



HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

MEMO

June 26, 1975

SUBJECT: Summary of HB-167 (PN 1731) Unfair Debt Collection Practices Law

TO: Honorable C. L. Schmitt, Chairman, Consumer Protection Committee

FROM: Jacob Myers, Legal Counsel, Consumer Protection Committee

The statute is divided into several sections; first, important terms are defined; next prohibited practices are set forth; and, finally, public and private remedies are provided.

Broad definitions are provided to give the statute the widest possible coverage. A "debtor" is defined as an individual who owes a debt to any party. "Debt" is broadly defined to include all possible obligations. Most importantly, a "debt collector" is defined as anyone who attempts to collect a debt, whether on his own behalf or on behalf of others, not including any employee of the U.S. to the extent that it interferes with his duties. "Consumer Reporting Agency" means any person assembling consumer credit information. "Person" means any legal entity.

Prohibited activities cover a broad range of actions employed by collectors to harass and intimidate alleged debtors.

Section 3-1 prohibits communication of the fact of the debt to any person, other than the debtor, his or her spouse or relatives, or the post secondary institution the debtor is attending, attended or plans to attend, residing with the debtor or the debtor's attorney or legal representative or one who the creditor believes might reasonably be expected to be liable therefor. This would not prohibit the collector from reporting a debt or alleged debt to a credit bureau or for engaging an agent or an attorney or creditor for the purpose of collecting a debt or an alleged debt. The collector would also be allowed to communicate with others for the purpose of locating the debtor or the assets of the debtor.

Section 3-2 would prohibit activities intended to harass, embarrass or intimidate the debtor. These activities would include the use of profane or obscene language, placement of telephone calls without a meaningful disclosure of the identity of the caller; causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges; causing a telephone to ring or engaging any person in telephone conversation with unreasonable frequency, or at unreasonable hours; or by threats of violence or by any threats which the debt collector knows or has reason to know are false.

Section 3-3 prohibits the collection or attempted collection by the use of any misleading, deceptive, false or fraudulent means or representations.

Section 3-4 prohibits the attempted collection by the use of any communication or publication which falsely simulates judicial process or falsely indicates either directly or indirectly that he is associated with or approved of by a State or local official or agency.

Section 3-5 would prohibit communication with a debtor after written notification from an attorney representing such debtor that all further communications relative to the claim shall be addressed to him.

Section 3-7 would prohibit the placing of any call in an effort to collect a debt or to hear information concerning a debt or debtor without disclosing his identity and his place of employment or business, if any.

Section 3-8 would prohibit any unconscionable means of collection, including, but not limited to, any attempt to collect for a debtor any part or all of his fee or charge for services rendered. Expenses in addition to the claim would only be allowed to be collected if they were expressly listed in the judgment or order of court.

This subsection would not abrogate any existing rights a creditor may have to include reasonable attorney fees, suit costs, late charges, interest and collection expenses and reasonable charges actually incurred in the instrument of indebtedness.

Section 4 of the bill would empower the District Attorney or Attorney General to restrain by temporary or permanent injunction the use of any prohibited acts.

The action could be brought in the court of common pleas in the county in which such debt collector resides, has his principal place of business, or is doing business.

Section 5 imposes civil penalties of not more than \$1,000 for each violation of Section 4 above.

In addition to the right of public action and civil penalties, the bill grants private remedies in Section 6. Any person who sustains damages caused by a debt collector violating this act may bring a civil action against such debt collector to recover the damages plus reasonable attorney's fees and costs.

Attached to this analysis is a report by former Attorney General J. Shane Creamer and Joel Weisberg, Director of the Bureau of Consumer Protection concerning debt collection abuses in Pennsylvania.

This act shall take effect in 60 days.

## Debt Collection Abuses in Pennsylvania -

### The Need for No Threat Legislation

A Report to the Citizens of Pennsylvania by J. Shane Creamer, Attorney General, Commonwealth of Pennsylvania and Joel G. Weisberg, Director, Bureau of Consumer Protection, Department of Justice, Commonwealth of Pennsylvania

#### Introduction

Over the past several years the Bureau of Consumer Protection, Department of Justice, Commonwealth of Pennsylvania had received numerous complaints from citizens of Pennsylvania concerning widespread abuses in the collection of debts. The complaints filed with the Bureau indicated that creditors and other bill collecting agencies engaged in a number of abusive and unlawful practices ranging from frequent and harassing dunning phone calls to false and misleading threats to ruin financially the beleaguered debtor. These complaints plus the need for knowledge concerning practices of the bill collection industry prompted the Attorney General under the auspices of the Bureau of Consumer Protection to hold hearings on collection practices in Pennsylvania.

Pursuant to the authority granted the Bureau of Consumer Protection of the Department of Justice under Section 918 of the Administrative Code of Pennsylvania, a series of hearings were held throughout the Commonwealth during the months of February and March, 1972. Hearings were held in Pittsburgh on February 23, and in Philadelphia on March 8 and 9, 1972.

