

SENATE BILL 2133

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 62,
Chapter 20, relative to collection service.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-20-102(3), is amended by adding the following after the first sentence:

“Collection service” does not include any person that engages in, or attempts to engage in, the collection of notes or guarantees.

SECTION 2. Tennessee Code Annotated, Section 62-20-103(a), is amended by adding the following as new, appropriately designated subdivisions:

(4) Any state or national bank; state or federal mutual savings bank; state or federal savings institution; or any parent, subsidiary, or affiliate of any of the foregoing;

(5) Any state or federal credit union;

(6) Any industrial loan and thrift company licensed or authorized by title 45, chapter 5;

(7) Any small business development corporation authorized by title 45, chapter 8;

(8) Any person that services or collects obligations secured by a consensual lien on a dwelling as defined by 12 C.F.R. 1026.2(a)(19) or any successor regulation; or

(9) Any person that holds or acquires accounts, bills or other forms of indebtedness through purchase, assignment, or otherwise; and only engages in collection activity through the use of a licensed collection agency or an attorney authorized to practice law in this state.

SECTION 3. Tennessee Code Annotated, Section 62-20-127, is amended by deleting subsection (a) and substituting instead the following:

(a) A collection service, holding a valid license under this chapter, may bill, collect or file suit in its own name, as the real party in interest, on any form of indebtedness, so long as the owner or holder of the indebtedness has assigned this limited right to the collection service licensee and the following conditions have been met:

(1) The assignment was voluntary, properly executed and acknowledged by the person making the assignment to the collection service licensee;

(2) The original agreement between the creditor and the debtor does not prohibit an assignment for the limited purpose of billing, collecting or filing suit in the assignee's own name, as the real party in interest;

(3) The assignment was manifested by a written agreement stating the effective date of the assignment and any consideration given for the assignment. The written agreement must also disclose that the collection service licensee may, for purposes of litigation, consolidate the assigned account, bill, note or other form of indebtedness with those of other creditors against the individual debtor or codebtors;

(4) The assignment to the collection service licensee does not transfer title or any ownership interest in the underlying account, bill, note or other form of indebtedness to the collection service licensee; and

(5) A collection service licensee bringing suit in its own name as an assignee may submit an affidavit of sworn account that has been executed under oath by the assigning party or by a person qualified to execute a sworn account pursuant to § 24-5-107(a). The licensee shall file a copy of the sworn account with the court for service upon the debtor.

SECTION 4. Tennessee Code Annotated, Section 62-20-105, is amended by adding the following new subsections:

(d) Nothing in this chapter shall be construed to impair, or impede the obligation of any contract, delinquent account, bills or other forms of indebtedness, nor prevent or deny any person the right to purchase, sell, assign, or take by assignment any obligation.

(e) Notwithstanding subsection (a), no debt or obligation that has been collected by a voluntary payment or by a final judgment of any court may be set aside or challenged.

(f) Any person who is alleged to have violated subsection (a) in the collection of a delinquent account, bill or other form of indebtedness:

(1) May cure the default at any time, even after collection may have started, by filing an application for a license with the collection services board as provided in this chapter, and the board may not use a prior collection effort in violation of this act as a basis or consideration for the denial of a license; and

(2) May be subject to sanction by the collection service board, but may not be subject to other civil action or defense based on such alleged violation.

SECTION 5. It is the legislative intent that the provisions contained in this act are remedial in nature and are intended to clarify the statute and policies of the collection services board. The clarifying provisions in this act are intended to provide a restatement of the statute and policies.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.