

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to Regulate Debt Collection Activity.

PETITION OF:

NAME:

James B. Eldridge

DISTRICT/ADDRESS:

Middlesex and Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO REGULATE DEBT COLLECTION ACTIVITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 259 of the General Laws, as appearing in the 2006 Official Edition, is hereby
2 amended by adding the following section:--

3

4 Section 1A. In an action in which the money, property, or services which are the subject of the
5 action were primarily for personal, family, or household purposes, the action shall not be
6 accepted by a clerk for filing and dismissed sua sponte, if it is filed, if the action involves a
7 written contract that is not attached to complaint or statement of claim. If a party bringing a
8 claim against a consumer involving a debt obtained the debt from another, the action shall not
9 be accepted by a clerk for filing and shall be dismissed sua sponte, if it is filed, if the writing by
10 which the party purchased the debt is not attached to the complaint or statement of claim. In
11 an action in which the money, property, or services which are the subject of the action were
12 primarily for personal, family, or household purposes, the plaintiff must affirmatively plead that
13 the action involved or did not involve a contract or written memorandum of an agreement by
14 the defendant. Actions involving an agreement, or an alleged agreement, in which the money,
15 property, or services which were the subject of the agreement were primarily for personal,
16 family, or household purposes, must be brought as an action on a contract and may not be
17 brought as a claim of an account stated.

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20 SECTION 2. Chapter 260 of the General Laws, as appearing in the 2006 Official Edition, is hereby
21 amended by adding the following section:--

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23 Section 2F. With regard to contracts in which the money, property, or services that are the
24 subject of the transaction were primarily for personal, family, or household purposes, the period
25 of limitations shall be four years. The period begins sixty days after the last payment or
26 purchase by the consumer, or loan of money to the consumer, whichever is later. The period is
27 not extended by a later payment by the consumer unless the consumer also waives the
28 protection in writing after clear and conspicuous disclosure in plain language of the substance of
29 the right and that it is being waived. The running of the period of limitations in this section
30 extinguishes the debt as well as any remedy and bars any activity directly or indirectly to collect
31 the debt, including the reporting of the debt to a credit reporting agency.

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35 SECTION 3. Chapter 231 Section 6C of the General Laws, as appearing in the 2006 Official Edition, is
36 hereby amended by adding at the end thereof the following paragraph:--

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38

39 Provided further that where the judgment is entered against an individual in connection with a
40 contract for personal, family, or household purposes, the rate for the second and subsequent
41 years shall be a rate calculated at a weekly average one-year constant maturity treasury yield, as
42 published by the Board of Governors of the Federal Reserve System, for the first week of the
43 calendar year that the judgment is entered, provided, however, that such interest shall not
44 exceed the rate of ten percent per annum. The Attorney General shall maintain a schedule of
45 the rate described above for the distribution to all clerks of courts.

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48 SECTION 4: Chapter 93 of the General Laws, as appearing in the 2006 Official Edition, is hereby
49 amended by inserting after subsection(d) in section 49 the following:-

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51 (e) The creditor communicates with *an* alleged debtor *who is sixty years of age or older*
52 regarding a debt after such debtor has notified the creditor, in writing or orally, that the alleged
53 debtor refuses to pay such debt or that the alleged debtor wishes the creditor to cease further

54 communications with debtor about such debt, with the following exceptions, which must be in
55 writing:

- 56
- 57 1. To advise the alleged debtor that the creditors further efforts are being
58 terminated;
 - 59
 - 60 2. To notify the alleged debtor that the creditor may invoke specified
61 remedies which are ordinarily invoked by such creditor; or
62
 - 63 3. Where applicable, to notify the debtor that the creditor intends to invoke a
64 specified remedy.
65

66 A debtor's oral notice shall be valid for only forty days unless the alleged debtor provides
67 written confirmation postmarked or delivered within seven days of such notice. A debtor may
68 rescind at any time such a notice by written communication to the creditor. A creditor must
69 inform the alleged debtor of the right provided by this subsection upon first communication
70 with the alleged debtor, to be followed within thirty days by a written short and plain
71 explanation of the right provided by this subsection.

