

SENATE No. 1691

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:	DISTRICT/ADDRESS:
James B. Eldridge	Middlesex and Worcester
Elizabeth A. Malia	11th Suffolk
Carl M. Sciortino, Jr.	34th Middlesex
Steven J. D'Amico	4th Bristol
Theodore C. Speliotis	13th Essex
Joyce A. Spiliotis	12th Essex
Jennifer M. Callahan	18th Worcester
Lori Ehrlich	8th Essex
Ellen Story	3rd Hampshire

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
2 Edition, is hereby amended by adding the following section:--

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

15 or services which were the subject of the agreement were primarily for personal, family,
16 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.

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

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

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

32 Provided further that where the judgment is entered against an individual in connection
33 with a contract for personal, family, or household purposes, the rate for the second and
34 subsequent years shall be a rate calculated at a weekly average one-year constant
35 maturity treasury yield, as published by the Board of Governors of the Federal Reserve
36 System, for the first week of the calendar year that the judgment is entered, provided,

37 however, that such interest shall not exceed the rate of ten percent per annum. The
38 Attorney General shall maintain a schedule of the rate described above for the
39 distribution to all clerks of courts.

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

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

- 47 1. To advise the alleged debtor that the creditors further efforts are being
48 terminated;
- 49 2. To notify the alleged debtor that the creditor may invoke specified
50 remedies which are ordinarily invoked by such creditor; or
- 51 3. Where applicable, to notify the debtor that the creditor intends to invoke a
52 specified remedy.

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

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

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

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

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

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

72 Section 49B

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

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

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

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

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

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

87 Section 49C

88 A debt collector purchasing a debt owed by a consumer that has been delinquent for 60
89 days or more shall not attempt to collect the debt unless the debt collector has obtained
90 substantially all of the records related to the consumer's obligation to pay the account.

91 Such records shall include any application of the consumer for the account, any terms or
92 alleged terms of the account, the dates and amounts of each activity regarding the account
93 for the three years prior to any delinquency (including all billing statements), and any
94 record of communications between the consumer and prior creditors and debt collectors
95 regarding the account.

96 Section 49D

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

101 (1) the amount of the debt;

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

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

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

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

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

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

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

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

133 (e) Notice provisions. The sending or delivery of any form or notice which does not relate
134 to the collection of a debt and is expressly required by the Internal Revenue Code of
135 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law
136 relating to notice of data security breach or privacy, or any regulation prescribed under
137 any such provision of law, shall not be treated as an initial communication in connection
138 with debt collection for purposes of this section.

139 Section 49E

140 When a debt collector accepts a payment or negotiates a payment plan with a consumer,
141 the debt collector shall send to the consumer within ten days of accepting the payment or
142 payment plan a written statement identifying the debt, the terms of the payment or

143 payment plan, and whether the payment(s) should be designated as payment in full of the
144 debt. The statement should also state that this is an important record that should be
145 retained by the consumer.

146 Section 49F

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

150 Section 49G

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

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

158 (c) Remedies. Any debt collector, who fails to comply with any provision of Section 49,
159 49B through 49D with, respect to any person is liable to such person in an amount equal,
160 to the sum of—

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

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

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

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

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

179 (2) in any class action under subsection (c)(2)(B) of this section, the frequency and
180 persistence of noncompliance by the debt , collector, the nature of such noncompliance,
181 the resources of the debt collector, the number of persons adversely affected, and the
182 extent to which the debt collector's noncompliance was intentional.

183 (c) Intent. A debt collector may not be held liable in any action brought under this
184 subchapter if the debt collector shows by a preponderance of evidence that the violation

185 was not intentional and resulted from a bona fide error notwithstanding the maintenance
186 of procedures reasonably adapted to avoid any such error.