



General Assembly

February Session, 2016

Raised Bill No. 5571

LCO No. 1657



Referred to Committee on BANKING

Introduced by:
(BA)

AN ACT CONCERNING CONSUMER COLLECTION AGENCIES AND DEBT COLLECTION ACTIONS.

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

1 Section 1. Section 36a-800 of the 2016 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2016*):

4 As used in [sections 36a-800] this section and sections 36a-801 to
5 36a-812, inclusive, as amended by this act, unless the context otherwise
6 requires:

7 (1) "Branch office" means a location other than the main office at
8 which a licensee or any person on behalf of a licensee acts as a
9 consumer collection agency;

10 (2) "Consumer collection agency" means any person (A) engaged as
11 a third party in the business of collecting or receiving [for] payment for
12 others [of] on any account, bill or other indebtedness from a consumer
13 debtor, (B) engaged directly or indirectly in the business of collecting

14 on any account, bill or other indebtedness from a consumer debtor for
15 such person's own account if the indebtedness was acquired from
16 another person and if the indebtedness was either delinquent or in
17 default at the time it was acquired, or (C) engaged in the business of
18 collecting or receiving [for payment property] tax payments, including,
19 but not limited to, property tax and federal income tax payments, from
20 a property tax or federal income tax debtor on behalf of a municipality
21 or the United States Department of Treasury, including, but not
22 limited to, any person who, by any device, subterfuge or pretense,
23 makes a pretended purchase or takes a pretended assignment of
24 accounts from any other person, [or] municipality or taxing authority
25 of such indebtedness for the purpose of evading the provisions of
26 [sections 36a-800] this section and sections 36a-801 to 36a-812,
27 inclusive, as amended by this act. [It] "Consumer collection agency"
28 includes persons who furnish collection systems carrying a name
29 which simulates the name of a consumer collection agency and who
30 supply forms or form letters to be used by the creditor, even though
31 such forms direct the consumer debtor, [or] property tax debtor or
32 federal income tax debtor to make payments directly to the creditor
33 rather than to such fictitious agency. "Consumer collection agency"
34 further includes any person who, in attempting to collect or in
35 collecting such person's own accounts or claims from a consumer
36 debtor, uses a fictitious name or any name other than such person's
37 own name which would indicate to the consumer debtor that a third
38 person is collecting or attempting to collect such account or claim.
39 "Consumer collection agency" does not include (i) an individual
40 employed on the staff of a licensed consumer collection agency, or by a
41 creditor who is exempt from licensing, when attempting to collect on
42 behalf of such consumer collection agency, (ii) persons not primarily
43 engaged in the collection of debts from consumer debtors who receive
44 funds in escrow for subsequent distribution to others, including, but
45 not limited to, real estate brokers and lenders holding funds of
46 borrowers for payment of taxes or insurance, (iii) any public officer or
47 a person acting under the order of any court, (iv) any member of the

48 bar of this state, (v) a person who services loans or accounts for the
49 owners thereof when the arrangement includes, in addition to
50 requesting payment from delinquent consumer debtors, the providing
51 of other services such as receipt of payment, accounting, record-
52 keeping, data processing services and remitting, for loans or accounts
53 which are current as well as those which are delinquent, (vi) a bank or
54 out-of-state bank, as defined in section 36a-2, and (vii) a subsidiary or
55 affiliate of a bank or out-of-state bank, provided such affiliate or
56 subsidiary is not primarily engaged in the business of purchasing and
57 collecting upon delinquent debt, other than delinquent debt secured by
58 real property. Any person not included in the definition contained in
59 this subdivision is, for purposes of sections 36a-645 to 36a-647,
60 inclusive, as amended by this act, a "creditor", as defined in section
61 36a-645;

62 (3) "Consumer debtor" means any natural person, not an
63 organization, who has incurred indebtedness or owes a debt for
64 personal, family or household purposes, including current or past due
65 child support, [or] who has incurred indebtedness or owes a debt to a
66 municipality due to a levy by such municipality of a personal property
67 tax or who has incurred indebtedness or owes a debt to the United
68 States Department of Treasury under the Internal Revenue Code of
69 1986, or any subsequent corresponding internal revenue code of the
70 United States, as amended from time to time;