72

73 For purposes of this section, "creditor" means any person and his agents, an assignee of the
74 creditor, , employees, attorneys or collection agents engaged in collecting a debt owed or
75 alleged to be owed to him by a debtor.

76

77 (f) The creditor seeks payment on an alleged obligation on which the statute of limitations for
78 bringing suit has run.

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81 SECTION 5. Chapter 218 section 22 of the General Laws, as appearing in the 2006 Official Edition, is
82 hereby amended by adding the following after the first paragraph:--

83

84

85 The entry fee shall be \$60 for any party that had filed five statements of claim in the court
86 during the calendar year, \$90 for any party that has previously filed fifty statements of claim in
87 the court during the calendar year, \$120 for any party that has previously filed one hundred
88 statements of claim in the court during the calendar year.

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91 SECTION . Chapter 93 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended
92 by adding the following sections:--

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94

95 Section 49B

96 A debt collector who purchases or acquires a debt owed by a consumer that has been
97 delinquent for 60 days or more shall provide within 30 days of obtaining the debt a notice to any
98 consumer obligated or allegedly obligated for the debt that contains:

99 (a) A statement that the debt collector has acquired the debt and identifying where any future
100 payments are to be made.

101 (b) The name of the original creditor with whom the consumer dealt and the name of the entity
102 from which the debt collector obtained the debt.

103 (c) A copy of the last statement sent to the consumer when the account was not delinquent.

104 (d) A statement of the amounts, types, and dates of any charges added to the account after the
105 last statement sent to the consumer when the account was not delinquent.

106

107 If the debt collector obtains a consumer report, as defined in M.G.L. ch. 93, section 50, of the
108 consumer, such notice must be provided to the most recent address indicated in the consumer
109 report or the consumer's current address provided by a more reliable source.

110

111 Section 49C

112 A debt collector purchasing a debt owed by a consumer that has been delinquent for 60 days or
113 more shall not attempt to collect the debt unless the debt collector has obtained substantially
114 all of the records related to the consumer's obligation to pay the account. Such records shall
115 include any application of the consumer for the account, any terms or alleged terms of the
116 account, the dates and amounts of each activity regarding the account for the three years prior
117 to any delinquency (including all billing statements), and any record of communications
118 between the consumer and prior creditors and debt collectors regarding the account.

119

120 Section 49D

121 (a) Notice of debt; contents. Within five days after the initial communication with a consumer in
122 connection with the collection of any debt, a debt collector shall, unless the following
123 information is contained in the initial communication or the consumer has paid the debt, send
124 the consumer a written notice containing—

125 (1) the amount of the debt;

126 (2) the name of the creditor to whom the debt is owed;

127 (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes
128 the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt
129 collector;

130 (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day
131 period that the debt, or any portion thereof, is disputed, the debt collector will a response to
132 the dispute or a copy of a judgment against the consumer and a copy of such response or
133 judgment will be mailed to the consumer by the debt collector; and

134 (5) a statement that, upon the consumer's written request within the thirty-day period, the debt
135 collector will provide the consumer with the name and address of the original creditor, if
136 different from the current creditor.

137 (b) Disputed debts. If the consumer notifies the debt collector in writing within the thirty-day
138 period described in subsection (a) of this section that the debt, or any portion thereof, is
139 disputed, or that the consumer requests the name and address of the original creditor, the debt
140 collector shall cease collection of the debt, or any disputed portion thereof, until the debt
141 collector conducts a reasonable investigation of the dispute of the debt or obtains a copy of a
142 judgment, or the name and address of the original creditor, and a copy of a response to the
143 dispute or judgment, or name and address of the original creditor, is mailed to the consumer by
144 the debt collector.

