

ASSEMBLY, No. 647

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman JOHN ARMATO
District 2 (Atlantic)

SYNOPSIS

Requires debt collectors, in certain circumstances, to cease debt collections against certain victims of identity theft.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning debt collection practices and supplementing
2 Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in this act:

8 “Consumer” means any natural person obligated or allegedly
9 obligated to pay any debt.

10 “Debt” means any obligation or alleged obligation of a consumer
11 to pay money arising out of a transaction in which the money,
12 property, insurance or services which are the subject of the
13 transaction are primarily for personal, family, or household
14 purposes, whether or not that obligation has been reduced to
15 judgment.

16 “Debt collector” means any person who by any direct or indirect
17 action, conduct, or practice, collects or attempts to collect a debt
18 that is owed or due or asserted to be owed or due from a consumer
19 in this State. Notwithstanding the exclusion provided by paragraph
20 (6) of this definition, the term includes any creditor who, in the
21 process of collecting debt owed to that creditor, uses any name
22 other than his own which would indicate that a third person is
23 collecting or attempting to collect that debt. For the purpose of this
24 section, the term also includes any person engaged in any business
25 the principal purpose of which is the enforcement of a security
26 interest. The term does not include:

27 (1) any officer or employee of a creditor while, in the name of
28 the creditor, collecting debts for that creditor;

29 (2) any person while acting as a debt collector for another
30 person, both of whom are related by common ownership or
31 affiliated by corporate control, if the person acting as a debt
32 collector does so only for persons to whom it is so related or
33 affiliated and if the principal business of that person is not the
34 collection of debts;

35 (3) any officer or employee of the United States or any state to
36 the extent that collecting or attempting to collect any debt is in the
37 performance of his official duties;

38 (4) any person while serving or attempting to serve legal process
39 on any other person in connection with the judicial enforcement of
40 any debt;

41 (5) any nonprofit organization which, at the request of
42 consumers, performs bona fide consumer credit counseling and
43 assists consumers in the liquidation of their debts by receiving
44 payments from those consumers and distributing those amounts to
45 creditors; and

46 (6) any person collecting or attempting to collect any debt owed
47 or due or asserted to be owed or due another to the extent that
48 activity: (a) is incidental to a bona fide fiduciary obligation or a

1 bona fide escrow arrangement; (b) concerns a debt which was
2 originated by that person; (c) concerns a debt which was not in
3 default at the time it was obtained by that person; or (d) concerns a
4 debt obtained by that person as a secured party in a commercial
5 credit transaction involving the creditor.

6
7 2. a. If a consumer sends a written statement to a debt
8 collector that the consumer claims to be the victim of identity theft
9 or misidentification with respect to a specific debt being collected
10 by a debt collector within 45 days of the debt collector's initial
11 communication or, if applicable, within 45 days of the debt
12 collector's written notice pursuant to subsection b. of this section,
13 the debt collector shall cease collection activities upon receipt of
14 that written statement until completion of a review required by
15 subsection c. of this section. The written statement shall consist of
16 either:

17 (1) a properly completed copy of a standardized affidavit of
18 identity theft, as established by the Federal Trade Commission
19 pursuant to section 609 of the federal "Fair Credit Reporting Act,"
20 Pub.L.91-508 (15 U.S.C. s.1681g); or

21 (2) a written statement certifying that the representations are
22 true, correct, and contain no material omissions of fact to the best
23 knowledge and belief of the consumer. The statement shall contain,
24 or be accompanied by the following, to the extent that an item listed
25 below is relevant to the consumer's allegation of identity theft or
26 misidentification with respect to the debt in question:

27 (a) A statement that the consumer is a victim of identity theft or
28 misidentification;

29 (b) Specific facts supporting the claim of identity theft or
30 misidentification, if available;

31 (c) Any explanation showing that the consumer did not incur the
32 debt;

