

HOUSE BILL 1413

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 47,
relative to debt buying practices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following new part:

47-18-5601.

This part shall be known and may be cited as the "Fair Debt Buying Practices Act."

47-18-5602. For purposes of this part:

- (1) "Charged-off debt" means a debt that has been removed from a creditor's books as an asset and treated as a loss or expense;
- (2) "Creditor" means a person or entity that extends consumer credit to a debtor;
- (3) "Debt" means any obligation or alleged obligation of an individual to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to a judgment;
- (4) "Debt buyer" means a person or entity that is engaged in the business of purchasing or owning delinquent or charged-off debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation;
- (5) "Debtor" means an individual who owes a debt to another person or entity;
- (6) "Good faith" means an honest, fair, and reasonable assessment of the legally relevant facts under this part, and not necessarily limited only to those facts for which a

person has actual knowledge. "Good faith" may require a fair and reasonable inquiry of others in possession of information known or believed to be relevant to the matter at issue; and

(7) "Statute of limitations" means the time period established by law in which an aggrieved party may bring a cause of action in a court of competent jurisdiction.

47-18-5603.

(a) A debt buyer shall not make any contact with a debtor in an attempt to collect a debt unless the debt buyer possesses documents evidencing all of the following:

(1) That the debt buyer is the sole owner of the debt at issue or has authority to assert the rights of all owners of the debt, including the entire chain of sale from the original creditor to the debt buyer in sufficient form so as to reasonably identify each such buyer;

(2) The name, last known address, date of birth, and last four digits of the social security number of the debtor if such information appeared on the original creditor's records;

(3) If there were changes in the interest rate, fees, or other charges associated with the debt since the inception of the original transaction, copies of all documents in a form sufficient to reasonably identify such changes and charges;

(4) That the debt is not barred by the applicable statute of limitations. Documents evidencing the outstanding itemized balance on the date that the statute of limitations began to run are necessary to establish the requirement set out by this subdivision (a)(4); and

(5) A copy of a contract or other document evidencing the debtor's agreement to the debt. For purposes of:

(A) A claim that is based on debt for which no signed contract or agreement exists, an affidavit from the original creditor that no such signed contract or agreement exists, along with a copy of a document

provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor is sufficient to satisfy the requirement set out by this subdivision (a)(5); and

(B) A revolving credit account, the most recent monthly statements recording a purchase transaction or cash advance as well as the last payment are sufficient to satisfy the requirement set out by this subdivision (a)(5);

(b) In addition to the requirements set out in subsection (a), if the first communication with the debtor is in writing, a debt buyer must include in the first communication the documents identified in subsection (a) to the debtor without charge.

(c) In addition to the requirements set out in subsection (a), if the first communication with the debtor is oral, a debt buyer shall:

(1) Begin the phone call with the following statement:

I am calling from [debt buyer]. I am attempting to collect payments on a debt that I believe you owe from an account with [original creditor]. Within five days, I will send you copies of documents that I have to show that you owe the debt and that [debt buyer] has the right to collect payments from you. At any time, you may tell me if you think you have already paid the debt, if you think we have contacted the wrong person, or if there is any other reason why you might think you do not have to make payments on the debt; and

(2) Provide the documents identified in subsection (a) to the debtor without charge within five (5) calendar days after the initial communication with the debtor.

(d) If a debt buyer knows or has reason to know that the debtor cannot effectively communicate in English, the debt buyer shall make good faith efforts to determine the debtor's primary language and communicate the written and oral requirements of subsections (b) and (c) in that language.

(e) In the event of a conflict between the requirements of subsection (b) or (c) and federal law, so that it is impracticable to comply with both, the requirements of federal law shall prevail.

(f) A debt buyer is in violation of this part if the debt buyer contacts or attempts to contact the debtor when the debt buyer knows or has reason to know that the debt is outside the applicable statute of limitations.

47-18-5604.

