

Fair Credit Extension Uniformity

This Act provides for the regulation of debt collection practices in a manner that conforms more closely with federal debt collection law. This Act defines unfair or deceptive acts with regard to the collection of debt. The Act incorporates the federal Fair Debt Collection Practices Act (FDCPA) into state law. While the federal law only applies to debt collection agencies, the state law applies to creditors as well.

Generally, this Act provides that:

- Creditors must meet delineated requirements when communicating with a third person while attempting to determine the location of the consumer;
- Unless there is prior consent of the consumer or court permission, creditors may not communicate with a consumer, as set forth in this Act;
- Creditors may not communicate in connection with the collection of a debt with any one other than the consumer, his attorney, a debt collector, or a consumer reporting agency;
- A creditor may not harass, oppress or abuse any person in connection with the collection of a debt;
- A creditor may not use false, deceptive or misleading representation as a means to collect a debt;
- The creditor may not use unfair or unconscionable means to collect or attempt to collect a debt, and
- Violations constitute unfair trade practices.

Submitted as:

Pennsylvania

P.L. 23, No. 7 of 2000

Status: enacted into law in 2000.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be known and may be cited as “The Fair Credit Extension
2 Uniformity Act.”

3
4 Section 2. [*Scope of Act.*] This Act establishes what shall be considered unfair methods of
5 competition and unfair or deceptive acts or practices with regard to the collection of debts.

6
7 Section 3. [*Definitions.*] As used in this Act:

8 “Communication” means the conveying of information regarding a debt directly or indirectly to any
9 person through any medium.

10 “Consumer” means a natural person residing in this state who owes or is alleged to owe a debt or one
11 who has incurred or is alleged to have incurred liability for the debt within this state, including, but not
12 limited to, a comaker, guarantor, surety or parent if the consumer is under [eighteen (18)] years old. The term
13 includes the consumer’s guardian, executor or administrator.

14 “Creditor” means a person, including agents, servants or employees conducting business under the
15 name of a creditor and within this state, to whom a debt is owed or alleged to be owed.

16 “Debt” means an actual or alleged past due obligation, claim, demand, note or other similar liability
17 of a consumer to pay money, arising out of a single account as a result of a purchase, lease or loan of goods,
18 services or real or personal property for personal, family or household purposes or as a result of a loan of
19 money or extension of credit which is obtained primarily for personal, family or household purposes,
20 provided, however, that money which is owed or alleged to be owed as a result of a loan secured by a

21 purchase money mortgage on real estate shall not be included within the definition of debt. The term also
22 includes any amount owed as a tax to any political subdivision of this state. Tax includes an assessment, any
23 interest, penalty, fee or other amount permitted by law to be collected. Debt does not include any such amount
24 owed to the United States or the state.

25 “Debt Collector” means:

26 (1) A person not a creditor conducting business within this state, acting on behalf of a
27 creditor, engaging or aiding directly or indirectly in collecting a debt owed or alleged to be owed a creditor or
28 assignee of a creditor.

29 (2) The term does not include:

30 (i) Any officer or employee of a creditor while, in the name of the creditor, collecting
31 debts for such creditor.

32 (ii) A person while attempting to collect a debt on behalf of a creditor, both of whom
33 are related by common ownership or affiliated by corporate control, if the person acting as a debt collector
34 does so only for creditors to whom it is so related or affiliated and if the principal business of the person is not
35 the collection of debts.

36 (iii) A person while collecting or attempting to collect any debt owed or due or
37 asserted to be owed or due to another to the extent such activity:

38 (A) is incidental to a bona fide fiduciary obligation or a bona fide escrow
39 arrangement;

40 (B) concerns a debt which was originated by such person;

41 (C) concerns a debt which was not in default at the time it was obtained by
42 such person; or

43 (D) concerns a debt obtained by such person as a secured party in a
44 commercial credit transaction involving the creditor.

45 Persons included within this subparagraph shall be considered creditors and not debt collectors for purposes
46 of this Act.

