

104TH CONGRESS
1ST SESSION

S. 1379

To make technical amendments to the Fair Debt Collection Practices Act,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 1995

Mr. SIMPSON introduced the following bill; which was read twice and referred
to the Committee on Banking, Housing, and Urban Affairs

A BILL

To make technical amendments to the Fair Debt Collection
Practices Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Debt Collection
5 Practices Amendments Act of 1995”.

6 **SEC. 2. DEFINITIONS.**

7 Section 803(6)(C) of the Fair Debt Collection Prac-
8 tices Act (15 U.S.C. 1692a(6)(C)) is amended by inserting
9 “owed to the Federal Government or to any State” after
10 “collect any debt”.

1 **SEC. 3. ACQUISITION OF LOCATION INFORMATION.**

2 Section 804(6) of the Fair Debt Collection Practices
3 Act (15 U.S.C. 1692b(6)) is amended by inserting before
4 the period at the end the following: “, except that the debt
5 collector may communicate with persons other than the
6 attorney for the purpose of acquiring location information
7 or information relating to the income, assets, or credit of
8 the consumer if the attorney refuses to provide such infor-
9 mation to the debt collector”.

10 **SEC. 4. VALIDATION OF DEBTS.**

11 (a) DESTINATION OF VALIDATION NOTICE.—Section
12 809(a) of the Fair Debt Collection Practices Act (15
13 U.S.C. 1692g(a)) is amended in the matter preceding
14 paragraph (1) by striking “send the consumer” and in-
15 serting “send to the last known address of the consumer
16 (or to any location at which the debt collector has a rea-
17 sonable belief that the consumer is residing)”.

18 (b) FORM OF VALIDATION NOTICE.—Section
19 809(a)(3) of the Fair Debt Collection Practices Act (15
20 U.S.C. 1692g(a)(3)) is amended—

21 (1) by inserting “appearing in type at least as
22 large as 12-point type” after “a statement”;

23 (2) by striking “disputes” and inserting “noti-
24 fies the debt collector in writing that”; and

25 (3) by striking “thereof,” and inserting “there-
26 of is disputed,”.

1 **SEC. 5. LEGAL ACTIONS BY DEBT COLLECTORS.**

2 Section 811(a)(2) of the Fair Debt Collection Prac-
3 tices Act (15 U.S.C. 1692i(a)(2)) is amended—

4 (1) in subparagraph (A), by inserting “or in
5 which the obligation was incurred” before the semi-
6 colon; and

7 (2) in subparagraph (B), by inserting “or is
8 employed” after “consumer resides”.

9 **SEC. 6. CIVIL LIABILITY.**

10 (a) LIMITATIONS ON DAMAGES.—Section 813(a) of
11 the Fair Debt Collection Practices Act (15 U.S.C.
12 1692k(a)) is amended to read as follows:

13 “(a) LIMITATIONS ON DAMAGES.—

14 “(1) IN GENERAL.—Except as otherwise pro-
15 vided in this section, a debt collector who fails to
16 comply with any provision of this title with respect
17 to any person shall be liable to such person as fol-
18 lows:

19 “(A) INDIVIDUAL ACTIONS.—In the case of
20 an action arising under this title other than an
21 action described in subparagraph (B), in an
22 amount equal to any actual damages sustained
23 by the person as a result of such failure.

24 “(B) CLASS ACTIONS.—In the case of an
25 action arising under this title that is brought or
26 maintained as a class action pursuant to the

1 Federal Rules of Civil Procedure or as other-
2 wise provided by law (hereafter in this section
3 referred to as a 'class action'), in an amount
4 equal to the sum of—

5 “(i) the amount for each named plain-
6 tiff as is recoverable under subparagraph
7 (A); and

8 “(ii) such amount as the court may
9 allow for all other class members, without
10 regard to a minimum individual recovery,
11 not to exceed the total amount for such
12 class members as is recoverable under sub-
13 paragraph (A).

14 “(C) COSTS AND ATTORNEY’S FEES.—In
15 the case of any successful action to enforce the
16 liability specified in subparagraph (A) or (B),
17 the costs of the action, together with reasonable
18 attorney’s fees as determined by the court, in
19 an amount not to exceed the amount awarded
20 in such action under subparagraph (A) or (B),
21 as applicable.