33 (d) Any available correspondence disputing the debt after
34 transaction information had been provided to the consumer by the
35 original creditor;

36 (e) Documentation of the residence of the consumer at the time
37 the alleged debt was incurred;

38 (f) A telephone number for contacting the consumer concerning
39 any additional information or questions, or direction that further
40 communications to the consumer be in writing only, with the
41 mailing address specified in the statement;

42 (g) To the extent the consumer has information concerning who
43 may have incurred the debt, the identification of any person whom
44 the consumer believes is responsible; and

45 (h) An express statement that the consumer did not authorize the
46 use of the consumer's name or personal information for incurring
47 the debt.

1 The certification required pursuant to this paragraph (2) shall be
2 sufficient if it is in substantially the following form: “I certify that
3 the representations made are true and correct, and contain no
4 material omissions of fact. I further certify that the copies of all
5 documents attached to this certificate are true, correct and complete
6 copies of the original documents. I am aware that if any of the
7 foregoing statements made by me are willfully false, I am subject to
8 punishment. _____” (Date and Place)
9 (Signature)

10 It is a violation of this act if, with the purpose to deceive or
11 mislead any person, a person makes a false statement which he does
12 not believe to be true in the written statement or certification
13 submitted pursuant to this paragraph.

14 Any documents, forms or written statements submitted to the
15 debt collector by the consumer pursuant to this section shall be
16 required to include only the last 3 digits of the social security
17 number or any other personal identifier. With respect to any
18 personal information submitted by a consumer to a debt collector
19 pursuant to this act, a violation by the debt collector of sections 11
20 through 13 of P.L.2005, c.226 (C.56:8-162 through C.56:8-164)
21 shall also be a violation of this act.

22 b. If a consumer notifies a debt collector orally, within 45 days
23 of the debt collector’s initial communication, that he is a victim of
24 identity theft or misidentification, the debt collector shall notify the
25 consumer, in writing, that the consumer’s claim must be in writing.
26 If a consumer notifies a debt collector in writing that he is a victim
27 of identity theft or misidentification, but omits information required
28 pursuant to subsection a. of this section, then the debt collector
29 shall:

30 (1) Cease collection activities for a period of at least 45 days
31 from the date written notice is sent pursuant to paragraph (2) of this
32 subsection; and

33 (2) Provide written notice to the consumer of the additional
34 information that is required or send the consumer a copy of the
35 standardized affidavit of identity theft established by the Federal
36 Trade Commission.

37 c. Upon receipt of the complete statement and information
38 required by subsection a. of this section, the debt collector shall
39 review and consider all of the information provided by the
40 consumer and other information available to the debt collector in
41 his file or from any other credible source, and shall determine in
42 good faith whether the information establishes that the consumer is
43 not responsible for the specific debt in question. The debt collector
44 shall notify the consumer in writing of that determination and the
45 basis for it. If the debt collector determines that the information
46 establishes that the consumer is not responsible for the debt, the
47 debt collector shall immediately cease all collection activities
48 against the consumer for the debt. If the debt collector determines

1 that the information establishes that the consumer is responsible for
2 the debt, the debt collector may recommence debt collection
3 activities.

4 d. (1) Failure to exercise good faith in determining whether
5 the information establishes that the consumer is responsible for the
6 specific debt in question; or (2) recommencement or continuation of
7 debt collection activities by the debt collector, without making a
8 written determination whether the information establishes the
9 consumer's responsibility for the specific debt in question, as
10 required pursuant to subsection c. of this section, shall constitute a
11 violation of this act.

12 e. No inference or presumption that the debt is valid or invalid,
13 or that the consumer is liable or not liable for the debt, shall arise
14 from: (1) the determination of the debt collector after the review
15 required pursuant to subsection c. of this section; or (2) from the
16 exercise or non-exercise of rights under this section. The exercise
17 or non-exercise of the rights under this section shall not be deemed
18 to be a waiver of any other right or defense of the consumer or the
19 debt collector.

