing of the name of all prior owners of the  
123 debt and the date of each transfer or ownership of the debt, beginning  
124 with the name of the original creditor and (B) a contract of sale and  
125 exhibits that transferred ownership of the debt to the debt buyer;

126 (4) Evidence sufficient to establish an unbroken chain of ownership  
127 by business records that satisfy the requirements of section 52-180 of  
128 the general statutes. Such evidence shall include (A) an affidavit by the  
129 original creditor of the facts constituting the debt, the default in

130 payment, the sale or assignment of the debt, authenticated contract of  
131 sale and exhibits and the amount due at the time of sale or assignment;  
132 (B) for each subsequent assignment or sale of the debt to another  
133 entity, including an entity related by common ownership or affiliated  
134 by corporate control, an affidavit authenticating the attached contract  
135 of sale and exhibits of the debt by the debt seller, completed by the  
136 seller or assignor; and (C) proof that each assignment or other writing  
137 evidencing transfer of ownership contains the original account number  
138 of the debt purchased and clearly shows the debtor's name associated  
139 with such account number; and

140 (5) An affidavit that states that the time period during which the  
141 debt buyer may bring suit or initiate an arbitration proceeding to  
142 collect the debt under the applicable statute of limitations, or any  
143 extension of the time period available under the statute of limitations,  
144 has not expired.

145 (b) In any action on a consumer debt, if a debt buyer seeks a  
146 judgment or an order against the debtor and has not complied with the  
147 requirements of this section, the court shall not enter a judgment for  
148 the debt buyer and shall dismiss the action with prejudice.

149 (c) If the debt buyer is the prevailing party in any action to collect on  
150 a consumer debt, any interest on the judgment shall be at a maximum  
151 rate of interest equal to the weekly average one-year constant maturity  
152 yield of United States Treasury securities, as published by the Board of  
153 Governors of the Federal Reserve System, for the calendar week  
154 preceding the date of the judgment. No other rate of interest on the  
155 judgment shall be permitted, including the rate provided for in the  
156 contract or other writing evidencing the original debt.

157 Sec. 5. (NEW) (*Effective October 1, 2013*) (a) On and after October 1,  
158 2013, a debt buyer shall commence any action for the collection of  
159 consumer debt, including, but not limited to, a cause of action for  
160 breach of contract, account stated or open account, not later than three  
161 years from the date of the accrual of the cause of action, which shall be

162 the earlier of the date of charge-off or placement for collection of the  
163 debt or one hundred eighty days after the last regular payment on the  
164 debt, notwithstanding the provisions of any applicable statute of  
165 limitations, unless such statute of limitations provides for a shorter  
166 limitations period.

167 (b) Notwithstanding any other provisions of any other law, if a  
168 consumer debt has been charged-off or placed for collection or if there  
169 has not been any payment on a consumer debt for more than one  
170 hundred eighty days, any subsequent payment toward such debt shall  
171 not extend the three-year limitations period set forth in subsection (a)  
172 of this section or bar the consumer debtor from asserting any defenses  
173 to the collection of such debt.

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

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

180 (a) The commissioner may adopt such regulations in accordance  
181 with the provisions of chapter 54 as may be necessary to carry out the  
182 purposes of sections 36a-645 to 36a-647, inclusive, as amended by this  
183 act, and sections 3 to 5, inclusive, of this act, including, but not limited  
184 to, specifying those acts which are deemed to be in violation of section  
185 36a-646.