71 (4) "Creditor" means a person, including, but not limited to, a
72 municipality or the United States Department of Treasury, that retains,
73 hires, or engages the services of a consumer collection agency;

74 (5) "Federal income tax" means all federal taxes levied on the income
75 of a natural person or organization by the United States Department of
76 Treasury under the Internal Revenue Code of 1986, or any subsequent
77 corresponding internal revenue code of the United States, as amended
78 from time to time;

79 (6) "Federal income tax debtor" means any natural person or
80 organization who owes a debt to the United States Department of
81 Treasury;

82 [(5)] (7) "Main office" means the main address designated on the
83 application;

84 [(6)] (8) "Municipality" means any town, city or borough,
85 consolidated town and city, consolidated town and borough, district as
86 defined in section 7-324 or municipal special services district
87 established under chapter 105a;

88 [(7)] (9) "Organization" means a corporation, partnership,
89 association, trust or any other legal entity or an individual operating
90 under a trade name or a name having appended to it a commercial,
91 occupational or professional designation;

92 [(8)] (10) "Property tax" has the meaning given to the term in section
93 7-560; and

94 [(9)] (11) "Property tax debtor" means any natural person or
95 organization who has incurred indebtedness or owes a debt to a
96 municipality due to a levy by such municipality of a property tax.

97 Sec. 2. Subsection (a) of section 36a-801 of the 2016 supplement to
98 the general statutes is repealed and the following is substituted in lieu
99 thereof (*Effective October 1, 2016*):

100 (a) No person shall act within this state as a consumer collection
101 agency unless such person has first obtained a consumer collection
102 agency license for such person's main office and each branch office
103 where such person's business is conducted. A consumer collection
104 agency is acting within this state if it (1) has its place of business
105 located within this state; (2) has its place of business located outside
106 this state and (A) collects from consumer debtors, [or] property tax
107 debtors or federal income tax debtors who reside within this state for

108 creditors who are located within this state, or (B) collects from
109 consumer debtors, [or] property tax debtors or federal income tax
110 debtors who reside within this state for such consumer collection
111 agency's own account; (3) has its place of business located outside this
112 state and regularly collects from consumer debtors, [or] property tax
113 debtors or federal income tax debtors who reside within this state for
114 creditors who are located outside this state; or (4) has its place of
115 business located outside this state and is engaged in the business of
116 collecting child support for creditors located within this state from
117 consumer debtors who are located outside this state.

118 Sec. 3. Subsection (a) of section 36a-802 of the general statutes is
119 repealed and the following is substituted in lieu thereof (*Effective*
120 *October 1, 2016*):

121 (a) No such license and no renewal thereof shall be granted to a
122 third party consumer collection agency unless the applicant has filed
123 with the commissioner a bond to the people of the state in the penal
124 sum of twenty-five thousand dollars, approved by the Attorney
125 General as to form and by the commissioner as to sufficiency of the
126 security thereof. Such bond shall be conditioned that such licensee
127 shall well, truly and faithfully account for all funds entrusted to the
128 licensee and collected and received by the licensee in the licensee's
129 capacity as a consumer collection agency. Any person who may be
130 damaged by the wrongful conversion of any creditor, consumer
131 debtor, [or] property tax debtor or federal income tax debtor funds
132 received by such consumer collection agency may proceed on such
133 bond against the principal or surety thereon, or both, to recover
134 damages. The commissioner may proceed on such bond against the
135 principal or surety thereon, or both, to collect any civil penalty
136 imposed upon the licensee pursuant to subsection (a) of section 36a-50.
137 The proceeds of the bond, even if commingled with other assets of the
138 licensee, shall be deemed by operation of law to be held in trust for the
139 benefit of such claimants against the licensee in the event of
140 bankruptcy of the licensee and shall be immune from attachment by

141 creditors and judgment creditors. The bond shall run concurrently
142 with the period of the license granted to the applicant, and the
143 aggregate liability under the bond shall not exceed the penal sum of
144 the bond.