At these hearings a number of witnesses including consumers, representatives of consumer protection agencies and representatives of businesses engaged in debt collection testified. Thirteen (13) witnesses testified during the full day of hearings in Pittsburgh and eighteen (18) witnesses gave testimony during the two days of hearings in Philadelphia. The testimony of the consumer witnesses revealed a common theme of harassing practices to outright threats by the collection industry. To a large extent the testimony of the representatives of consumer protection agencies corroborated the fact that there are serious abuses in the collection industry in Pennsylvania. The spokesmen for the industry generally admitted abuses in the industry and, to a man, these spokesmen deplored and condemned these practices. There is no discernible consensus among these representatives as to the nature and scope of the remedies necessary to eliminate and reduce collection abuses. Unquestionably the consumer witnesses and representatives of consumer protection agencies advocated some kind of "no-threat" legislation in this area.

The following report contains a summary of the testimony of the witnesses at the hearings, as well as a discussion of this testimony in light of present Pennsylvania law dealing with debt collection practices and the laws of other jurisdictions and recommendations. The report concludes that there is a great need for "no-threat" legislation in this state. Appended therefore to this report is a draft of proposed legislation which will be submitted for enactment.

#### Summary of Testimony

The individual consumers who testified detailed instances of flagrant abuse by creditors and collection agencies. One witness in Pittsburgh testified

that she was harassed and intimidated over a bill which she did not owe, and which was, in fact, contracted for by a person whom she had never met. The witness, a woman, was continually questioned about a bill entered into by a male whose last name happened to be the same as hers. First, the representative of the agency came to her home and asked if she knew the debtor in question. She answered that she did not. About a week later she received a telephone call from an individual who asked for the debtor by his first name. She again replied that she did not know the person. Still another call took place the following week. Again in a few days she was visited at her home and this time was asked to supply a list of her "boyfriends". Neighbors were then approached and questioned about the possible association of the witness with the alleged debtor. The so-called "conspiracy" between the witness and the alleged debtor was explained to a number of her neighbors. The neighbors were even informed that the "secret service" was involved in the investigation and was searching for the alleged debtor. Calls were made to the witness's employer. The witness insists that she does not know and has never known the alleged debtor.

Another witness testified the representatives of an agency walked uninvited into her home and at another time disturbed her at her place of employment in an effort to collect a disputed debt. Neighbors were also called in an attempt to collect the debt.

Still another witness testified she was called between five and ten times a day at her place of employment, and that although she was not a minor, her father was contacted and informed that he must pay the bill. At one point representatives of the creditor tied up three telephone lines at her place of employment at the same time, while still another placed a telephone call to her mother.

There was testimony from a witness who claimed her creditor not only contacted her employer but visited her place of business and literally fought with her employer.

A 76 year old woman testified that she was informed that her house would be placed at sheriff's sale the next day.

A 17 year old girl was told to "take a last look" at her furniture before it was all removed and sold at sheriff's sale.

In one case, a letter was sent to a witness which informed her that her home had been scheduled for sheriff's sale and included the date of the sale and the dates when the sale had been advertised in a local newspaper. No judgment had been obtained against the debtor, and no sale had ever been scheduled. In addition, this witness had conclusive proof that the debt had, in fact, been paid.

The testimony of representatives from public and private organizations involved in consumer protection supported the views of the individual consumer witnesses that abuses did occur and that they occurred all too frequently. A representative of the Pittsburgh Better Business Bureau outlined the nature of complaints which had come to the attention of his office. These included debtors who received collect phone calls with the implication that it was something important for which charges should be accepted; debtors who received up to ten telephone calls a day both at work and at home; instances of friends, neighbors, and relatives who were called and in some cases asked to make payments on behalf of the debtor; of employers who were called; of threats against credit ratings; of debtors who received simulated legal process; of debtors who were threatened with legal process which could not be carried out, and a number of instances of other abuses.



Representatives of consumer protection organizations unanimously requested new and stronger legislation to police what they consider to be the presently uncontrolled activities of these organizations within the Commonwealth. It was suggested that enforcement include remedies available both to the State and private individuals. Some urged that consumers be afforded the opportunity to bring court action on their own behalf for actual and punitive damages.

Representatives of the collection industry generally agreed that their practices were not free from abuse. A number of representatives supported reasonable legislation which would control improper activities without unduly restricting proper collection activities. Those who opposed further regulation apparently did so out of the belief that this might unduly hamper collection activities. They feared that many consumers would take advantage of the situation and cease payment of any bills. They voiced concern over the possibility that legitimate agencies would be forced out of business by stringent controls. These views are exemplified by the statement of one creditor who noted that he "didn't think we should change things to make it easier for them not to pay their bills, because this is becoming more and more known -- how not to pay your bills -- in the past years." He went on to say, however, that "as far as harassing them, getting into their personal life, I think there are changes that can be made."

