HOUSE DOCKET, NO. 2954 FILED ON: 1/21/2011

HOUSE . . . . . No. 2170

The Commonwealth of Massachusetts

PRESENTED BY:

Linda Dorcena Forry and 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 adoption of the accompanying bill:

An Act to regulate debt collection activity.

PETITION OF:

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

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HOUSE . . . . . No. 2170

By Representative Forry of Boston and Senator Eldridge, a joint petition (accompanied by bill, House, No. 2170) of Linda Dorcena Forry, James B. Eldridge and others for legislation to regulate debt collection activity. 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:

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

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

19 Section 2F. With regard to contracts in which the money, property, or services that are
20 the subject of the transaction were primarily for personal, family, or household purposes, the
21 period of limitations shall be four years. The period begins sixty days after the last payment or
22 purchase by the consumer, or loan of money to the consumer, whichever is later. The period is
23 not extended by a later payment by the consumer unless the consumer also waives the protection
24 in writing after clear and conspicuous disclosure in plain language of the substance of the right
25 and that it is being waived. The running of the period of limitations in this section extinguishes
26 the 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
29 Official 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
31 with a contract for personal, family, or household purposes, the rate for the second and
32 subsequent years shall be a rate calculated at a weekly average one-year constant maturity

33 treasury yield, as published by the Board of Governors of the Federal Reserve System, for the
34 first week of the calendar year that the judgment is entered, provided, however, that such interest
35 shall not exceed the rate of ten percent per annum. The Attorney General shall maintain a
36 schedule of the rate 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,
38 is 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
46 which are ordinarily invoked by such creditor; or

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

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

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

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

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

60 SECTION 5. Chapter 218 section 22 of the General Laws, as appearing in the 2006
61 Official 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
63 during the calendar year, $90 for any party that has previously filed fifty statements of claim in
64 the court during the calendar year, $120 for any party that has previously filed one hundred
65 statements of claim in the court during the calendar year.

66 SECTION 6. Chapter 93 of the General Laws, as appearing in the 2006 Official Edition,
67 is 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
70 delinquent for 60 days or more shall provide within 30 days of obtaining the debt a notice to any
71 consumer 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
73 future payments are to be made.

74 (b) The name of the original creditor with whom the consumer dealt and the name of the
75 entity 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
77 delinquent.

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

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

83 Section 49C

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

91 Section 49D

92 (a) Notice of debt; contents. Within five days after the initial communication with a
93 consumer in connection with the collection of any debt, a debt collector shall, unless the

94 following information is contained in the initial communication or the consumer has paid the
95 debt, send the consumer a written notice containing—

96 (1) the amount of the debt;

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

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

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

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

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

114 dispute or judgment, or name and address of the original creditor, is mailed to the consumer by
115 the debt collector.

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

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

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

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

134 Section 49E

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

140 Section 49F

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

144 Section 49G

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

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

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

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

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

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

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

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

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

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

178 intentional and resulted from a bona fide error notwithstanding the maintenance of procedures

179 reasonably adapted to avoid any such error.