145 Sec. 4. Subsection (a) of section 36a-805 of the 2016 supplement to
146 the general statutes is repealed and the following is substituted in lieu
147 thereof (*Effective October 1, 2016*):

148 (a) No consumer collection agency shall: (1) Furnish legal advice or
149 perform legal services or represent that it is competent to do so, or
150 institute judicial proceedings on behalf of others; (2) communicate with
151 consumer debtors, [or] property tax debtors or federal income tax
152 debtors in the name of an attorney or upon the stationery of an
153 attorney, or prepare any forms or instruments which only attorneys
154 are authorized to prepare; (3) receive assignments as a third party of
155 claims for the purpose of collection or institute suit thereon in any
156 court; (4) assume authority on behalf of a creditor to employ or
157 terminate the services of an attorney unless such creditor has
158 authorized such agency in writing to act as such creditor's agent in the
159 selection of an attorney to collect the creditor's accounts; (5) demand or
160 obtain in any manner a share of the proper compensation for services
161 performed by an attorney in collecting a claim, whether or not such
162 agency has previously attempted collection thereof; (6) solicit claims
163 for collection under an ambiguous or deceptive contract; (7) refuse to
164 return any claim or claims upon written request of the creditor,
165 claimant or forwarder, which claims are not in the process of collection
166 after the tender of such amounts, if any, as may be due and owing to
167 the agency; (8) advertise or threaten to advertise for sale any claim as a
168 means of forcing payment thereof, unless such agency is acting as the
169 assignee for the benefit of creditors; (9) refuse or fail to account for and
170 remit to its clients all money collected which is not in dispute within
171 sixty days from the last day of the month in which said money is
172 collected; (10) refuse or intentionally fail to return to the creditor all
173 valuable papers deposited with a claim when such claim is returned;

174 (11) refuse or fail to furnish at intervals of not less than ninety days,
175 upon the written request of the creditor, claimant or forwarder, a
176 written report upon claims received from such creditor, claimant or
177 forwarder; (12) add any post charge-off charge or fee for cost of
178 collection, unless such cost is a court cost, to the amount of any claim
179 which it receives for collection or knowingly accept for collection any
180 claim to which any such charge or fee has already been added to the
181 amount of the claim unless (A) the consumer debtor is legally liable for
182 such charge or fee as determined by the contract or other evidence of
183 an agreement between the consumer debtor and creditor, a copy of
184 which shall be obtained by or available to the consumer collection
185 agency from the creditor and maintained as part of the records of the
186 consumer collection agency or the creditor, or both, and (B) the total
187 charge or fee for cost of collection does not exceed fifteen per cent of
188 the total amount actually collected and accepted as payment in full
189 satisfaction of the debt; (13) use or attempt to use or make reference to
190 the term "bonded by the state of Connecticut", "bonded" or "bonded
191 collection agency" or any combination of such terms or words, except
192 [that] the word "bonded" may be used on the stationery of any such
193 agency in type not larger than twelve-point; (14) when the debt is
194 beyond the statute of limitations, fail to provide the following
195 disclosure in type not less than ten-point informing the consumer
196 debtor in its initial communication with such consumer debtor that (A)
197 when collecting on debt that is not past the date for obsolescence
198 provided for in Section 605(a) of the Fair Credit Reporting Act, 15 USC
199 1681c: "The law limits how long you can be sued on a debt. Because of
200 the age of your debt, (INSERT OWNER NAME) will not sue you for it.
201 If you do not pay the debt, (INSERT OWNER NAME) may report or
202 continue to report it to the credit reporting agencies as unpaid"; and
203 (B) when collecting on debt that is past the date for obsolescence
204 provided for in Section 605(a) of the Fair Credit Reporting Act, 15 USC
205 1681c: "The law limits how long you can be sued on a debt. Because of
206 the age of your debt, (INSERT OWNER NAME) will not sue you for it
207 and (INSERT OWNER NAME) will not report it to any credit

208 reporting agencies."; [or] (15) notwithstanding any other provision of
209 law, demand, add, impose or obtain in any manner any interest, fee,
210 charge or expense incidental to the principle obligation for collection
211 from the consumer debtor unless the consumer debtor explicitly, in
212 writing, agreed to the imposition of such interest, fee, charge or
213 expense on the debt with the creditor at the time the debt was
214 incurred; or (16) engage in any activities prohibited by sections 36a-800
215 to 36a-812, inclusive.