One of the spokesmen for a collection agency did state, however, that he believed that the hearings were emphasizing the wrong side of the issue. It was his position that it was the debtor who was guilty of most abuse and required greater controls. He believed that fully 90% of all debtors who contract for credit knowingly misstated their financial position in applying for that credit. He detailed at some length instances of harassment by individual debtors against their creditors. This extreme was rejected by other agencies. Others agreed that consumers too often refused to adjust legitimate debts, but did not believe that the problem was of such magnitude.

### Discussion

A review of all of the testimony on the record leads to the inescapable conclusion that collection activities are not sufficiently regulated to control abuse. As one industry spokesman stated: "To say that there are no abuses in the collection industry is to say that there is no crime in America. . ." It must be noted that he concluded his sentence by stating "or to say that there is no consumer who seeks credit with the express purpose of defrauding the credit grantor." The fact, however, that there are those who seek to obtain credit fraudulently does not render proper the activities of those who would collect by fraudulent means. That both problems exist does not suggest that they cancel each other out and require no further attention. Nor does the fact that seeking a solution to one of these problems does not in and of itself serve to solve the other, lead to the conclusion that both problems must be solved together, or not at all.

It is clear that a great many members of the collection industry are not engaged in improper and abusive practices. There can be no doubt that many attempt to collect their own or their client's claims in a fair and equitable manner. Where abuses do exist they cannot be placed solely on the doorstep of those who engage in the occupation of collecting debts on a full-time basis. The blame must also be borne by sellers and lenders who act to collect on their own behalf. In addition, a portion of the responsibility must be shared by those consumers who seek by all available means, both proper and improper, to avoid the payment of their just debts.

The position, however, that these individuals represent 90% of those who obtain goods and services on credit is generally dismissed by members of the industry as well as by consumer advocates. The actual situation appears to have been correctly stated by the representative of the Consumer Credit Counseling Service of Western Pennsylvania, Inc., who stated that:

"When I was a creditor, I frequently referred to those I was having difficulty collecting from as 'deadbeats', and I hear many of my colleagues in the credit fraternity refer to them as such. With my present perspective, I use this term 'deadbeats' very advisedly. Very few of the clients we see are truly 'deadbeats'. Most are frightened, confused people who have responded to consolidation loan ads as a cure-all. Many have attempted to work out a solution to their problems with their creditors.

But since we collectors tend to be narrow-minded, about collecting our firm's money at all costs, very often the symptoms of the problem are ignored. . . ."

Although abuses appear to have existed for many years, an examination of laws affecting the operation of the collection industry reveals that regulation is almost non-existent. The only statute specifically aimed at improper collection practices is a section of the penal code entitled "Unlawful Collection Agency Practices Act", the Act of June 24, 1939, P.L. 872, § 895, 18 P.S. § 4895. This Act is very limited in scope, and as a section of the penal code carries with it only criminal penalties. As a penal statute the Act must be enforced by local District Attorneys. Yet in its more than thirty years of existence the Act has almost never been enforced. District Attorneys are charged with enforcing all of the Commonwealth's criminal law and rarely, if ever, find the resources necessary to take action against collection abuses. Even if the statute were enforced, by providing only criminal penalties it does not provide relief for the consumer who has been harassed and abused.

There are theoretically available to individuals who have suffered as a result of harassing and abusive collection techniques a number of private civil actions which might be brought to collect damages. These include court actions for intentional infliction of mental and emotional distress, invasion of privacy, intentional interference with employment relationships, and defamation. Consumers in a number of states have succeeded in obtaining damages in legal actions brought under these theories. Unfortunately, however, although most of these torts have been recognized by the courts of Pennsylvania, no consumer has ever been awarded damages in an action brought for harassing or abusive collection techniques.

If the theory is to be formally established within the State, proceeding without legislation will require a painstakingly slow case by case delineation of the boundaries of the theory. Legitimate businessmen engaged in the practice of collecting debts will be unaware of the permissible boundaries of the law until an action is brought to provide them. Consumers seeking redress will be forced to expend considerable sums to help develop the law for their individual case. Legislation which clearly establishes the law and provides reasonable boundaries should prove more satisfactory to both business and consumers alike.

No complete list is available of those states which have passed legislation specifically covering the debt collection field. In preparing the legislation

attached to this report, statutes and ordinances were considered which are presently in effect in the State of Maryland, in the District of Columbia as the result of an Act of Congress, and in the City of New York. Also studied were statutes which have been submitted to the legislatures of Connecticut and Texas, as well as model acts drawn by a number of consumer protection agencies, including the National Consumer Law Center located at Boston College Law School, Massachusetts and Federal Trade Commission guidelines against debt collection deception.

#### Recommendations

It is clear from the testimony of all witnesses that abuses exist in all areas of the collection industry and that these abuses remain unchecked under present law.

This panel finds that new legislation is needed in Pennsylvania to serve the dual purposes of setting guidelines for proper collection industry practices and at the same time to open the courts to consumers who have legitimate grievances in this area. This new legislation must halt those practices which cannot legitimately be used as an aid in the collection of just debts, but must not in an attempt to cure an injustice also serve to create a new injustice by unduly hampering the legitimate efforts of creditors and their representatives.