

The Poor Man's Class Action Lawsuit To Use Against Your Creditors and the Credit Bureaus

A practical guide to protecting your rights as a consumer at the same time putting
thousands of dollars in your pocket

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Disclaimer

What is here is true to the best of my understanding at the date of publication, but, alas, I am only human. I am not an attorney, a banker, a collection agency, or a credit card issuer. I seek to distribute useful information to the public in the most complete and accessible manner possible. But a word to the wise: Before you rely on any of the information here, check it out for yourself. Information varies around the country and changes over time.

This text relates to laws and customs in the United States and should not be taken as a guide to consumer credit in other nations. Also, it concerns itself primarily with federal law rather than state laws, which vary widely. But in every state you have at least the protections derived from federal laws that are noted here. I am always interested in state and local comparisons, but by design have omitted almost all state information from this book. Not that I would shamelessly plug my own web site in this book (I am above that, really), but for the latest and greatest information about credit matters refer to <http://www.creditinfocenter.com>. It's free.

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The Problem

Consumers are being hurt right and left by the carelessness of Credit bureaus and unethical practices of collection agencies.

It's true that the credit bureaus databases on the credit histories are full of inaccuracies; a recent study put the figure at 1 in 3 credit reports contains inaccurate data. It's true that the large amount of data the credit bureaus handle make it difficult to stay on top of things and make sure their databases are correct. But credit bureaus are for-profit corporations who could be doing more with their profits to make sure that the data they have is accurate.

In some cases, the data inaccuracies are grievous, making it difficult or impossible for some people to purchase a home, pay higher interest rates or insurance premiums. To prevent undue hardship from befalling innocent consumers, the credit bureaus should be making a bigger effort to ensure data accuracy in their credit databases. So what is a consumer to do? Call your congressman, lobby congress? Sure, you can do all these things, and in time, laws may be tightened which will help protect the consumer. However, these things take time, lots of time. And actually, *the laws are in somewhat decent shape as they stand right now*, they are just not enforced as well as they should be.

Enforcement of the current consumer credit protection laws

I'm going to run some figures by you to show you what a huge problem it is to enforce the current laws. In each case, the numbers used are going to be conservative, which means the scope of the problem is probably much bigger than these numbers show.

If you figure that this country has 260 million people, with some too young to have a credit file and some don't have a credit file at all, there are at least 100 million credit files for the bureaus to maintain.

If 1 in 3 credit files are inaccurate, then there are 33 million cases where the credit bureaus might be contacted to correct the problem.

If you consider that only 5% of these inaccuracies are impossible to remove through the fault of the creditor or the creditor not taking the time to investigate the problem or just being unresponsive, then there are 165,000 cases which should be handled by the Federal Trade Commission (FTC).

If you figure that that in a good year, the FTC in Washington has 1000 workers just to investigate complaints, and each case takes 7 days to investigate, **then it will take 1155 days or 3.14 years to investigate the current cases**, that is, if everyone complained about the problem. And this is for current cases. As time goes by, obviously, more and more inaccurate data is entered into a consumer's credit file.

So how come the FTC isn't drowning over all of the complaints it receives each year? People aren't complaining as much as they should be. Many people aren't even aware of their rights.

In addition, the FTC investigative process is a long one, and in the case of many consumers, waiting years for an investigation to be completed, an injunction against the violator to be filed, and any appeal which may be brought to US Court of Appeals to be heard is not an option. Most consumers need relief from credit inaccuracies immediately to purchase that home or get the best deals on interest rates. The exact progression of how the FTC handles its investigations is presented in Appendix A.

So what's the answer??

Of course, you want to take non-legal steps first in resolving the issues you have. In many courtrooms, it will hurt your case if the judge feels you haven't made enough effort to settle your dispute out of court. In many cases, you can get what you want by calling or writing the collection agency, credit bureau or creditor and asking for the corrections or updates you need. You can cite the law using the information in this report to help make your case.

Suing in small claims court is often called the “poor man’s class action lawsuit”.

You know the old sayings, “Money talks” and “Vote with your dollars”. Well, most companies, the credit bureaus and creditors included, are not going to change their ways unless it is in their best interest to do so. All of these companies have stockholders to report to, so if one of their practices is costing them a better bottom line, you better believe they will act to change their ways. One of these ways is for you the consumer, to take action legally against these companies when your rights have been violated.

Profit while helping others

The best news is that typically, each violation is between \$1000 fine, so it's money in your pocket. In addition, you are going to help make someone else's life better by suing someone who has broken the law. If everyone took action when their rights were violated, the credit bureaus would lose a fortune in legal disputes. It's time to protect your rights as a consumer as well as protecting the rights of your fellow United States citizens. Let's run some numbers again to see how much the credit bureaus could be liable for if everyone took action:

If 165,000 violations (the conservative number we calculated above) by a single credit bureau were taking place, and everyone of those consumers who were harmed took the credit bureau to small claims court and won a \$1000 settlement, then the cost to the credit bureau would be ***\$165 Million***. You don't think that would make a company sit up and take notice? That it might think about reviewing its business practices? You bet it would.

In addition, many credit files contain more than one inaccuracy and in some cases, the way the data is reported on the credit report violates more than one law. The \$165 M cost of litigation could actually be much higher.

America is called a litigious country because everyone sues at the drop of a hat. Why not use the legal process for good? You have every right to these companies to court when they break the law and your reputation is harmed.

What gives you the right to sue?