216 Sec. 5. Subsection (b) of section 36a-811 of the general statutes is
217 repealed and the following is substituted in lieu thereof (*Effective*
218 *October 1, 2016*):

219 (b) Each third party consumer collection agency shall deposit funds
220 collected or received from consumer debtors for payment for others on
221 an account, bill or other indebtedness in one or more trust accounts
222 maintained at a federally insured bank, Connecticut credit union,
223 federal credit union or an out-of-state bank that maintains in this state
224 a branch as defined in section 36a-410, which accounts shall be
225 reconciled monthly. Such funds shall not be commingled with funds of
226 the consumer collection agency or used in the conduct of the consumer
227 collection agency's business. Such account shall not be used for any
228 purpose other than (1) the deposit of funds received from consumer
229 debtors, (2) the payment of such funds to creditors, (3) the refund of
230 any overpayments to be made to consumer debtors, and (4) the
231 payment of earned fees to the consumer collection agency, which shall
232 be withdrawn on a monthly basis. Except for payments authorized by
233 subdivisions (2) to (4), inclusive, of this subsection, any withdrawal
234 from such account, including, but not limited to, any service charge or
235 other fee imposed against such account by a depository institution,
236 shall be reimbursed by the consumer collection agency to such account
237 not more than thirty days after the withdrawal. Funds received from
238 consumer debtors shall be posted to their respective accounts in
239 accordance with generally accepted accounting [practices] principles.

240 Sec. 6. (NEW) (*Effective October 1, 2016*) In any cause of action
241 initiated by a creditor, as defined in section 36a-645 of the general
242 statutes, or by a consumer collection agency, as defined in section 36a-
243 800, as amended by this act, for a liability on debt owed by a consumer
244 debtor, as defined in section 36a-645 of the general statutes, the
245 creditor or consumer collection agency shall attach the following
246 materials to the complaint:

247 (1) A copy of the contract or other documentation evidencing the
248 original debt and containing a signature of the consumer debtor or, if
249 the debt is credit card debt and no such signed documentation exists,
250 copies of the documentation generated when the credit card was used;
251 and

252 (2) A copy of the assignment or other documentation (A)
253 establishing that the plaintiff creditor is the owner of the debt, (B)
254 containing the original account number and name associated with the
255 debt, and, (C) if the debt has been assigned more than once, a copy of
256 each assignment or other documentation that establishes an unbroken
257 chain of ownership of the debt by the plaintiff creditor.

258 Sec. 7. (NEW) (*Effective October 1, 2016*) (a) For purposes of this
259 section: (1) "Charge-off" means the declaration by a creditor, as defined
260 in subdivision (2) of section 36a-645 of the general statutes, that a debt
261 is uncollectable and has been written off as a bad debt expense on the
262 creditor's income statement and removed from its balance sheet; and

263 (2) "Privilege log" means a document that describes documents or
264 other items withheld from production in a civil lawsuit in a manner
265 that will enable other parties to assess the claim of privilege.

266 (b) In any cause of action initiated by a creditor or consumer
267 collection agency, as defined in section 36a-800, as amended by this
268 act, for liability on debt owed by a consumer debtor, the creditor or
269 consumer collection agency shall file evidence with the court to
270 establish the amount and nature of the debt prior to entry of a default

271 judgment or summary judgment against the consumer debtor by the
272 court.

273 (c) The evidence presented by the creditor or consumer collection
274 agency in accordance with subsection (b) of this section shall be duly
275 authenticated and admissible in accordance with the rules of evidence
276 and contain not less than the following items:

277 (1) The original account number associated with the debt;

278 (2) The identity of the original creditor, as defined in subparagraph
279 (A) of subdivision (2) of section 36a-645 of the general statutes, to
280 whom the debt is owed;

281 (3) The amount of the original debt;

282 (4) An itemization of charges and fees to be owed by the consumer
283 debtor, including interest claimed on the debt and the basis for such
284 interest;

285 (5) The original charge-off balance on the debt, if applicable;

286 (6) An itemization of post charge-off charges, if applicable;

287 (7) The date of the last payment by the consumer debtor, if
288 applicable; and

289 (8) The names of all persons or entities that owned the consumer
290 debt after the original creditor, if applicable.

291 (d) A creditor or consumer collection agency shall indicate when
292 any of the items referenced in subsection (c) of this section have been
293 redacted and submit a privilege log to the court.

