

HOUSE No. 02170

The Commonwealth of Massachusetts

PRESENTED BY:

Linda Dorcena Forry and

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:	DISTRICT/ADDRESS:
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>George Ross</i>	<i>2nd Bristol</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Theodore C. Spiliotis</i>	<i>13th Essex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Kathi-Anne Reinstein</i>	<i>16th Suffolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>

HOUSE No. 02170

By Ms. Forry of Boston and Senator Mr. Eldridge, a joint petition (accompanied by bill, House, No. 2170) of Reinstein and others for legislation to regulate debt collection activity Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 1691 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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
- 2 hereby amended by adding the following section:--
- 3 Section 1A. In an action in which the money, property, or services which are the subject of the
- 4 action were primarily for personal, family, or household purposes, the action shall not be
- 5 accepted by a clerk for filing and dismissed sua sponte, if it is filed, if the action involves a
- 6 written contract that is not attached to complaint or statement of claim. If a party bringing a
- 7 claim against a consumer involving a debt obtained the debt from another, the action shall not be
- 8 accepted by a clerk for filing and shall be dismissed sua sponte, if it is filed, if the writing by
- 9 which the party purchased the debt is not attached to the complaint or statement of claim. In an

10 action in which the money, property, or services which are the subject of the action were
11 primarily for personal, family, or household purposes, the plaintiff must affirmatively plead that
12 the action involved or did not involve a contract or written memorandum of an agreement by the
13 defendant. Actions involving an agreement, or an alleged agreement, in which the money,
14 property, or services which were the subject of the agreement were primarily for personal,
15 family, or household purposes, must be brought as an action on a contract and may not be
16 brought as a claim of an account stated.

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

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

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

30 Provided further that where the judgment is entered against an individual in connection with a
31 contract for personal, family, or household purposes, the rate for the second and subsequent

32 years shall be a rate calculated at a weekly average one-year constant maturity treasury yield, as
33 published by the Board of Governors of the Federal Reserve System, for the first week of the
34 calendar year that the judgment is entered, provided, however, that such interest shall not exceed
35 the rate of ten percent per annum. The Attorney General shall maintain a schedule of the rate
36 described above for the distribution to all clerks of courts.

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

39 (e) The creditor communicates with an alleged debtor who is sixty years of age or older
40 regarding a debt after such debtor has notified the creditor, in writing or orally, that the alleged
41 debtor refuses to pay such debt or that the alleged debtor wishes the creditor to cease further
42 communications with debtor about such debt, with the following exceptions, which must be in
43 writing:

44 1. To advise the alleged debtor that the creditors further efforts are being terminated;

45 2. To notify the alleged debtor that the creditor may invoke specified remedies which are
46 ordinarily invoked by such creditor; or

47 3. Where applicable, to notify the debtor that the creditor intends to invoke a specified
48 remedy.

49 A debtor's oral notice shall be valid for only forty days unless the alleged debtor provides written
50 confirmation postmarked or delivered within seven days of such notice. A debtor may rescind at
51 any time such a notice by written communication to the creditor. A creditor must inform the
52 alleged debtor of the right provided by this subsection upon first communication with the alleged

53 debtor, to be followed within thirty days by a written short and plain explanation of the right
54 provided by this subsection.

55 For purposes of this section, “creditor” means any person and his agents, an assignee of the
56 creditor, , employees, attorneys or collection agents engaged in collecting a debt owed or alleged
57 to be owed to him by a debtor.

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

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

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

66 SECTION 6. Chapter 93 of the General Laws, as appearing in the 2006 Official Edition, is
67 hereby amended by adding the following sections:--

68 Section 49B

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

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

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

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

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

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

82 Section 49C

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

90 Section 49D

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

95 (1) the amount of the debt;

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

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

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

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

107 (b) Disputed debts. If the consumer notifies the debt collector in writing within the thirty-day
108 period described in subsection (a) of this section that the debt, or any portion thereof, is disputed,
109 or that the consumer requests the name and address of the original creditor, the debt collector
110 shall cease collection of the debt, or any disputed portion thereof, until the debt collector
111 conducts a reasonable investigation of the dispute of the debt or obtains a copy of a judgment,
112 or the name and address of the original creditor, and a copy of a response to the dispute or
113 judgment, or name and address of the original creditor, is mailed to the consumer by the debt
114 collector.

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

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

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

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

133 Section 49E

134 When a debt collector accepts a payment or negotiates a payment plan with a consumer, the debt
135 collector shall send to the consumer within ten days of accepting the payment or payment plan a
136 written statement identifying the debt, the terms of the payment or payment plan, and whether

137 the payment(s) should designated as payment in full of the debt. The statement should also state
138 that this is an important record that should be retained by the consumer.

139 Section 49F

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

143 Section 49G

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

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

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

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

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

157 (B) in the case of a class action, (i) such amount for each, named plaintiff as could be recovered
158 under subparagraph , (A), and (ii) such amount as the court may allow for all other , class
159 members, without regard to a minimum individual , recovery, not to exceed the lesser of
160 \$500,000 or 1 per centum , of the revenues of the debt collector during the year in which the
161 violation occurred; and , (3) in the case of any successful action to enforce the foregoing liability,
162 the costs of the action, together with a reasonable , attorney’s fee as determined by the court. On
163 a finding by the, court that an action under this section was brought in bad faith, and for the
164 purpose of harassment, the court may award to the defendant attorney’s fees reasonable in
165 relation to the work expended and costs.

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

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

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

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