For violation of the FDCPA:

Section 813. Civil liability

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of --

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

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or
 (B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and
 (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

For violation of the FCRA:

SECTION 621 Administrative enforcement

(a)(2) (A) In the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than \$2,500 per violation.

(B) In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

Small claims court is quick and easy

You are allowed in most states to recover damages from \$3000 - \$7000, which is usually an ample amount to sue. Some states allow larger sums (example Tennessee– up to \$15,000).

Taking action will not only help to bring about the change that is necessary in the way these companies operate, but the matter gets resolved quickly, and you stand to be compensated for your frustration. See the section below for help on filing a claim in small claims court.

Will this really work?

Absolutely. You are using the law. If you can prove any violations, it is pretty cut and dried that you will win, and the amount of the fines and your right to them is spelled out explicitly. Most debtors and certainly the credit bureaus are unprepared for such attacks, and will usually settle with you to avoid having to go to court. You will either receive a monetary judgment or get a creditor to do things your way.

So Who Can You Sue and What Can You Sue For?

Who	Why	Precedent/Law	Fine
Creditors if they report your credit history inaccurately	Defamation, financial injury	US Court of Appeals, Ninth Circuit, No. 00-15946, Nelson vs. Chase Manhattan	Extent of damages incurred by the wronged party as deemed

			by the courts
Creditors if they pull your credit file without permissible purpose	Injury to your credit report and credit score	FCRA Section 604 (A)(3)	\$1000
Credit bureaus if they refuse to correct information after being provided proof	Defamation, willful injury	FCRA Section 623 CUSHMAN, v. TRANS UNION CORPORATION US Court of Appeals for the Third Circuit Court Case 115 F.3d 220 June 9, 1997, Filed (D.C. No. 95-cv-01743).	Extent of damages incurred by the wronged party, as deemed by the courts
Credit bureaus if they reinsert a removed item from your credit report without notifying you in writing within 5 business days.	Consumer protection afforded by the FCRA	FCRA SECTION 611 Part (A)(5)(B)(ii)	\$1000
Credit bureaus if they fail to respond to your written disputes within 30 days (a 15 day extension may be granted if they receive information from the creditor within the first 30 days)	Consumer protection afforded by the FCRA	FCRA Section 611 Part (A)(1)	\$1000
Creditors or collection	Consumer protection	FCRA Section 605	\$1000

agencies, and credit bureaus if they try and "Re-age" your account by updating the date of last activity on your credit report in the hopes of keeping negative information on your account longer	afforded by the FCRA	(c) Running of the reporting period	
Collection agencies if they do not validate your debt yet continue to pursue collection activity (file for judgments, call or write you)	Consumer protection afforded by the FDCPA	FDCPA Section 809 (b), FTC opinion letter <i>Cass from LeFevre</i> (See Appendix B).	\$1000
Collection agencies if you have sent them a cease and desist letter and they still call you	Consumer protection afforded by the FDCPA	FDCPA Section 805 (c)	\$1000
Collection agencies if they have not validated your debt and they still continue to report to the credit bureaus	Consumer protection afforded by the FDCPA	Section 809 (b), FTC opinion letter <i>Cass from LeFevre</i> (See Appendix B).	\$1000
Collection agencies if they: - Cash a post-dated check before the date on the check - Cost you	Consumer protection afforded by the FDCPA	FDCPA Section 808	\$1000

<p>money by making you accept collect calls or COD mail</p> <p>- Take or threaten to take any personal property without a judgment</p>			
<p>Calls you after 8 PM at night or before 9 AM</p>	<p>Consumer protection afforded by the FDCPA</p>	<p>FDCPA Section 805. (a)(1)</p>	<p>\$1000</p>
<p>Calls you at your place of employment if the debt collector knows or has reason to know that your employer prohibits the consumer from receiving such communication.</p>	<p>Consumer protection afforded by the FDCPA</p>	<p>FDCPA Section 805. (a)(3)</p>	<p>\$1000</p>
<p>Calls any third part about your debt like friends, neighbors, relatives, etc. However they can contact your attorney, a consumer reporting agency, the creditor, the attorney of the creditor, or the attorney of the debt collector.</p>	<p>Consumer protection afforded by the FDCPA</p>	<p>FDCPA Section 805. (b)</p>	<p>\$1000</p>
<p>The collection agency can not use any</p>	<p>Consumer protection afforded by the</p>	<p>FDCPA Section 806</p>	<p>\$1000</p>

kind of harassment or abuse**	FDCPA		
Collector cannot claim to garnish your wages, seize property or have you arrested ***	Consumer protection afforded by the FDCPA	FDCPA Section 807	\$1000
Collector must you in a county in which you lived when you signed the original contract for the debt or where you live at the time when they file the lawsuit	Consumer protection afforded by the FDCPA	FDCPA Section 811 (a) (2)	\$1000 Also a good grounds for getting a judgment vacated
Collection agency used letterhead from an attorney, and this attorney had never reviewed the case (rent-a-letterhead). False and Deception practices.	The false representation or implication that any individual is an attorney or that any communication is from an attorney.	FDCPA violates section 1692e(3) (and also section 1692e(10) and also BIRGETTA A. DAVIS BOYD and CHARLENE HARRISON v. NORMAN WEXLER United States Court of Appeals for the Seventh Circuit - December 28, 2001	\$1000

** (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 (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) Placement of telephone calls without meaningful disclosure of the caller's identity.

***If the collection agency get a judgment against you, then they will be able to garnish your wages and seize property, but until that time, no.

