



Rep. Lou Lang

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09700HB5016ham001

LRB097 18247 CEL 66450 a

1 AMENDMENT TO HOUSE BILL 5016

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5016 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Collection Agency Act is amended by  
5 changing Section 2 and by adding Section 8.5 and 8.6 as  
6 follows:

7 (225 ILCS 425/2) (from Ch. 111, par. 2002)

8 (Section scheduled to be repealed on January 1, 2016)

9 Sec. 2. Definitions. In this Act:

10 "Charge-off date" means the date on which a receivable is  
11 treated as a loss or expense.

12 "Consumer credit transaction" means a transaction between  
13 a natural person and another person in which property, service,  
14 or money is acquired on credit by that natural person from such  
15 other person primarily for personal, family, or household  
16 purposes.

1 "Consumer debt" or "consumer credit" means money,  
2 property, or their equivalent, due or owing or alleged to be  
3 due or owing from a natural person by reason of a consumer  
4 credit transaction.

5 "Creditor" means a person who extends consumer credit to a  
6 debtor.

7 "Debt" means money, property, or their equivalent which is  
8 due or owing or alleged to be due or owing from a natural  
9 person to another person.

10 "Debt buyer" means any person engaging in, or holding  
11 itself out as engaging in, the business of purchasing accounts  
12 for value and acquiring all rights in and ownership of a debt.

13 "Debt collection" means any act or practice in connection  
14 with the collection of consumer debts.

15 "Debt collector", "collection agency", or "agency" means  
16 any person who, in the ordinary course of business, regularly,  
17 on behalf of himself or herself or others, engages in debt  
18 collection.

19 "Debtor" means a natural person from whom a debt collector  
20 seeks to collect a consumer debt that is due and owing or  
21 alleged to be due and owing from such person.

22 "Department" means Division of Professional Regulation  
23 within the Department of Financial and Professional  
24 Regulation.

25 "Director" means the Director of the Division of  
26 Professional Regulation within the Department of Financial and

1 Professional Regulation.

2 "Person" means a natural person, partnership, corporation,  
3 limited liability company, trust, estate, cooperative,  
4 association, or other similar entity.

5 "Principal balance" or "charge-off balance" means an  
6 account principal and other legally collectible costs,  
7 expenses, and interest that are accrued prior to the charge-off  
8 date, less any payments or settlement.

9 (Source: P.A. 95-437, eff. 1-1-08.)

10 (225 ILCS 425/8.5 new)

11 Sec. 8.5. Debt buyers. A debt buyer shall be subject to all  
12 of the terms, conditions, and requirements of this Act, except  
13 for subsection (b) of Section 8.6 of this Act.

14 (225 ILCS 425/8.6 new)

15 Sec. 8.6. Debt buyer activities.

16 (a) The provisions of this Section 8.6 shall apply to debt  
17 buyers. If a debt buyer commences litigation against a debtor,  
18 then the debt buyer shall attach to the complaint an affidavit  
19 in substantially the following form:

20 "[ CAPTION OF COURT PROCEEDING]  
21 AFFIDAVIT OF ACCOUNT OWNERSHIP

22 I,....., being first duly sworn upon my

1       oath, depose and state as follows:

2           1. I am an authorized agent of....., the  
3       plaintiff in this case and a debt buyer as defined in  
4       Section 2 of the Collection Agency Act ("debt buyer").

5           2. I am authorized to execute this affidavit on behalf  
6       of the debt buyer, and I am over the age of 18 and  
7       competent to testify as to the matters contained herein.

8           3. In my capacity as an authorized agent of the debt  
9       buyer, I have access to the records maintained in the  
10       ordinary course of business of the debt buyer, including  
11       the records for and relating to the subject account. Those  
12       records include records acquired by the debt buyer at the  
13       time it purchased the account from the transferor, and  
14       records generated by the debt buyer relating to the account  
15       since the time it was purchased. I have reviewed or caused  
16       to be reviewed those records relating to the account, and I  
17       make this affidavit based upon that review and my own  
18       personal knowledge of how the records are kept and  
19       maintained. The account records generated by the debt buyer  
20       are made at or near the time of the event, by or from  
21       information transmitted by a person with knowledge of such  
22       information. It is the regular practice of the debt buyer  
23       to keep such records in the ordinary course of its  
24       regularly conducted business activity.

25           4. The debt buyer owns the account that is the subject

1 of the pending collection action.

2 5. On the date of the signature of this affidavit, this  
3 account was within the applicable statutory period of  
4 limitations.

5 6. The records of the debt buyer reflect that [debtor  
6 name(s)], defendant in this case, was issued credit by  
7 [creditor name], with an account number of [redacted  
8 original account number] and that [credit name],  
9 [charge-off date]. The last payment, if any, received on  
10 the debtor's account was on [last payment date]. There is a  
11 balance due and owing to the debt buyer on this account in  
12 the amount of [charge-off balance due] less any post  
13 charge-off credits, and the debt buyer has not received  
14 payment of that balance due.

15 Further affiant sayeth naught.

16 .....

17 (Signature of Affiant)

18 Print Name:.....

19 Print Title:.....

20 Debt Buyer:.....

21 SUBSCRIBED AND SWORN TO

22 Before me, this.....day of .....,.....

23 .....

24 Notary Public".

1       (b) With respect to its activities as a debt buyer in  
2 pursuing the collection of accounts it owns, a debt buyer shall  
3 be subject to all of the terms, conditions, and requirements of  
4 this Act, except that a debt buyer shall not be required to (i)  
5 file and maintain in force a surety bond under Section 8 of  
6 this Act; (ii) maintain a trust account under Section 8c of  
7 this Act; (iii) procure written authorization to refer the  
8 account to an attorney for suit under Section 8a-1 of this Act;  
9 or (iv) adhere to the assignment for collection criteria under  
10 Section 8b of this Act.

11       (c) The Attorney General may enforce against debt buyers  
12 the provisions identified in Section 9.7 of this Act as an  
13 unlawful practice under the Consumer Fraud and Deceptive  
14 Business Practices Act.

15       Section 99. Effective date. This Act takes effect January  
16 1, 2013."