145 Collection activities and communications that do not otherwise violate this chapter, or
146 regulations thereunder, may continue during the 30-day period referred to in subsection (a)
147 unless the consumer has notified the debt collector in writing that the debt, or any portion of
148 the debt, is disputed or that the consumer requests the name and address of the original
149 creditor. Any collection activities and communication during the 30-day period may not
150 overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or
151 request the name and address of the original creditor.

152 (c) Admission of liability. The failure of a consumer to dispute the validity of a debt under this
153 section may not be construed by any court or other person as an admission of liability by the
154 consumer.

155 (d) Legal pleadings. A communication in the form of a formal pleading in a civil action shall not
156 be treated as an initial communication for purposes of subsection (a).

157 (e) Notice provisions. The sending or delivery of any form or notice which does not relate to the
158 collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of
159 Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data
160 security breach or privacy, or any regulation prescribed under any such provision of law, shall
161 not be treated as an initial communication in connection with debt collection for purposes of
162 this section.

163

164 Section 49E

165 When a debt collector accepts a payment or negotiates a payment plan with a consumer, the
166 debt collector shall send to the consumer within ten days of accepting the payment or payment
167 plan a written statement identifying the debt, the terms of the payment or payment plan, and
168 whether the payment(s) should designated as payment in full of the debt. The statement
169 should also state that this is an important record that should be retained by the consumer.

170

171 Section 49F

172 In any action by debt collector against a consumer where the underlying contract provides for
173 the recovery of a collection or attorney fee, a prevailing consumer shall be entitled to recover a
174 reasonable attorney fee.

175

176 Section 49G

177 (a) For purposes of Sections 49B through 49F, a “debt collector” is one who in more than
178 isolated instances is a creditor, an attorney for a creditor, an assignee of a creditor, and any
179 agent, employee, or entity regularly hired by a creditor to collect a debt of a natural person
180 present or residing in Massachusetts who has incurred a debt primarily for personal, family or
181 household purposes.

182 (b) For purposes of Sections 49B through 49E, a consumer is one who has incurred a debt
183 primarily for personal, family or household purposes.

184 (c) Remedies. Any debt collector, who fails to comply with any provision of Section 49, 49B
185 through 49D with, respect to any person is liable to such person in an amount equal, to the sum
186 of—

187 (1) any actual damage sustained by such person as a result of , such failure;

188 (2)(A) in the case of any action by an individual, such additional , damages as the court may
189 allow, but not exceeding \$2,000; or

190 (B) in the case of a class action, (i) such amount for each, named plaintiff as could be recovered
191 under subparagraph , (A), and (ii) such amount as the court may allow for all other , class
192 members, without regard to a minimum individual , recovery, not to exceed the lesser of
193 \$500,000 or 1 per centum , of the revenues of the debt collector during the year in which the
194 violation occurred; and , (3) in the case of any successful action to enforce the foregoing liability,
195 the costs of the action, together with a reasonable , attorney’s fee as determined by the court.
196 On a finding by the, court that an action under this section was brought in bad faith, and for the
197 purpose of harassment, the court may award to the defendant attorney’s fees reasonable in
198 relation to the work expended and costs.

199 (b) Factors considered by court. In determining the amount of liability in any action under
200 subsection (c), the court shall consider, among other relevant factors—

201 (1) in any individual action under subsection (c)(2)(A), the , frequency and persistence of
202 noncompliance by the debt collector, , the nature of such noncompliance, and the extent to
203 which such noncompliance was intentional; or

204 (2) in any class action under subsection (c)(2)(B) of this section, the frequency and persistence of
205 noncompliance by the debt , collector, the nature of such noncompliance, the resources of the
206 debt collector, the number of persons adversely affected, and the extent to which the debt
207 collector’s noncompliance was intentional.

208 (c) Intent. A debt collector may not be held liable in any action brought under this subchapter if
209 the debt collector shows by a preponderance of evidence that the violation was not intentional
210 and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably
211 adapted to avoid any such error.