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

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

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

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

206 (a) A creditor, as defined in section 36a-645, who [uses any abusive,  
207 harassing, fraudulent, deceptive or misleading representation, device  
208 or practice to collect or attempt] violates section 36a-646, as amended  
209 by this act, or the regulations adopted pursuant to section 36a-647, as  
210 amended by this act, while collecting or attempting to collect a debt [in  
211 violation of section 36a-646 or the regulations adopted pursuant to  
212 section 36a-647] shall be liable to a person who is harmed by such  
213 conduct in an amount equal to the sum of: (1) Any actual damages  
214 sustained by such person, (2) if such person is an individual, such  
215 additional damages as the court may award, not less than five hundred  
216 dollars per violation and not to exceed [one] five thousand dollars per  
217 violation, [and] (3) in the case of a class action, the amount for each  
218 named plaintiff as could be recovered under subdivision (2) of this  
219 subsection and an amount as the court may determine for each other  
220 class member, not exceeding the amount per person that could be  
221 recovered under subdivision (2) of this subsection, and (4) in the case  
222 of any successful action to enforce liability under the provisions of this  
223 subsection, the costs of the action and [, in the discretion of the court,]  
224 a reasonable attorney's fee as determined by the court.



225 (b) If a creditor violates section 36a-646, as amended by this act, or  
226 the regulations adopted pursuant to section 36a-647, as amended by  
227 this act, neither the creditor nor any other person who may legally seek  
228 to collect on a claim brought pursuant to subsection (a) of this section  
229 shall be allowed to collect any interest, service charge, attorney's fees,  
230 collection costs, delinquency charge or any other fees or charges  
231 otherwise legally chargeable to the consumer debtor on such claim. A  
232 creditor who is not a debt buyer may recover from the consumer  
233 debtor the amount of the original claim or obligation.

234 [(b)] (c) In determining the amount of liability in an action brought  
235 pursuant to subsection (a) of this section, the trier of fact shall consider,  
236 among other relevant factors, the frequency and persistence of  
237 noncompliance by the creditor, the nature of such noncompliance and  
238 the extent to which such noncompliance was intentional. In any class  
239 action brought pursuant to subsection (a) of this section, the trier of  
240 fact shall also consider the resources of the creditor and the number of  
241 persons adversely affected by such noncompliance.

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

247 [(d)] (e) An action to enforce liability under this section may be  
248 brought in any court of competent jurisdiction not later than one year  
249 after the date on which the violation occurs.

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

253 (a) Except as provided in sections 37-3b, 37-3c, [and] 52-192a and  
254 section 4 of this act, interest at the rate of ten per cent a year, and no  
255 more, may be recovered and allowed in civil actions or arbitration

256 proceedings under chapter 909, including actions to recover money  
257 loaned at a greater rate, as damages for the detention of money after it  
258 becomes payable. Judgment may be given for the recovery of taxes  
259 assessed and paid upon the loan, and the insurance upon the estate  
260 mortgaged to secure the loan, whenever the borrower has agreed in  
261 writing to pay such taxes or insurance or both. Whenever the maker of  
262 any contract is a resident of another state or the mortgage security is  
263 located in another state, any obligee or holder of such contract,  
264 residing in this state, may lawfully recover any agreed rate of interest  
265 or damages on such contract until it is fully performed, not exceeding  
266 the legal rate of interest in the state where such contract purports to  
267 have been made or such mortgage security is located.

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

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

277       (1) A copy of the contract or other writing evidencing the original  
278 debt, which shall contain a signature of the defendant. If a claim is  
279 based on credit card debt and no such signed writing evidencing the  
280 original debt ever existed, then the holder shall attach copies of  
281 documents generated when the credit card was used; and

282       (2) A copy of the assignment or other writing establishing that the  
283 plaintiff is the owner of the debt. If the debt has been assigned more  
284 than once, the holder shall attach each assignment or other writing  
285 evidencing transfer of ownership and establishing an unbroken chain  
286 of ownership. Each assignment or other writing evidencing transfer of  
287 ownership shall contain the original account number of the debt

288 purchased and shall clearly show the debtor's name associated with  
289 such account number.

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

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

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

299 (a) No action for an account, or on any simple or implied contract,  
300 or on any contract in writing, shall be brought but within six years  
301 after the right of action accrues, except as provided in subsection (b) of  
302 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)

**Statement of Purpose:**

To reform debt collection practices in this state.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: REP. ORANGE, 48th Dist.

H.B. 6173