

Debt Collection Industry Transparency Act (DCITA) of 2009

Bill Summary:

Mandates increased transparency and accountability for debt collection agencies and agents in order to better protect U.S. consumers from fraudulent and dishonest debt collection practices. Requires debt collection agencies and their agents be licensed and registered in the states in which they operate. Excludes convicted felons from serving as debt collectors. Limits access to consumer information and increases penalties for violators of the Fair Debt Collection Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA).

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Section 1. Short title

This title may be cited as the “Debt Collection Industry Transparency Act.”

Section 2. Findings and declaration of purpose

- (a) In 2008, the Federal Trade Commission received 104,661 complaints about abusive, deceptive and unfair debt collectors, an increase of more than 14% over 2007. The majority of the complaints cited debt collectors harassing consumers and attempting to collect larger payments than permitted by law. Under any economic conditions, abusive debt collection practices contribute to personal bankruptcies, higher consumer costs, job losses and invasions of privacy. But, during a recessionary period, these practices are particularly destructive, leaving debt-ridden, credit-starved consumers unable to rent apartments, buy homes or secure or retain jobs.
- (b) The recession has left millions of Americans unemployed and unable to pay debts. These Americans represent a lucrative opportunity for abusive and unlawful debt collectors.
- (c) Penalties prescribed under existing law are ineffectual deterrents to debt collectors’ abusive practices as evidenced by increased complaints.
- (d) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
- (e) Debt collectors routinely skirt the provisions and restrictions of the FDCPA and FCRA.
- (f) Debt collection agencies routinely employ convicted felons and persons convicted of misdemeanor forgery or fraud charges.
- (g) It is the purpose of this title to increase the transparency of the debt collection industry, to increase consumer protections, to increase the effectiveness of penalties prescribed under FDCPA and FCRA, to eliminate abusive debt collection practices by debt collectors and to improve States ability to protect consumers against such abuses.

Section 3. Definitions

As used in this title—

- (1) The term “Caller ID” means any device, software or service that provides subscribers the name and telephone number of a caller.
- (2) The term “Commission” means the Federal Trade Commission

- (3) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (4) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.
- (5) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
- (6) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
- (7) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—
 - a. any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
 - b. any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
 - c. any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
 - d. any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

- e. any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
 - f. any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity
 - i. is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
 - ii. concerns a debt which was originated by such person;
 - iii. concerns a debt which was not in default at the time it was obtained by such person; or
 - iv. concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.
- (8) The term "Email" means any communication or message distributed by electronic means from one user to one or more recipients via a network
- (9) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

Section 4. Exclusions

This Act does not apply to persons whose collection activities are confined to and are directly related to the operation of a business other than that of a collection agency, and specifically does not include the following:

- (1) Banks, including trust departments, affiliates and subsidiaries thereof, fiduciaries, and financing and lending institutions (except those who own or operate collection agencies);
- (2) Abstract companies doing an escrow business;
- (3) Real estate brokers when acting in the pursuit of their profession;
- (4) Public officers and judicial officers acting under order of a court;
- (5) Licensed attorneys at law;
- (6) Insurance companies;
- (7) Credit unions, including affiliates and subsidiaries thereof;
- (8) Loan and finance companies;
- (9) Retail stores collecting their own accounts;
- (10) Unit Owner's Associations established under the Condominium Property Act, and their duly authorized agents, when collecting assessments from unit owners; and

- (11) Unit Owner's Associations established under the Condominium Property Act, and their duly authorized agents, when collecting assessments from unit owners; and
- (12) Any person or business under contract with a creditor to notify the creditor's debtors of a debt using only the creditor's name.

Section 5: Licensing Requirements

(a) Any person, business or organization who practices, offers to practice, attempts to practice, or holds oneself out to practice as a collection agency must be licensed and registered in the state(s) in which they operate.

(b) Each individual debt collector, regardless of whether he operates as an individual debt collector or sole proprietor, or is employed by a debt collection agent or agency, must qualify for and obtain a state-issued license.

(c) Licenses must be issued to a single licensee and be non-transferrable. Licenses must expire after one 24-month period with renewal subject to debt collectors' ability to meet current eligibility requirements.

(d) *Eligibility.*

(1) Regardless of the state(s) in which the debt collector operates, the debt collector must meet certain minimum eligibility requirements.

(A) No felony convictions;

(B) No misdemeanor convictions for fraud, identity theft, stalking or related offenses; and

(C) Have a current state-issued identification card, drivers' license or other proof of identity and right to work as defined under the Immigration Reform and Control Act of 1986.

(e) *State Licensing Board Databases.*

Each state must create a searchable database of licensees to which the names and license numbers of all licensed debt collectors must be added. The database, or the information contained therein, must be made available to the public for the purpose of verifying the identity, status and license number of debt collectors.