(a) In an action brought by a debt buyer on a debt, the complaint must allege all of the following:

(1) That the plaintiff is a debt buyer;

(2) The nature of the underlying debt and the consumer transaction or transactions from which the debt is derived, in a short and plain statement;

(3) That the debt buyer is the sole owner of the debt at issue, or has authority to assert the rights of all owners of the debt;

(4) The debt balance at charge-off from the original creditor and an itemization and explanation of the amount, nature, and reason for all pre-charge-off and post-charge-off interest and fees, if any, imposed by the original creditor or any subsequent owners of the debt, including a statement of how the interest rate was calculated;

(5) That the debt falls within the applicable statute of limitations, as evidenced by the date of default or the date of the last payment;

(6) The name and an address of the original creditor at the time of charge off, and the original creditor's account number associated with the debt. The original creditor's name and address shall be in a form sufficient to reasonably identify the original creditor;

(7) The name, last known address, and last four digits of the social security number of the debtor as that information appeared in the original creditor's records prior to the sale of the debt; and

(8) The names and addresses of all persons or entities that owned the debt after the original creditor, including the plaintiff debt buyer and the date of each sale or transfer. The names and addresses shall be in a form sufficient to reasonably identify each owner.

(b) In an action brought by a debt buyer on a debt, the complaint must include copies of all of the documents and written communications, if any, required under § 47-18-5603.

(c) This part shall not require the disclosure of personal, financial, or medical information that is otherwise made confidential pursuant to other applicable law.

(d) Notwithstanding any provision of law to the contrary, in an action brought by a debt buyer involving collection of debt, if the defendant debtor appears for trial on the scheduled trial date and the plaintiff debt buyer either fails to appear or is not prepared to proceed to trial and the court does not find a good cause for continuance, the court may, in its discretion, dismiss the action with or without prejudice. If there is a dismissal pursuant to this subsection (d), the court may award the defendant debtor the costs of preparing for trial, including, but not limited to, lost wages and transportation expenses.
47-18-5605.

(a) Notwithstanding any law to the contrary:

(1) No default or other judgment shall be entered against a debtor unless copies of all documents described in § 47-18-5604 have been submitted by the debt buyer to the court;

(2) All documents described in § 47-18-5604 must be accompanied by an admissible affidavit or testimony from the source of the documents establishing their authenticity;

(3) The affidavit required by subdivision (a)(2) is not admissible without, at a minimum, the inclusion of the following text:

I am a custodian of records [or other qualified representative] for [company] and have familiarity with the way in which records are kept for [company] in the ordinary course of business. I swear under penalty of perjury under the laws of [State] that I have personal knowledge that this record was created by [company] in the ordinary manner in which records are created and maintained;

(4) No default or other judgment may be entered without an admissible affidavit or testimony from the individual charged with effectuating service of process detailing the good faith steps taken to serve the defendant. This subdivision (a)(4) requires that a statement that the address for the defendant set forth in the summons and complaint is the current address of the defendant or that a good faith effort was made to determine a current address for the defendant; and

(5) In any action on a debt, if a debt buyer plaintiff seeks a default or other judgment and has not complied with the requirements of this subsection (a), the court shall not enter a default judgment for the plaintiff and shall dismiss the action with or without prejudice.

(b) Notwithstanding any law to the contrary:

(1) At the time of levy, earnings withholding, or judgment lien, the levying officer shall serve a copy of the following on the judgment debtor, or the levying action is deemed invalid:

(A) The writ of execution;

(B) A notice of levy, earnings withholding, or judgment lien;

(C) The form listing any exemptions available to the debtor by applicable law;

(D) The list of any exemption amounts for exemptions set out in subdivision (b)(1)(C);

(E) Any form that the judgment debtor is required to use to make a claim of exemption as set out in subdivision (b)(1)(C);

(F) Any other applicable forms regarding financial statements or exemptions that the judgment debtor is required to use pursuant to applicable law; and

(G) Any other affidavit, including an affidavit of identity, for the name of the debtor listed on the writ of execution.