47 (iv) A person while serving or attempting to serve legal process on another person in
48 connection with the judicial enforcement of a debt.

49 (v) A person who is an elected or appointed official of any political subdivision of
50 this state, who collects or attempts to collect a tax or assessment owed to the political subdivision which
51 employs the person, while that person is acting within the scope of his elected or appointed position or
52 employment.

53 (3) The term does include:

54 (i) A creditor who, in the process of collecting his or her own debt, uses a name other
55 than his or her own which would indicate that a third person is collecting or attempting to collect the debt.

56 (ii) An attorney, whenever such attorney attempts to collect a debt, as herein defined,
57 except in connection with the filing or service of pleadings or discovery or the prosecution of a lawsuit to
58 reduce a debt to judgment.

59 (iii) A person who sells or offers to sell forms represented to be a collection system,
60 device or scheme that is intended or designed to collect debts.

61 (iv) A person, other than an elected or appointed official of any political subdivision
62 of this state, who collects or attempts to collect a tax or assessment owed to any political subdivision of this
63 state.

64 “Location Information” means a consumer’s plans of abode and his telephone number at such place
65 or his place of employment.

66 “State” means any state, territory or possession of the United States, the District of Columbia, the
67 Commonwealth of Puerto Rico or any political subdivision of any of the above.

68

69 Section 4. [*Unfair or Deceptive Acts or Practices.*]

(a) By debt collectors -- It shall constitute an unfair or deceptive debt collection act or practice under this Act if a debt collector violates any of the provisions of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.).

(b) By creditors -- With respect to debt collection activities of creditors in this state, it shall constitute an unfair or deceptive debt collection act or practice under this Act if a creditor violates any of the following provisions:

(1) Any creditor communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(i) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(ii) not state that such consumer owes any debt;

(iii) not communicate with any such person more than once unless requested to do so by such person or unless the creditor reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(iv) not communicate by postcard;

(v) not use any language or symbol on any envelope or in the contents of any communication effected by the mail or telegram that indicates that the communication relates to the collection of a debt, and

(vi) after the creditor knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney unless the attorney fails to respond within a reasonable period of time to communication from the creditor.

(2) Without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction, a creditor may not communicate with a consumer in connection with the collection of any debt:

(i) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a creditor shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location;

(ii) if the creditor knows the consumer is represented by an attorney with respect to such debt and has knowledge of or can readily ascertain such attorney's name and address unless the attorney fails to respond within a reasonable period of time to a communication from the creditor or unless the attorney consents to direct communication with the consumer; or

(iii) at the consumer's place of employment if the creditor knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(3) Except as provided in paragraph (1), without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a post-judgment judicial remedy, a creditor may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency it otherwise permitted by law, a debt collector, the attorney of the debt collector or the attorney of the creditor.

(4) A creditor may not engage in any conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

(i) The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.

(ii) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(iii) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to people who meet the requirements of section 161a(f) or 1681b (a) (3) of the Fair Credit Reporting Act (Public Law 91-508, 15 U.S.C. § 1601 et seq.).