22 “(2) CLASS ACTION LIMITATION.—The total
23 amount recovered under paragraph (1)(B) in any
24 class action or series of class actions arising out of

1 the same failure to comply by the same debt collec-
2 tor shall not exceed the lesser of—

3 “(A) \$500,000; or

4 “(B) 1 percent of the net financial worth
5 of the debt collector.

6 “(3) ACTIONS BROUGHT IN BAD FAITH.—On a
7 finding by the court that an action arising under
8 this title was brought in violation of Rule 11(b) of
9 the Federal Rules of Civil Procedure, the court may
10 award to the defendant the costs of the action, to-
11 gether with reasonable attorney’s fees, as determined
12 by the court.

13 “(4) OFFER OF JUDGMENT.—Notwithstanding
14 any other provision of law, in any action arising
15 under this title, for purposes of any application of
16 Rule 68 of the Federal Rules of Civil Procedure—

17 “(A) costs shall include reasonable attor-
18 ney’s fees; and

19 “(B) following any offer made to a plain-
20 tiff or to the plaintiff class that is not accepted
21 in accordance with such Rule, the plaintiff or
22 plaintiff class, as applicable, shall not be enti-
23 tled to recover attorney’s fees as otherwise pro-
24 vided in this title if the amount of the final
25 judgment awarded to the plaintiff or to the

1 plaintiff class, as applicable, is less than or
2 equal to the offer.”.

3 (b) FACTORS FOR CONSIDERATION.—Section 813(b)
4 of the Fair Debt Collection Practices Act (15 U.S.C.
5 1692k(b)) is amended to read as follows:

6 “(b) FACTORS FOR CONSIDERATION.—In determin-
7 ing the liability of a debt collector under subsection (a)
8 in any action arising under this title, the court shall con-
9 sider, among other relevant factors—

10 “(1) the frequency and persistence of non-
11 compliance by the debt collector;

12 “(2) the nature of such noncompliance; and

13 “(3) the extent to which the noncompliance of
14 the debt collector is intentional.”.

15 (c) MODIFICATION OF BONA FIDE ERROR DE-
16 FENSE.—Section 813(c) of the Fair Debt Collection Prac-
17 tices Act (15 U.S.C. 1692k(c)) is amended—

18 (1) by striking “violation was not” and insert-
19 ing the following: “violation—

20 “(1) was not”;

21 (2) by striking the period at the end and insert-
22 ing “; or”; and

23 (3) by adding at the end the following new
24 paragraph:

1 “(2) resulted from the use of written commu-
2 nication in a form approved by any Federal or State
3 agency responsible for the regulation of debt collec-
4 tors.”.

5 (d) REASONABLE PERSON STANDARD.—Section 813
6 of the Fair Debt Collection Practices Act (15 U.S.C.
7 1692k) is amended by adding at the end the following new
8 subsection:

9 “(f) REASONABLE PERSON STANDARD.—In making
10 a determination under this section as to whether or not
11 a debt collector has failed to comply with any provision
12 of this title with respect to any person, the court shall
13 consider the effect of the actions or omissions of the debt
14 collector on a reasonable person.”.

15 **SEC. 7. RELATION TO STATE LAWS.**

16 Section 816 of the Fair Debt Collection Practices Act
17 (15 U.S.C. 1692n) is amended to read as follows:

18 **“SEC. 816. RELATION TO STATE LAWS.**

19 “(a) IN GENERAL.—This title supersedes any provi-
20 sion of the law of any State that creates a private right
21 of action relating to any operation, practice, or activity
22 of a debt collector.

23 “(b) NO REMEDY UNDER THIS TITLE FOR STATE
24 LAW VIOLATIONS.—This title shall not be construed to

1 provide a remedy for any violation of the law of any State
2 with respect to debt collection practices.

3 “(c) NO LIABILITY UNDER THIS TITLE FOR STATE
4 LAW VIOLATIONS.—This title shall not be construed to
5 establish any liability or penalty for a violation of the law
6 of any State unless the conduct which constitutes a viola-
7 tion of the law of such State also constitutes a violation
8 of any requirement of this title or any regulation promul-
9 gated pursuant to this title.”.

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