



## Senator Franken's Proposed Changes to

# The Fair Debt Collection Practices Act

U.S. Senate Bill 3350 – “End Debt Collector Abuse Act of 2012” -- seeks to expand the Fair Debt Collection Practices Act. The bill, introduced by Sen. Al Franken (D-Minn.), is essentially the same as a bill he introduced in the previous session of Congress but with one major change – it contains extensive provisions regarding medical debt.

If the bill is passed as is, the FDCPA will have the following changes (in red):

### **§ 802. Congressional findings and declarations of purpose [15 USC 1692]**

(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

[NEW SUBSECTION] (e) Medical debt is unique among types of consumer debt in that—

(1) with very few exceptions, consumers seek out health care services out of medical need, not choice;

(2) consumers typically do not know the cost of health care services in advance and are not in a position to negotiate a lower price; and

(3) overly aggressive medical debt collection can discourage consumers from seeking needed healthcare services, with dire financial, physical and public health consequences for themselves and their communities.

(f) [FORMERLY SUBSECTION e] It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.



#### **§ 806. Harassment or abuse [15 USC 1692d]**

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)<sup>1</sup> of this Act.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

[NEW SUBSECTION] (7) Communicating or attempting to communicate with a consumer in connection with the collection of any debt in a hospital emergency department, labor and delivery department, or any department where critical care medical services are provided, such as the intensive care unit. Nothing in this paragraph prohibits a health care provider from providing information to a consumer about a debt in response to a direct request from the consumer or discussing a debt at the time the consumer is discharged.

#### **§ 808. Unfair practices [15 USC 1692f]**

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
- (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.



(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if -

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

[NEW SUBSECTION] (9) Withholding emergency medical services, taking action to delay such services, threatening to withhold such services, or giving the impression that such services will be withheld until a debt is paid.

[NEW SUBSECTION] (10) Using protected health information, as defined in regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-25 note), except to the extent as is absolutely necessary to provide adequate information to consumers.

#### **[NEW SECTION] SEC. 820. TREATMENT OF MEDICAL DEBT.**

(a) IN GENERAL.—Sections 806, 807 (other than paragraph (11)), 808, 811, and 813, shall apply to the collection of a medical debt, whether or not the debt is being collected directly by the creditor or on behalf of the creditor by a third party, and regardless of whether such debt is current or past due.

(b) AVAILABILITY OF INFORMATION.—Any person attempting to collect a medical debt shall—

(1) in the initial written communication to the consumer—

(A) prominently disclose the availability of any charity care coverage (or the equivalent thereof), financial assistance, discounts based on income eligibility, or public or private insurance coverage that may assist in the payment of all or part of the debt; and

(B) provide the consumer with information regarding how to apply for such programs; and

(2) in the initial oral communication to the consumer—

(A) orally disclose the availability of any charity care coverage (or the equivalent thereof), financial assistance, discounts based on income eligibility, or public or private insurance coverage that may assist in the payment of all or part of the debt; and

(B) provide the consumer with information regarding how to apply for such programs.

(c) DEFINITION. – For purposes of this section the term 'medical debt' means debt arising from the receipt of medical services, products, or devices.