Getting Started

Most likely, you are reading this guide because you have

- Just pulled your credit report and you
- Noticed some negative marks on your credit report which aren't yours
- Noticed some negative marks on your credit report which ARE yours
- Noticed some inquiries on your credit report from companies of whom you have never heard
- Just received a letter from a collection agency
- Just received a summons to appear in court due to an outstanding debt.

If you are in the process of repairing your credit

The credit repair process is well documented on our website, <http://www.creditinfocenter.com> and in our book, *Good Credit is Sexy*. This guide is designed to help you apply pressure to the credit bureaus, creditors and collection agencies while you are in the credit repair process. We assume you are familiar with the general principals of credit repair and debt validation (brief overviews are given in Appendix E).

Looking for the gold

Think of all of the following situations as "gold nuggets". They can turn into actual dollars for you if you document the situation and win the lawsuit. At the very least, it can help the credit repair situation enormously.

You must document

All gold miners know that without the right pick, pan, and without the right documentation that a claim is theirs, they might as well not go through the effort of gold mining at all. Use the table in the preceding pages and note the exact statute which was violated.

Things to look for while going through the credit repair process (credit bureau):

- Credit bureau does not respond to you within 30 days of receiving your credit dispute
- Credit bureau puts back a negative mark they deleted without notifying you in writing
- Credit bureau refuses to change a listing for which you have provided proof that it is wrong.
- Credit bureau refuses to remove a collection listing from a collection agency who has refused to validate your debt.
- Original creditor refuses to update a listing with the credit bureaus for which you have proof that it is incorrect.

Things to look for while going through the credit repair process (collection agency):

Note: In this case, validating your debt means that you have sent them a debt validation letter and they have failed to provide you with the proper validation. See Appendix E for what constitutes a proper debt validation.

- Collection agency contacts you after you have sent them a cease and desist letter.
- Collection agency harasses you or uses abusive language
- Collection agency talks to your fellow workmates, friends, neighbors or relatives about your debt without your permission
- Collection agency continues to report a collection to the credit bureaus when they have not validated it.
- Collection agency files court action against you when they have not validated the collection properly.
- Collection agency continues any other kind of collection activity against you when they have not validated your debt.

How do you prove harassment?

Harassment by a collection agency is a tough thing to prove, as most collectors do this by phone and there is no written documentation. If a bill collector violates the FDCPA, try and see if you can get the illegal behavior on tape.

Taping phone conversations

There are important questions of law that must be addressed when considering whether or not to record a phone conversation with anyone. There are both federal and state statutes governing the use of electronic recording equipment. The unlawful use of such equipment can give rise not only to a civil suit by the "injured" party, but criminal prosecution. You should carefully review the following paragraphs before attempting to tape a phone call.

A majority of the states and territories have adopted wiretapping statutes based on the federal law. Thirty-eight states and the District of Columbia permit an individual to record a conversation to which they are a party without informing the other party that they are doing so. These laws are referred to as "one-party consent" statutes, and as long as you are a party to the conversation, it is legal for you to record it. In this case, the laws generally referring to electronic recording of a conversation, but in the majority of the cases, also cover eavesdropping.

Twelve states require, under most circumstances, the consent of all parties to a conversation. Those jurisdictions are California, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Pennsylvania, and Washington. These laws are sometimes referred to as "two-party consent" laws, which is misleading: if there are more than two people involved in the conversation, *all* must consent to the taping.

Just in case you're trying to be a super sleuth and can videotape your encounters with collection agencies or creditors, you should also be aware of the laws governing video recording. Twelve states have laws outlawing the use of hidden cameras in private places: Alabama, California, Delaware, Georgia, Hawaii, Kansas, Maine, Michigan, Minnesota, New Hampshire, South Dakota, and Utah.

If you live in a state which forbids "secret" phone taping

A log book with notes on all conversations with your creditors usually impresses judges. Make a note of each time you call or are called by a creditor. Note the phone number, date, time of day, the people you talked to, the company called and brief notes on the conversation. Make special notes of any harassments, threats and demands that you think are in violation of your rights. Exact quotes are highly beneficial.

In addition to impressing the court, this will also keep your own sanity! Trying to keep track of multiple creditors is extremely difficult!

Inquiries

When you get a copy of your credit report, you want to take a close look at the section called "Inquires" or "Companies who have requested a copy of your Credit Report". Next to the list of the company, there will be a reason given for the credit report request or a code for the reason.

Do you recognize the names of the companies who have pulled your credit?
If you do, what was the reason given for your credit report being pulled?

A creditor may only pull your credit for the following reasons:

- To make a determination on whether to grant you credit.
- To assist in underwriting of insurance
- For employment purposes
- To check on the status of an existing credit obligation
- To determine eligibility for a license or other benefit granted by a governmental instrumentality required by law
- In response to a court order
- If you have given someone written permission
- To determine child support payments.

If you think you have inquiries on your report which are from companies you do not know or don't think they meet the permissible purpose guidelines shown above, then you have reason to go after them in court, if they don't remove the inquiries from your credit report.

You've got to have a solid case

In order to win in court:

You should know the laws you are quoting, well enough to explain them to the judge. The judge may be unfamiliar with the FCRA and FDCPA. It's up to you to educate him.

- Have copies of these laws to take to court
- Take any supporting information you have with you

You must make a good faith effort to resolve the issue first before taking someone to court

This is vital. As stated above, without making an attempt to settle things out of court, your case is going to be seriously hampered. The judge will most likely be highly annoyed with you for wasting court time when you might have just talked to the creditor and settle the matter over the phone.