(f) *Unlicensed practice; violation; civil penalty.*

(1) Any person, business or organization who practices, offers to practice, attempts to practice, or holds oneself out to practice as a collection agency without being licensed under this Act shall, in addition to any other penalty provided by law, pay a civil penalty to the Department in an amount not to exceed \$15,000 for each offense as determined by the Department. The

civil penalty shall be assessed by the Department after a hearing is held in accordance with the provisions set forth in this Act regarding the provision of a hearing for the discipline of a licensee.

- (2) The Department has the authority and power to investigate any and all unlicensed activity. In addition to taking any other action provided under this Act, whenever the Department has reason to believe a person, association, partnership, corporation, or other legal entity has violated any provision of subsection (a) of this Section, the Department may issue a rule to show cause why an order to cease and desist should not be entered against that person, association, partnership, corporation, or other legal entity. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued immediately.
- (3) The civil penalty shall be paid within 60 days after the effective date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and execution had thereon in the same manner as any judgment from any court of record.

Section 6. Validation of debts

(a) *Initial communications.* Upon initial communication with the consumer in connection with the collection of any debt, a debt collector shall send the consumer a written notice via mail, electronic mail ("email") or any form of communication that provides the consumer a permanent, printable record of the communication.

(b) *Required information.* The information provided must be sufficient to prove the creditor contracted with the debt collector to collect the debt from the consumer; to allow the consumer to assess the validity and legal status of the debt; and to allow the consumer to verify that the debt collector is licensed. To comply with this Act, the debt collector must provide all of the following information—

- (1) The amount of the debt;
- (2) Name of the original creditor to which the debt is owed;
- (3) Address of the original creditor;
- (4) Phone number of the original creditor;
- (5) Original account number(s) assigned by the original creditor;

- (6) A copy of the contract, agreement or promissory note between the consumer and the original creditor;
- (7) An itemization of (a) the principal, (b) the total of all interest, and (c) the total of all fees and other charges that make up the debt;
- (8) A contract between the original creditor and the debt collector, identifying the debt collector as a contingency agency or collection law firm to whom the original collector has assigned or sold the debt;
- (9) Debt collector's license number and that of the agent(s) to which the account has been assigned;
- (10) Debt collector's contact and remittance information; and
- (11) All information required under §809 of the Fair Debt Collection Practices Act (FDCPA).

Section 7. Communication in connection with debt collection

- (a) *Initial communication.* Initial communication with consumers must be in writing as defined in §6 of this Act.
- (b) *Caller identification Disclosures.* Debt collectors are prohibited from disguising or obscuring their telephone number or other contact information in any way. Debt collectors must call consumers via a telephone with a published telephone number that is registered to the debt collector or debt collection agency. Consumers using caller identification devices, or any technology or service designed to identify the last caller, must be able to easily identify the phone number and the name of the debt collector who made the call.
- (c) *Subsequent communications with consumer.* In subsequent communications with the consumer, the debt collector must provide the following information upon request—
 - (1) Name of the debt collector and debt collection agency;
 - (2) License number of the agent and the debt collection agency;
 - (3) Debt collector's contact and remittance information;
 - (4) Creditor's name;
 - (5) Creditor's contact information; and
 - (6) Original account number.
- (d) *Notification of rights.* Debt collectors must notify consumers of their rights under §809(b) of the FDCPA. Notice may be provided in writing via mail or email.
- (e) *Electronic communications.* In all communications between the debt collector and the consumer, the debt collector is prohibited from obscuring or disguising

his identity in any way. The debt collector must use an email address or user name that clearly identifies the name of the debt collection agency. The electronic communication must be free of malicious advertising software (“malware”), software viruses or any programming code or software designed to invade consumers’ privacy, track consumers’ online transactions or movements, or obtain private information such as bank account numbers or credit card numbers from the consumers’ computer, email account or online file storage account.

(f) *Limits on electronic communications.*

- (1) *Privacy and security.* Debt collectors must make reasonable efforts to ensure that consumers’ information is private and secure. Debt collectors may not include consumers’ social security numbers or other private data in any electronic communication. Debt collectors may not copy additional recipients or publish the information thereby making it available to anyone other than the consumer from whom the debt collector is seeking payment.
- (2) *Costs to consumers.* Debt collectors may communicate with consumers via any means that may cause consumers to incur costs for the transmission or receipt of data.

(g) *Use of predictive dialers, answering machines and voicemail.* Debt collectors may use predictive dialers or other automated dialing tools so long as the number of “hang-up” or “dead-air” calls is limited to no more than five (5) within a given day and do not occur prior to 9am or after 8pm in the consumer’s time zone.