121 (iv) The advertisement for sale of any debt to coerce payment of the debt.
 122 (v) Causing a telephone to ring or engaging any person in telephone conversation
 123 repeatedly or continuously with intent to annoy, abuse or harass any person at the called number.
 124 (vi) Accept as provided in paragraph (I), the placement of telephone calls without
 125 meaningful disclosure of the caller's identity.
 126 (5) A creditor may not use any false, deceptive or misleading representation or means in
 127 connection with the collection of any debt. Without limiting the general application of the foregoing, the
 128 following conduct is a violation of this paragraph;
 129 (i) The false representation or implication that the creditor is vouched for, bonded by
 130 or affiliated with the United States or any state, including the use of any badge, uniform or facsimile thereof.
 131 (ii) The false representation of the character, amount or legal status of any debt.
 132 (iii) The false representation or implication that any individual is an attorney or that
 133 any communication is from an attorney.
 134 (iv) The representation or implication that nonpayment of any debt will result in the
 135 arrest or imprisonment of any person or the seizure, attachment or sale of any property of any person unless
 136 such action is lawful and the creditor intends to take such action.
 137 (v) The threat to take any action that cannot legally be taken or that is not intended to
 138 be taken.
 139 (vi) The false representation or implication that a sale, referral or other transfer of any
 140 interest in a debt shall cause the consumer to lose any claim or defense to payment of the debt or become
 141 subject to any practice prohibited by this Act.
 142 (vii) The false representation or implication that the consumer committed any crime
 143 or other conduct in order to disgrace the consumer.
 144 (viii) Communicating or threatening to communicate to any person credit information
 145 which is known or which should be known to be false, including the failure to communicate that a debt its
 146 disputed.
 147 (ix) The use or distribution of any written communication which simulates or is
 148 falsely represented to be a document authorized, issued or approved by any court, office or agency of the
 149 United States or any state or which creates a false impression as to its source, authorization or approval.
 150 (x) The use of any false representation or deceptive means to collect or attempt to
 151 collect any debt or to obtain information concerning a consumer.
 152 (xi) The false representation or implication that accounts have been turned over to
 153 innocent purchasers for value.
 154 (xii) The false representation or implication that documents are legal process.
 155 (xiii) The false representation or implication that documents are not legal process
 156 forms or do not require action by the consumer.
 157 (6) A creditor may not use unfair or unconscionable means to collect or attempt to collect any
 158 debt. Without limiting the general application of the foregoing, the following conduct is a violation of this
 159 paragraph:
 160 (i) The collection of any amount, including any interest, fee, charge or expense
 161 incidental to the principal obligation, unless such amount is expressly authorized by the agreement creating
 162 the debt or permitted by law.
 163 (ii) The acceptance by a creditor from any person of a check or other payment
 164 instrument postdated by more than [five (5)] days unless such person will be notified in writing of creditor's
 165 intent to deposit such check or instrument nor more than [ten (1)] nor less than [three (3)] business days prior
 166 to such deposit.
 167 (iii) The solicitation by a creditor of any postdated check or other postdated payment
 168 instrument for the purpose of threatening or instituting criminal prosecution.
 169 (iv) Depositing or threatening to deposit any postdated check or other postdated
 170 payment instrument prior to the date on such check or instrument.

(v) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(vi) Taking or threatening to take any non-judicial action to effect dispossession or disablement of property if:

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(vii) Communicating with a consumer regarding a debt by postcard.

(viii) Using any language or symbol, other than the creditor's address, on any envelope when communicating with a consumer by use of the mails or by telegram, provided that a creditor may use its business name.

(c) For the purpose of subsection (b)(2) and (3) the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor) guardian, executor or administrator.

Section 5. [*Enforcement and Penalties.*]

(a) Unfair trade practices -- If a debt collector or creditor engages in an unfair or deceptive debt collection act or practice under this Act, it shall constitute a violation of [insert citation].

(b) Jurisdiction -- An action to enforce any liability created by this Act may be brought in any court of competent jurisdiction in this state within [two (2)] years from the date on which the violation occurs.

(c) Remedies -- Remedies available for violation of this Act and the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.) shall not be cumulative, and debt collectors who violate this Act and the Fair Debt Collection Practices Act shall not incur cumulative penalties.

(d) Defenses -- A debt collector or creditor may not be held liable in any action for a violation of this Act if the debt collector or creditor shows by a preponderance of the evidence that the violation was both not intentional and:

(1) Resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, or

(2) Resulted from good faith reliance upon incorrect information offered by any person other than an agent, servant or employee of the debt collector or creditor.

Section 6. [*Severability.*] [Insert severability clause.]

Section 7. [*Repealer.*] [Insert repealer clause.]

Section 8. [*Effective Date.*] [Insert effective date.]