As with everything else you do, you need to document these good faith efforts by recording the date of the conversation, who you spoke to and what was said. You need to send all correspondence certified mail return receipt requested.

Try to settle out of court

Once the negotiation process breaks down, it's time to file suit. (This is all covered in the section below). Sometimes, this is all it takes to get someone to see things your way. You are using a lawsuit as crowbar to open the door to your good credit if you want to see it that way. Many times, if the company you are suing realizes that you will win hands down in court, they will offer to settle with you. When at all possible, do it. A judgment won in court is much more difficult to collect on than an out-of-court settlement agreement. Why? The credit bureaus or collections know that if they don't pay, you can still take them to court and most likely win a bigger settlement.

So how do you offer to settle?

Along with the notice that you have actually filed the lawsuit, you can send them a settlement letter, asking them to remove a listing or whatever repair you are seeking plus the money amount you are seeking in the suit. Even paying you, it will save them lawyer's and court fees, so it's possible you will get cash out of them.

It would be nice to collect money from the defendant, but if you get them to remove or change a listing, that's worth something, too. Don't be greedy. If they offer to update or remove a listing to your satisfaction, I would seriously consider taking it. Appendix F has a sample offer to settle letter.

If they take your settlement offer

Get it in writing

Make sure you get it all in writing. You can request a hard copy of the agreement with your original signature on it, and hope you get it. It's possible that you will. However, a faxed copy of the agreement with their signature may be all that you are going to get. If they won't give you the settlement in writing, then it's time to go back to court. You are encouraged to try to settle your case before trial.

What to ask for in your settlement offer

Usually the party you are suing will have a lawyer send you an agreement letter written in somewhat hard to understand legalese. There is an example letter of agreement to settle out of court in Appendix F. Look over this agreement carefully before you sign, and be sure it contains a liquidated damages provision (explained in the next section). The one thing to look out for is some kind of clause in the agreement which states you agree never to sue the company again, no matter what the circumstances. For instance, if you settle with a company and they violate your rights after the settlement is completed, you agreed per the contract not to sue them. Of course, no one ever gives up his or her right to sue in court, but this is a technicality which could delay and hamper future lawsuits. An example of a clause which spells out this kind of bogus "you agree to never sue us again for any reason" could look like:

<Your Name> agrees to release, acquit and forever discharge the Released Party, its successors and assigns, and its officers, directors, employees, agents,

attorneys, and insurers of and from any and all manner of actions and causes of action, suits, accounts, claims, and demands which they ever had, now have, or hereafter can, shall or may have against the Released Party, resulting from, on account, or in any way arising or growing out of, any credit reporting or non-reporting, or collection efforts of or by the Released Party, including especially, but without in any way limiting the foregoing general terms, all claims or causes of action or claims for counsel fees either asserted, or which could have been asserted.

Again, if you don't feel comfortable, it is definitely worth having your lawyer look over the agreement before you sign it.

Liquidated Damages

The term liquidated refers to a fixed amount of damages expressly stipulated as the amount to be recovered if there is a breach, such as early termination. These damages **are additional** to any judgments monies you are awarded in the initial lawsuit, and protect you from further harm from the collection agency or original creditor.

A liquidated damage amount is awarded automatically should the terms of your settlement not be carried out exactly. For instance, if Experian agrees to never relist a trade line that you are suing them to remove, and they insert the trade line, you will automatically be owed the amount of the liquidated damages. They are similar, but not the same as a penalty clause in the agreement. Here's how a clause can be determined to be a liquidated damage and not a penalty:

When the damages are uncertain and not capable of being ascertained by any satisfactory or known rule - whether the uncertainty lies in the nature of the subject itself or in the particular circumstances of the case: from the nature of the case and the tenor of the agreement, it is clear that the damages have been the subject of actual and fair calculation and adjustment between the parties.

Usually you want to start your negotiations to include a \$10,000 liquidated damages provision. The defendants (the collection agency, or credit bureau you have sued) should be quick to want to settle with you out of court should you start demanding such a provision. Why? Because they are usually so shocked at the amount that they will try to negotiate it down rather than have it removed. After all, as part of the settlement, they are agreeing to fix the mistake (or they should be). If they keep their promise, the liquidated damages provision will never take effect. So what's to complain about?

Here's an example paragraph specifying liquidated damages:

The Released Party agrees to ensure the disputed account ("Exhibit B") does not reappear on Plaintiff's credit report in the present, or any time in the future. Should the Released Party breach these terms of the contract at any point in the present or the future, the Released Party agrees to award damages in the amount of \$10,000 to Plaintiff's, and further agrees to make no effort to dispute the enforceability of the Provision. The Released Party and Plaintiff's agree that this Provision is limited to the account outlined in Exhibit B, and is not transferable towards any remedies or actions Plaintiff's has ever sought, is seeking, or ever will seek against the Released Party not directly related to Exhibit B.

Once you receive your check, dismiss the case with the court

If you settle the dispute before the hearing, you must inform the court so the hearing can be canceled and your case dismissed.

If they don't pay before the court date

If the terms of your agreement, including money, are not fulfilled before the court date, proceed with the case in court.

NOTE: If you drop the suit, your filing fee and service costs are not returned.

Filing a Small Claim in Court

Note: the procedure varies from county to county and state to state. These are just general guidelines.

How do you file a small claim?

First of all, most courts want to see that you attempted to collect this money before going to court (that you have taken all reasonable measures to collect before getting the courts involved.)