294 (e) A creditor or consumer collection agency shall provide the items
295 identified in subsection (c) of this section to the consumer debtor in
296 writing not later than five business days after the initial
297 communication with the consumer debtor and shall cease all collection

298 of the debt owed by the consumer until such information is provided.

299 (f) No creditor or consumer collection agency shall initiate a cause of
300 action to collect debt owed by a consumer when the debt collector
301 knows or reasonably should know that the applicable statute of
302 limitations on such cause of action has expired.

303 (g) Notwithstanding any other provision of law, when the
304 applicable statute of limitations on a cause of action to collect debt
305 owed by a consumer has expired, any subsequent payment toward or
306 written or oral affirmation of the debt owed by the consumer shall not
307 extend the limitations period within which the creditor or consumer
308 debtor may bring the cause of action.

309 Sec. 8. Section 36a-647 of the general statutes is repealed and the
310 following is substituted in lieu thereof (*Effective October 1, 2016*):

311 (a) The commissioner may adopt such regulations in accordance
312 with the provisions of chapter 54 as may be necessary to carry out the
313 purposes of sections 36a-645 to 36a-647, inclusive, and sections 6 and 7
314 of this act, including, but not limited to, specifying those acts which are
315 deemed to be in violation of section 36a-646.

316 (b) The commissioner may receive and investigate complaints and
317 may receive assurances of voluntary compliance with the provisions of
318 sections 36a-645 to 36a-647, inclusive, and sections 6 and 7 of this act,
319 or forward such complaints to the appropriate prosecuting officials at
320 the commissioner's discretion. No action taken by the commissioner
321 against a creditor in accordance with section 36a-50 relieves the
322 creditor from civil liability.

323 (c) Whenever the commissioner has reason to believe that any
324 person has violated, is violating or is about to violate any provision of
325 sections 36a-645 to 36a-647, inclusive, or section 6 or 7 of this act, or
326 any regulation adopted under this section, the commissioner may take
327 action against such person in accordance with sections 36a-50 and 36a-

328 52.

329 (d) Nothing contained in sections 36a-645 to 36a-647, inclusive, or
 330 sections 6 and 7 of this act, shall be construed as a limitation upon the
 331 power or authority of the state, the Attorney General or the
 332 commissioner to seek administrative, legal or equitable relief as
 333 provided by other statutes or at common law.

334 Sec. 9. Subsection (a) of section 36a-648 of the general statutes is
 335 repealed and the following is substituted in lieu thereof (*Effective*
 336 *October 1, 2016*):

337 (a) A creditor, as defined in section 36a-645, or consumer collection
 338 agency, as defined in section 36a-800, as amended by this act, who uses
 339 any abusive, harassing, fraudulent, deceptive or misleading
 340 representation, device or practice to collect or attempt to collect a debt
 341 in violation of section 36a-646, section 6 or 7 of this act or the
 342 regulations adopted pursuant to section 36a-647, as amended by this
 343 act, shall be liable to a person who is harmed by such conduct in an
 344 amount equal to the sum of: (1) Any actual damages sustained by such
 345 person, (2) if such person is an individual, such additional damages as
 346 the court may award, not to exceed one thousand dollars, and (3) in
 347 the case of any successful action to enforce liability under the
 348 provisions of this subsection, the costs of the action and, in the
 349 discretion of the court, a reasonable attorney's fee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	36a-800
Sec. 2	<i>October 1, 2016</i>	36a-801(a)
Sec. 3	<i>October 1, 2016</i>	36a-802(a)
Sec. 4	<i>October 1, 2016</i>	36a-805(a)
Sec. 5	<i>October 1, 2016</i>	36a-811(b)
Sec. 6	<i>October 1, 2016</i>	New section
Sec. 7	<i>October 1, 2016</i>	New section
Sec. 8	<i>October 1, 2016</i>	36a-647

Sec. 9	October 1, 2016	36a-648(a)
--------	-----------------	------------

Statement of Purpose:

To (1) require licensing for companies engaged in the collection of federal income tax debt and to prohibit consumer collection agencies from collecting interest, fees, charges or expenses on debts absent an explicit agreement signed by a consumer debtor to the contrary; (2) protect individuals from causes of action for liability on debt brought by creditors or consumer collection agencies with insufficient evidence of ownership of the debt or association of such debt with the individual.

[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.]