House Insurance and Banking Subcommittee Am. #1

Amendment No._____

Kelly Keisling

Signature of Sponsor

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Date _____
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AMEND Senate Bill No. 2302* **House Bill No. 2402**

by deleting all language after the enacting clause and substituting instead the following:

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

47-18-5601. Short title.

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

47-18-5602. Part definitions.

As used in 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 the 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 the person or entity 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":

(A) 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; and

(B) 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. Statute of limitations.

After the expiration of a debt, the statute of limitations on the debt is not revived by the collection of a payment on an account, a discharge in a bankruptcy proceeding unless required by federal law, an oral or written reaffirmation of the debt, or any other method.

47-18-5604. Requirements before initiating contact.

(a) No debt buyer shall make any contact with a debtor in an attempt to collect a debt unless the debt buyer possesses the following:

(1) Documents evidencing 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 buyer;

(2) Documents evidencing the name, last known address, date of birth, and last four (4) digits of the social security number of the debtor if that 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 the changes and charges;

(4) Documents evidencing that the debt is not barred by the applicable statute of limitations as shown by documents evidencing the outstanding itemized balance on the date that the statute of limitations began to run; and

(5)

(A) A copy of a contract or other document evidencing the debtor's agreement to the debt;

(B) If the claim is based on debt for which no signed contract or agreement exists, an affidavit from the original creditor that no 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; or

(C) For a revolving credit account, the most recent monthly statements recording a purchase transaction or cash advance as well as last payment.

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

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

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

(2) Begin the oral communication 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.

(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 primary language.

(e) If a conflict exists between federal law and the requirements of subsection (b) or (c), the requirements of federal law prevail.

(f) A debt buyer violates this section 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.

47-18-5605. Requirements to bring suit.

(a) In an action brought by a debt buyer on a debt, the complaint must allege 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 address of the original creditor at the time of charge-off in a form sufficient to reasonably identify the original creditor, and the original creditor's account number associated with the debt;

(7) The name, last known address, and last four (4) 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, 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 the documents and written communications, if any, made under § 47-18-5604.

(c) This part does not require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by any state or federal law.

(d) Notwithstanding any law to the contrary:

(1) In a case brought by a debt buyer involving collection of debt, the court may, in its discretion, dismiss the action with or without prejudice if the defendant debtor appears for trial on the scheduled trial date and the plaintiff debt buyer:

(A) Fails to appear; or

(B) Is not prepared to proceed to trial and the court does not find a good cause for continuance; and

(2) In any situation as described in subdivision (d)(1), the court may award the defendant debtor the costs of preparing for trial, including lost wages and transportation expenses.

(e) A debt buyer violates this section if the debt buyer files suit, initiates arbitration, or commences other legal proceedings when the debt buyer knows or has reason to know that the debt is outside the applicable statute of limitations.

47-18-5606. Requirements to collect a judgment.

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 (1)(C);

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

(5) 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 the following:

(A) 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;

(B) The manner of computing the specific amounts;

(C) 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

(D) A statement that, if the judgment debtor wishes a court hearing to prove that amounts should not be withheld from the judgment debtor because they are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer an original and one (1) copy of the judgment debtor's claim of exemption and an original and one (1) copy of the judgment debtor's financial statement; and

(6) Service upon the judgment debtor under this section is limited to in-person service.

47-18-5607. Enforcement.

(a) In an action brought by an individual or individuals, a debt buyer that violates this section with respect to any person is 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).

(b) Notwithstanding any law to the contrary, in a class action, a debt buyer that violates this section shall be liable for all actual and statutory damages as provided in subsection (a). If the court finds that the debt buyer engaged in a pattern and practice of violating this section, the court may award additional damages to the class.

(c) 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 section.

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

(e) 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.

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

(g) Any waiver of this section is contrary to public policy, and is void and unenforceable.

(h) Unless otherwise expressly provided, this section is cumulative to the remedies, requirements, and penalties of other applicable state and federal laws.

47-18-5608. Severability.

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

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. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to contracts entered into or renewed on or after the effective date of this act.