Usually, by choosing a Small Claims Court, you waive all right to a jury trial. Furthermore, it is only in very specific instances that you have the right to appeal to a higher court if the Clerk does not find in your favor. Defendants, however, always have the right to appeal.

You need to go down to your county courthouse and ask the clerk for the procedure in your county. Fill out the documents they give you. You may attach a copy of the Legal Form in Appendix F, which may help to more clearly outline your complaint. This is a good thing to do, especially if you are nervous about presenting your case or are afraid you might forget important facts. If county will not let you file this form (doubtful), then you can take it with you as your own private notes. ***You must pay all the filing fees before your paperwork will be processed.***

In some counties, all you will have to do is sign the form in the presence of the clerk; in others, you will need to get a judge's signature.

Once your paperwork is filled out properly, you will be given a hearing date, trial date, or response date will be entered by the clerk. You will either be given the information then or by mail, depending on the court's local procedures.

It is the plaintiff's responsibility to accurately identify the defendant, provide a proper address and, if possible, provide a phone number. You must furnish the precise legal name and address of the party you are suing. For example, S & J Construction, Inc. You may sue any individual, business, partnership, or corporation. The legal name of a business which is not a corporation may be determined by contacting the clerk in the city or town hall and requesting business certificate information. Another suggestion is contacting the your state Corporation Commission to find out the exact name.

Can I only sue companies in my state?

Typically, the answer is yes. Some small claims courts won't even allow paperwork to be filed if the other party is out of town. Others may allow you to file in the state in which a

contract was signed or where personal injury occurred. However, as long as a company has a registered agent in your state, you may sue them. A registered agent is an entity (physical office or person who represents the company in your state.) To find the registered agent in your state:

The Better Business Bureau - <http://www.bbb.org>
<http://www.residentagentinfo.com>

How much does it cost?

All states have different filing fees, but generally the cost is between \$10 and \$50, with some businesses paying a slightly higher fee.

Serving the notice

In order for the judgment to be binding, the party being sued must be properly served. Depending on your state, either the court will serve the notice, or leave it up to you. ***It is vital to make sure the party is served properly.***

If your state makes it your responsibility to serve the party you are suing, ask for a list of the qualified people or services you can use to serve the paperwork.

What if I want to hire a lawyer, or at least consult with one before going to trial?

The problem is that many lawyers aren't familiar with this kind of law and many only practice in a single state. Where do you find a lawyer? The following link is an EXCELLENT resource for finding a lawyer in your area.

<http://www.naca.net./resource.htm>

What if they respond with a "Discovery Notice"?

Discovery is a good thing once you file a lawsuit and serve the other party. It means that the other side is taking you seriously. It also may mean that they are testing you to see if you know what you are doing. Discovery does not happen in every case – if you get no response, then you are most likely to win your case by default, because the collection agency or credit bureau either doesn't respond to your court summons or won't show up in court.

The discovery process is a way that attorneys have to gather as much information as they can from the party suing them and it is their legal right. You really need to respond to all requests for discovery, or your case can get thrown out. Most of the time, an attorney for the defendant (the company or person you are suing), will send you a written request via the mail.

Just be careful, you don't have to respond to every question they ask you if you feel that the question is irrelevant to the case or intrudes on your privacy. The other thing to be careful about is naming any witnesses or documents – whatever you put in your discovery response may be what you are limited to using in court. In other words, if you list one or no witnesses to testify for you during your case, and you discover other witnesses of value to you, you may not be allowed to use them. The best thing to do is to say that the number of witnesses and the documentation you are using has not been determined at this time and you will notify the defendant when the decision has been made. An example response to a discovery request is shown in Appendix F.

Preparing For The Trial

As mentioned in the previous section, you can help yourself by being well prepared.

To prepare for the trial, collect all papers, photographs, receipts, estimates, canceled checks, or other documents that concern the case. It may be helpful to write down ahead of time the facts of the case in the order that they occurred. This will help you to organize your thoughts and to make a clear presentation of your story to the judge.

It is also a good idea to sit through a small claims court session before the date of your hearing. This will give you first-hand information about the way small claim cases are heard.

What Happens At The Trial?

When you arrive at the court, report to the courtroom in which your case has been assigned.

When your case is called in the courtroom, come forward to the counsel table and the judge will swear in all the parties and witnesses.

Don't be nervous--remember that a trial in small claims court is informal.

The judge will ask the plaintiff to give his or her side first, then will ask the defendant for his or her explanation. Be brief and stick to the facts. The judge may interrupt you with questions, which you should answer straight out and to the best of your knowledge.

Be polite, not just to the judge, but also to your opponent. Do not interrupt. Whatever happens, keep your temper. Good manners and even tempers help the fair, efficient conduct of the trial, and make a good impression.

After both sides have been heard by the judge, he or she will normally announce the decision right then and will sign and hand the parties a judgment.

Tips for Addressing the Judge

Judges don't like flowery or long, drawn-out stories. They will have many cases to hear the day of your court appearance and will appreciate your getting to the point quickly. If you don't get to the point within 3 or 4 sentences, you may annoy the judge. A good rule of thumb is that you should be able to sum up your case in 3-4 sentences. He also wants to hear how much you are suing the defendant for right at the beginning, so include this in your 3 or 4 sentence summary. Also remember that the judge is not going to be impressed as much with your story as with your evidence.

Don't think you can describe your case in 3-4 sentences? Practice ahead of time. Don't forget, that this is not all you are going to be able to say. After stating the case briefly, you can start to present your evidence which supports your case. Remember to not interrupt the judge.