(2) For any designated employer of an employee whose earnings are to be withheld, as part of the execution pursuant to this section, the levying officer shall also serve a copy of the following, or the levying action is deemed invalid:

(A) The original plus one (1) copy of the earnings withholding order; and

(B) Any applicable forms for the employer to return to the court or the magistrate.

(3) For any designated financial institution of a customer whose assets are to be levied, as part of the execution pursuant to this section, the levying officer shall serve a copy of the following, or the levying action is deemed invalid:

(A) The original plus one (1) copy of the order; and

(B) Any applicable forms for the financial institution to return to the court or magistrate.

(4) For any designated recording office in the county in which the debtor owns real estate that is to be placed under a judgment lien, the levying officer shall serve a copy of the following, or the levying action is deemed invalid:

(A) The original plus one (1) copy of the order; and

(B) Any applicable forms for the recording office to return to the court or magistrate.

(c) Notwithstanding any law to the contrary, upon execution of a judgment pursuant to this section, the notice to the judgment debtor must contain a statement that informs the debtor in simple terms of the nature of the levy, earnings withholding, or judgment lien; the right to an exemption; the procedure for claiming an exemption; and all of the following:

(1) The specific amounts to be collected from the judgment debtor, and a statement that these amounts should be paid over to the levying officer for transmittal to the person specified in the order in payment of the judgment described in the order;

(2) The manner of computing the specific amounts;

(3) A statement that the judgment debtor shall be able to keep more or all of the specific amount to be collected if the judgment debtor proves that retaining the amount is necessary for the support of the judgment debtor or the judgment

debtor's family who are supported, in whole or in part, by the judgment debtor;
and

(4) A statement indicating that the debtor has a right to request a hearing to establish the amounts in subdivision (c)(3).

(d) If a debtor makes a claim of exemption pursuant to subdivision (c)(3), the judgment debtor shall file with the levying officer an original plus one (1) copy of the judgment debtor's claim of exemption and an original plus one (1) copy of the judgment debtor's financial statement.

47-18-5606.

(a) In determining the amount of liability, the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt buyer, the nature of the noncompliance, the resources of the debt buyer, and the number of persons adversely affected.

(b) In the case of an action brought by an individual or individuals, a debt buyer that violates this part with respect to any person shall be liable to that person in an amount equal to the sum of the following:

(1) Any actual damages sustained by that person as a result of the violation; and

(2) Statutory damages in an amount as the court may allow, which for each violation shall not be less than five hundred dollars (\$500) nor greater than ten thousand dollars (\$10,000).

(c) In the case of any successful action to enforce liability under this part, the court shall award costs of the action together with reasonable attorney's fees.

(d) Notwithstanding any law to the contrary, for purposes of a class action, a debt buyer that violates this part is liable for all actual and statutory damages as

provided in subsection (b). If the court finds that the debt buyer engaged in a pattern and practice of violating this part, the court may award additional damages to the class.

(e) The attorney general and reporter has the authority to investigate complaints, undertake periodic reviews of compliance of covered entities, and bring actions to enforce this part.

47-18-5607.

(a) An action to enforce any liability created by this part shall be brought within three (3) years from the date of the last violation.

(b) After its expiration, the statute of limitations on a debt shall not be revived by the collection of a payment on an account, a discharge in a bankruptcy proceeding, an oral or written reaffirmation of the debt, or any other method.

(c) A debt buyer shall not file an action, initiate arbitration, or commence other legal proceedings when the debt buyer knows or has reason to know that the debt is outside the statute of limitations.

47-18-5608.

(a) Any waiver of any provision of this part is contrary to public policy, and is void and unenforceable.

(b) Unless otherwise expressly provided, the provisions of this part are cumulative to each other and to the remedies, requirements, and penalties of other applicable state and federal laws.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to actions occurring on or after that date.