20

21 3. a. Recommencement of debt collection activities by a debt
22 collector, without making a written determination whether the
23 information establishes the consumer's or third party's
24 responsibility for the specific debt in question as required pursuant
25 to section 2 of this act, shall constitute a violation of this act.

26 b. Whenever there shall be a violation of this act, an
27 application may be made by the Attorney General to a court having
28 jurisdiction to issue an injunction, and upon notice to the party of
29 not less than five days, to enjoin or restrain the continuance of that
30 violation. If it shall appear to the satisfaction of the court that the
31 party has, in fact, violated this act, an injunction may be issued by
32 the court, enjoining and restraining any further violation, without
33 requiring proof that any person has, in fact, been injured or
34 damaged thereby. Whenever the court finds that a violation of this
35 act has occurred, the court may impose a civil penalty of not less
36 than \$500 nor more than \$1,000 for each violation. In connection
37 with any proposed application, the Attorney General is authorized
38 to take proof and make a determination of the relevant facts and to
39 issue subpoenas in accordance with the Rules of Court of the State
40 of New Jersey.

41 c. A debt collector shall have no civil liability under this act if,
42 upon discovering a violation of this act, which may be cured, or
43 after the receipt of a written notice of that violation, the debt
44 collector notifies the consumer of the violation, and makes
45 whatever adjustments or corrections are necessary to cure the
46 violation with respect to the consumer.

47 d. No debt collector shall be deemed to have violated the
48 provisions of this act, if he shows by a preponderance of the

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

4 e. Notwithstanding any other law or regulation to the contrary,
5 an action to enforce any provision of this act shall be filed in the
6 appropriate court within one year from the date on which the
7 violation occurs.

8
9 4. This act shall take effect immediately.

10
11
12 STATEMENT
13

14 This bill establishes a process for a victim of identity theft to
15 notify a debt collector of their status as a victim of identity theft and
16 requires the debt collector to cease collection activities until a
17 determination is made by the debt collector as to whether the
18 consumer is in fact responsible for the debt in question.

19 The bill defines the term “debt collector” to mean any person
20 who by any direct or indirect action, conduct, or practice, collects
21 or attempts to collect a debt that is owed or due or asserted to be
22 owed or due from a consumer in this State. The bill specifies that
23 the term includes any creditor who, in the process of collecting debt
24 owed to that creditor, uses any name other than his own which
25 would indicate that a third person is collecting or attempting to
26 collect that debt and any person engaged in any business the
27 principal purpose of which is the enforcement of a security interest.
28 The term does not include:

29 (1) any officer or employee of a creditor while, in the name of
30 the creditor, collecting debts for that creditor;

31 (2) any person while acting as a debt collector for another
32 person, both of whom are related by common ownership or
33 affiliated by corporate control, if the person acting as a debt
34 collector does so only for persons to whom it is so related or
35 affiliated and if the principal business of that person is not the
36 collection of debts;

37 (3) any officer or employee of the United States or any state to
38 the extent that collecting or attempting to collect any debt is in the
39 performance of his official duties;

40 (4) any person while serving or attempting to serve legal process
41 on any other person in connection with the judicial enforcement of
42 any debt;

43 (5) any nonprofit organization which, at the request of
44 consumers, performs bona fide consumer credit counseling and
45 assists consumers in the liquidation of their debts by receiving
46 payments from those consumers and distributing those amounts to
47 creditors; and

1 (6) any person collecting or attempting to collect any debt owed
2 or due or asserted to be owed or due another to the extent that
3 activity: (a) is incidental to a bona fide fiduciary obligation or a
4 bona fide escrow arrangement; (b) concerns a debt which was
5 originated by that person; (c) concerns a debt which was not in
6 default at the time it was obtained by that person; or (d) concerns a
7 debt obtained by that person as a secured party in a commercial
8 credit transaction involving the creditor.