Here is an example of a clearly stated case: "Your honor, I pulled my credit report in March of 2002 and noticed a collection account on it. I never received notice of this collection per the Fair Debt Collection Practices Act and sent the collection agency a request to validate my debt per the same Act. After several requests to the collection agency, who never responded, nor removed the collection from my report, I notified them that if they did not remove the account I was taking them to court for violating the

Fair Debt Collection Practices Act, section 809. They never responded, and per the Act, I am entitled to \$1000 for the continued collection activity after request for validation.”

What If My Opponent Does Not Appear For Trial?

If the defendant fails to appear for trial, the plaintiff will be granted judgment for the amount of the claim proven in court, plus costs--provided the plaintiff can show proof of service.

If the plaintiff fails to appear, the claim is dismissed; however, generally the court will permit the plaintiff to start over, if good cause for the non-appearance is shown.

Can You Appeal A Case If You Lose?

You can always appeal to a higher court, usually the superior court in your state. If you plan on doing this, there is usually a time limit in which to file, so make sure you file your paperwork in a timely manner. Court fees for Superior Court are different than small claims, again, your county courthouse clerk can answer questions about your filing fees and procedures.

If you agreed to arbitration, meaning you did not see a judge, but agreed to mediation by a lawyer (in some states with heavy workloads like California, this happens frequently when you want to expedite the hearing), your ability to appeal may be limited. You need to check out these types of things before proceeding.

If you want to Go Beyond Small Claims

Sometimes the violations given here are so numerous and the damages so extensive that you feel you need to go to State Superior or Federal Court.

Examples:

1. If the basis of your claim is the FCRA, then you may be able to collect substantial punitive damages (pain and suffering), which would be more than the maximum award allowed in small claims court.
2. If the basis of your claim is the FDCPA, your actual damages may be more than small claims allows. In addition, if you are suing with the FDCPA as the basis of your lawsuit, you can collect attorneys fees as part of the settlement, which may entice a lawyer to take your case on contingency. Taking a case on contingency means that a lawyer only collects money from you IF you win in court. If you lose, you are not out any money.

If you do decide to have your case heard in any other court besides small claims, you are going to need a good lawyer. The problem is that many lawyers aren't familiar with this kind of law and many only practice in a single state. Where do you find a lawyer? The following link is an EXCELLENT resource for finding a lawyer in your area.

<http://www.naca.net./resource.htm>

How Do I Collect My Money?

A money judgment in your favor does not necessarily mean that the money will be paid. The Small Claims Court does not collect the judgment for you.

If no appeal is taken and the judgment is not paid within 30 days, or the time set by the court in the payment plan, that a transcript of the judgment be entered into the civil docket of the court. At that time you may proceed with a method of collection such as garnishment of wages, bank accounts, and other monies of the defendant or an execution may be issued on cars, boats, or other personal property of the judgment debtor. Remember, the clerks cannot give you legal advice. You may need the assistance of an attorney or collection agency at this point.

When the judgment has been paid in full you must send written notice to the district court that the judgment has been satisfied.

How do I Enforce the terms of the Judgment?

If your judgment calls for the creditor to remove or update a listing to your satisfaction, you can send a copy of it into the credit bureaus as part of supporting documentation when you request them to update your listing. Send in your credit dispute via regular mail to each of the credit bureaus. This should be more than enough to get the listings corrected.

Appendix A – The Federal Trade Commission Process

The FTC may begin an investigation in different ways. Letters from consumers or businesses, Congressional inquiries, or articles on consumer or economic subjects may trigger FTC action.

Investigations are either public or nonpublic. Generally, FTC investigations are nonpublic in order to protect both the investigation and the company.

If the FTC believes a violation of the law occurred, it may attempt to obtain voluntary compliance by entering into a consent order with the company. A company that signs a consent order need not admit that it violated the law, but it must agree to stop the disputed practices outlined in an accompanying complaint.

If a consent agreement cannot be reached, the FTC may issue an administrative complaint. If an administrative complaint is issued, a formal proceeding that is much like a court trial begins before an administrative law judge: evidence is submitted, testimony is heard, and witnesses are examined and cross-examined. If a law violation is found, a cease and desist order or other appropriate relief may be issued. Initial decisions by administrative law judges may be appealed to the full Commission.

Final decisions issued by the Commission may be appealed to the U.S. Court of Appeals and, ultimately, to the U.S. Supreme Court. If the Commission's position is upheld, the FTC, in certain circumstances, may then seek consumer redress in court. If the company ever violates the order, the Commission also may seek civil penalties or an injunction.

In some circumstances, the FTC can go directly to court to obtain an injunction, civil penalties, or consumer redress. This usually happens in cases of ongoing consumer fraud. By going directly to court, the FTC can stop the fraud before too many consumers are injured. The Commission can also issue Trade Regulation Rules. If the FTC staff finds evidence of unfair or deceptive practices in an entire industry, it can recommend that the Commission begin a rulemaking proceeding. Throughout the rulemaking proceeding, the public will have opportunities to attend hearings and file written comments. The Commission will consider these comments along with the entire rulemaking record--the hearing testimony, the staff reports, and the Presiding Officer's report -- before making a final decision on the proposed rule. An FTC rule may be challenged in any of the U.S. Courts of Appeal. When issued, these rules have the force of law.