Debt collectors may use answering machines or voicemail to leave messages for consumers so long as debt collectors abide by the identification and communications requirements outlined in §6 and §7 of this Act and do not use the messages to harass, abuse, threaten or annoy consumers.

Section 8. Telephone recording devices; audio files; file retention

(a) *Use of telephone recording devices.* If the debt collector informs the consumer that their telephone communications may be recorded, the debt collector must record the conversation between himself and the consumer in its entirety and make the audio recording(s) available to the consumer upon submission of a written request.

(b) *Retention of audio files.* Debt collectors must retain audio files of all consumer calls for no less than three (3) years, and make the files available to consumers and/or their authorized representatives within 10 days of receipt of a written request containing the consumer’s name, account number and date of the call.

(c) *Reasonable fee for duplication and shipping.* Consumers may be required to pay a reasonable fee not to exceed \$25 to cover duplication and shipping costs.

Section 9. Accessing consumer accounts

(a) *Verifiable consent.* Prior to accessing consumer bank accounts or other payment accounts, debt collectors must first obtain the consumer's express verifiable consent. Acceptable forms of consent are limited to the following—

- (1) A signed, original contract or authorization document specifying the date(s) and amount of the payment(s) the consumer agrees to pay the debt collector;
- (2) A credit card, debit card or automated check payment initiated by the consumer via telephone or the Internet;
- (3) A money transfer, money gram or cablegram initiated by the consumer;
- (4) A valid check or money order written by the consumer to the debt collector;
- (5) An electronic payment initiated and approved by the consumer; and
- (6) Automatic drafts or payments that are initiated by the consumer and require a finite number and amount of payments.

(b) *Termination of payments and restrictions on access to consumer accounts.* All automated or electronic payments, and any other payment arrangements which authorize the debt collector to access consumer accounts on more than one occasion or for more than a single payment, must terminate immediately upon satisfaction of the agreement between the consumer and the debt collector. The debt collector may not continue to collect payments or to access consumers' accounts after the consumer has paid the debt as agreed.

Section 10. Reporting information to consumer reporting agencies

(a) Except as authorized under §605(b), no debt collector may enquire or report any of the following to consumer reporting agencies—

- (1) Debts placed for collection or charged to profit and loss which antedate the report by more than seven years;
- (2) Debts sold or transferred by one debt collection agency to another, which antedate the report by more than seven years;
- (3) Debts listed as "paid" or "settled" on a previous consumer report;

- (4) Debts previously deleted from a consumer report by a consumer reporting agency as the result of a consumer-initiated investigation;
- (5) Debts for which the debt collector is unable to produce the note or other proof that the debt is owed;
- (6) Debts for which the debt collector is unable to prove he has the legal right to collect; and
- (7) Debts for which another debt collector previously collected payment.

Section 11. Harassment or abuse

(a) A debt collector that engages in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt may be subject to civil liability and criminal prosecution.

(b) The use or threat of violence or other criminal means to harm the physical person, will subject the debt collector to criminal prosecution.

Section 12. Civil liability

(a) Failure to comply with the provisions of this Act shall constitute an unfair debt collection practice and subject the debt collection agency, and its individual agents, to civil liability and make the debt collector liable to the consumer in an amount equal to the sum of—

- (1) any actual damage sustained in by such person as a result of such failure
- (2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not to exceed \$15,000; or
(B) in the case of a class action,
 - (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and
 - (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$750,000 or 3 per centum of the net worth of the debt collector; and
- (3) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with reasonable attorney's fee as determined by the court. On finding by the court that the action was brought in bad faith and for the purpose of harassment, the court may award tot he

defendant attorney's fees reasonable in relation to the work expended and costs.

- (4) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors, those defined in §813(a)(3)(b) of the FDCPA.

(b) In accordance with the FDCPA, debt collectors are exempt from liability for collection errors made in reasonable reliance on information received from creditors that assign or sell accounts to them. A debt collector may not avail itself of this defense, however, if its reliance on the creditor's representations was unreasonable.

Section 13. Criminal Liability

Debt collectors who commit criminal acts such as stalking, threatening violence, destroying consumers' property or removing money from consumers' accounts without consumers' express verifiable permission will be subject to criminal prosecution.

Section 14. Arbitration

Debt collectors may not require consumers to sign an arbitration agreement, or any other agreements that denies consumers their right to sue or to seek remedy under this Act, the FDCPA or the FCRA.

Section 15. Relation to State laws

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

Section 16. Effective date.

This title takes effect upon the expiration of six months after the date of its enactment, and shall apply with respect to debts for which the initial attempt to collect occurs after such effective date.