9 The bill provides that if a consumer sends a written statement to
10 a debt collector that the consumer claims to be the victim of identity
11 theft or misidentification with respect to a specific debt being
12 collected by a debt collector within 45 days of the debt collector's
13 initial communication, a debt collector shall cease collection
14 activities upon receipt of that written statement until completion of
15 a review as required under the bill. If a consumer notifies the debt
16 collector orally, within 45 days of the debt collector's initial
17 communication, that he is the victim of identity theft, the debt
18 collector must notify the consumer in writing that the consumer's
19 claim must be in writing. In such a case, the consumer would have
20 an additional 45 days to notify the debt collector in writing that the
21 consumer is the victim of identity theft.

22 The bill requires the written statement to be either:

23 (1) a properly completed copy of a standardized affidavit of
24 identity theft, as established by the Federal Trade Commission
25 pursuant to section 609 of the federal "Fair Credit Reporting Act,"
26 Pub.L.91-508 (15 U.S.C. s.1681g); or

27 (2) written statement certifying that the representations are true,
28 correct, and contain no material omissions of fact to the best
29 knowledge and belief of the consumer. The bill specifies what that
30 statement must contain and what supporting documentation it must
31 contain. In addition, the bill provides a form that the written
32 certification may take to comply with this provision of the bill.

33 Under the bill, it is a violation of the bill if, with the purpose to
34 deceive or mislead any person, a person makes a false statement
35 which he does not believe to be true in the written statement or
36 certification submitted pursuant to this provision.

37 In addition, any documents, forms or written statements
38 submitted to the debt collector by the consumer shall be required to
39 include only the last 3 digits of the social security number or any
40 other personal identifier. With respect to any personal information
41 submitted by a consumer to a debt collector pursuant to the bill, a
42 violation by the debt collector of certain sections of the "Identity
43 Theft Prevention Act" concerning protection of personal
44 information is also a violation of the bill.

45 In addition, if a consumer notifies a debt collector in writing that
46 he is a victim of identity theft or misidentification, but omits
47 information required by the bill, then the debt collector must:

1 (1) Cease collection activities for a period of at least 45 days
2 from the date written notice is sent pursuant to paragraph (2); and

3 (2) Provide written notice to the consumer of the additional
4 information that is required or send the consumer a copy of the
5 standardized affidavit of identity theft established by the Federal
6 Trade Commission.

7 Pursuant to the bill, upon receipt of the complete statement and
8 information required by the bill, the debt collector is required to
9 review and consider all of the information provided by the
10 consumer and other information available to the debt collector in
11 his file or from the any other credible source, and determine, in
12 good faith, whether the information establishes that the consumer is
13 not responsible for the specific debt in question. The debt collector
14 must then notify the consumer in writing of that determination and
15 the basis for it.

16 If the debt collector determines that the information establishes
17 that the consumer is not responsible for the debt, the bill requires
18 the debt collector to immediately cease all collection activities
19 against the consumer for the debt. If the debt collector determines
20 that the information establishes that the consumer is responsible for
21 the debt, the bill permits the debt collector to recommence debt
22 collection activities.

23 The bill stipulates that (1) failure to exercise good faith in
24 determining whether the information establishes that the consumer
25 is responsible for the specific debt in question; or (2)
26 commencement or continuation of debt collection activities by the
27 debt collector, without making a written determination whether the
28 information establishes the consumer's responsibility for the
29 specific debt in question, constitutes a violation of the bill's
30 provisions.

31 The Attorney General is permitted to enforce the provisions of
32 the bill by seeking injunctive relief. In addition, the bill provides
33 that a court may impose a civil penalty of not less than \$500 nor
34 more than \$1,000 for each violation of the bill. However, the bill
35 provides an opportunity for a debt collector to cure a violation in
36 certain circumstances.

37 The bill also provides that an action to enforce any of its
38 provisions must be filed in the appropriate court within one year
39 from the date on which the violation occurs.