Appendix B – Opinion Letters

Opinion letter regarding whether or not a collection agency can report your listing to a CRA if they have not verified the debt

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Federal Trade Commission

December 23, 1997

Robert G. Cass
Compliance Counsel
Commercial Financial Services, Inc.
2448 E. 81st Street, Suite 5500
Tulsa, OK 74137-4248

Dear Mr. Cass:

Mr. Medine has asked me to reply to your letter of October 28, 1997, concerning the circumstances under which a debt collector may report a "charged-off debt" to a consumer reporting agency under the enclosed Fair Debt Collection Practices Act. In that letter, you pose four questions, which I set out below with our answers.

I. "Is it permissible under the FDCPA for a debt collector to report charged-off debts to a consumer reporting agency during the term of the 30-day validation period detailed in Section 1692g?" Yes. As stated in the Commission's Staff Commentary on the FDCPA (copy enclosed), a debt collector may accurately report a debt to a consumer reporting agency within the thirty day validation period (p. 50103). We do not regard the action of reporting a debt to a consumer reporting agency as inconsistent with the consumer's dispute or verification rights under § 1692g.

II. "Is it permissible under the FDCPA for a debt collector to report, or continue to report, a consumer's charged-off debt to a consumer reporting agency after the debt collector has received, but not responded to, a consumer's written dispute during the 30-day validation period detailed in § 1692g?" As you know, Section 1692g(b) requires the debt collector to cease collection of the debt at issue if a written dispute is received within the 30-day validation period until verification is obtained. Because we believe that reporting a charged-off debt to a consumer reporting agency, particularly at this stage of the collection process, constitutes "collection activity" on the part of the collector, our answer to your question is No. Although the FDCPA is unclear on this point, we believe the reality is that debt collectors use the reporting mechanism as a tool to persuade consumers to pay, just like dunning letters and telephone calls. Of course, if a dispute is received after a debt has been reported to a consumer reporting agency, the debt collector is obligated by Section 1692e(8) to inform the consumer reporting agency of the dispute.

III. "Is it permissible under the FDCPA to cease collection of a debt rather than respond to a written dispute from a consumer received during the 30-day validation period?" Yes. There is nothing in the FDCPA that requires a debt collector to continue collecting a debt after a written dispute is received. Further, there is nothing in the FDCPA that requires a response to a written dispute if the debt collector chooses to abandon its collection effort with respect to the debt at issue. See *Smith v. Transworld Systems, Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992).

IV. "Would the following action by a debt collector constitute continued collection activity under § 1692g(b): reporting a charged-off consumer debt to a consumer reporting agency as disputed in accordance with § 1692e(8), when the debt collector became aware of the dispute when the consumer sent a written dispute to the debt collector during the 30-day validation period, and no verification of the debt has been provided by the debt collector?" Yes. As stated in our answer to Question II, we view reporting to a consumer reporting agency as a collection activity prohibited by § 1692g(b) after a written dispute is received and no verification has been provided. Again, however, a debt collector must report a dispute received after a debt has been reported under § 1692e(8).

I hope this is responsive to your request.

Sincerely,

John F. LeFevre
Attorney

FTC Opinion Letter 2

Sending a computerized print out of a debt does not constitute debt validation

Jeffrey S. Wollman
Vice President and Controller
Retrieval Masters Creditors Bureau, Inc.
1261 Broadway
New York, New York 10001

Dear Mr. Wollman:

This is in response to your letter of February 9, 1993 to David Medine regarding the type of verification required by Section 809(b) of the Fair Debt Collection Practices Act. You ask whether a collection agency for a medical provider will fulfill the requirements of that Section if it produces "an itemized statement of services rendered to a patient on its own computer from information provided by the medical institution . . ." in response to a request for verification of the debt. You also ask who is responsible for mailing the verification to the consumer.

The statute requires that the debt collector obtain verification of the debt and mail it to the consumer (emphasis mine). Because one of the principal purposes of this Section is to help consumers who have been misidentified by the debt collector or who dispute the amount of the debt, it is important that the verification of the identity of the consumer and the amount of the debt be obtained directly from the creditor. Mere itemization of what the debt collector already has does not accomplish this purpose. As stated above, the statute requires the debt collector, not the creditor, to mail the verification to the consumer.

Your interest in writing is appreciated. Please be aware that since this is only the opinion of Commission staff, the Commission itself is not bound by it.

Sincerely,

John F. LeFevre
Attorney
Division of Credit Practices

Appendix C - The Fair Credit Reporting Act

As a public service, the staff of the Federal Trade Commission (FTC) has prepared the following complete text of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq. Although staff generally followed the format of the U.S. Code as published by the Government Printing Office, the format of this text does differ in minor ways from the Code (and from West's U.S. Code Annotated). For example, this version uses FCRA section numbers (§§ 601-625) in the headings. (The relevant U.S. Code citation is included with each section heading and each reference to the FCRA in the text.)

This version of the FCRA is complete as of July 1999. It includes the amendments to the FCRA set forth in the Consumer Credit Reporting Reform Act of 1996 (Public Law 104-208, the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Title II, Subtitle D, Chapter 1), Section 311 of the Intelligence Authorization for Fiscal Year 1998 (Public Law 105-107), and the Consumer Reporting Employment Clarification Act of 1998 (Public Law 105-347).

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§ 601. Short title

This title may be cited as the Fair Credit Reporting Act.

§ 602. Congressional findings and statement of purpose [15 U.S.C. § 1681]

(a) Accuracy and fairness of credit reporting. The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) Reasonable procedures. It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

§ 603. Definitions; rules of construction [15 U.S.C. § 1681a]

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) Consumer report.

(1) In general. The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 604 [§ 1681b].

(2) Exclusions. The term "consumer report" does not include

(A) any

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615 [§ 1681m]; or

(D) a communication described in subsection (o).

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(j) Definitions relating to child support obligations.

(1) Overdue support. The term "overdue support" has the meaning given to such term in section 666(e) of title 42 [Social Security Act, 42 U.S.C. § 666(e)].

(2) State or local child support enforcement agency. The term "State or local child support enforcement agency" means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) Adverse action.

(1) Actions included. The term "adverse action"

(A) has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act; and

(B) means

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D) [§ 1681b]; and

(iv) an action taken or determination that is

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 604(a)(3)(F)(ii)[§ 1681b]; and

(II) adverse to the interests of the consumer.

(2) Applicable findings, decisions, commentary, and orders. For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 701(d)(6) of the Equal Credit Opportunity Act by the Board of Governors of the Federal Reserve System or any court shall apply.

(l) Firm offer of credit or insurance. The term "firm offer of credit or insurance" means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) Credit or insurance transaction that is not initiated by the consumer. The term "credit or insurance transaction that is not initiated by the consumer" does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of

(1) reviewing the account or insurance policy; or

(2) collecting the account.

(n) State. The term "State" means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(o) Excluded communications. A communication is described in this subsection if it is a communication

(1) that, but for subsection (d)(2)(D), would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which

(A) the consumer who is the subject of the communication

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

§ 604. Permissible purposes of consumer reports [15 U.S.C. § 1681b]

(a) In general. Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;

(B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);

(C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and

(D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under Section 454 of the Social Security Act (42 U.S.C. § 654) for use to set an initial or modified child support award.

(b) Conditions for furnishing and using consumer reports for employment purposes.

(1) Certification from user. A consumer reporting agency may furnish a consumer report for employment purposes only if

(A) the person who obtains such report from the agency certifies to the agency that

(i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and

(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

(B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this title, as prescribed by the Federal Trade Commission under section 609(c)(3) [§ 1681g].

(2) Disclosure to consumer.

(A) In general. Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless--

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

(B) Application by mail, telephone, computer, or other similar means. If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application--

(i) the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 615(a)(3); and

(ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.

(C) Scope. Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if--

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the

provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(3) Conditions on use for adverse actions.

(A) In general. Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates--

(i) a copy of the report; and

(ii) a description in writing of the rights of the consumer under this title, as prescribed by the Federal Trade Commission under section 609(c)(3).

(B) Application by mail, telephone, computer, or other similar means.

(i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the report relates, in lieu of the notices required under subparagraph (A) of this section and under section 615(a), within 3 business days of taking such action, an oral, written or electronic notification--

(I) that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;

(II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);

(III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and

(IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

(ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the Federal Trade Commission under section 609(c)(3).

(C) Scope. Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if--

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(4) Exception for national security investigations.

(A) In general. In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that--

(i) the consumer report is relevant to a national security investigation of such agency or department;

(ii) the investigation is within the jurisdiction of such agency or department;

(iii) there is reason to believe that compliance with paragraph (3) will--

(I) endanger the life or physical safety of any person;

(II) result in flight from prosecution;

(III) result in the destruction of, or tampering with, evidence relevant to the investigation;

(IV) result in the intimidation of a potential witness relevant to the investigation;

(V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) Notification of consumer upon conclusion of investigation. Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made--

(i) a copy of such consumer report with any classified information redacted as necessary;

(ii) notice of any adverse action which is based, in part, on the consumer report; and

(iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

(C) Delegation by head of agency or department. For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.

(D) Report to the congress. Not later than January 31 of each year, the head of each agency and department of the United States Government that exercised authority under this paragraph during the preceding year shall submit a report to the Congress on the number of times the department or agency exercised such authority during the year.

(E) Definitions. For purposes of this paragraph, the following definitions shall apply:

(i) Classified information. The term 'classified information' means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.

(ii) National security investigation. The term 'national security investigation' means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

(c) Furnishing reports in connection with credit or insurance transactions that are not initiated by the consumer.

(1) In general. A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) in connection with any credit or insurance transaction that is not initiated by the consumer only if

(A) the consumer authorizes the agency to provide such report to such person; or

(B) (i) the transaction consists of a firm offer of credit or insurance;

(ii) the consumer reporting agency has complied with subsection (e); and

(iii) there is not in effect an election by the consumer, made in accordance with subsection (e), to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph.

(2) Limits on information received under paragraph (1)(B). A person may receive pursuant to paragraph (1)(B) only

(A) the name and address of a consumer;

(B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and

(C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

(3) Information regarding inquiries. Except as provided in section 609(a)(5) [§ 1681g], a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer.

(d) Reserved.

(e) Election of consumer to be excluded from lists.

(1) In general. A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) in connection with a credit or insurance transaction that is not initiated by the consumer, by notifying the agency in accordance with paragraph (2) that the consumer does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.

(2) Manner of notification. A consumer shall notify a consumer reporting agency under paragraph (1)

(A) through the notification system maintained by the agency under paragraph (5); or

(B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.

(3) Response of agency after notification through system. Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall

(A) inform the consumer that the election is effective only for the 2-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and

(B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.

(4) Effectiveness of election. An election of a consumer under paragraph (1)

(A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);

(B) shall be effective with respect to a consumer reporting agency

(i) subject to subparagraph (C), during the 2-year period beginning 5 business days after the date on which the consumer notifies the agency of the election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or

(ii) until the consumer notifies the agency under subparagraph (C), in the case of an election for which a consumer notifies the agency in accordance with paragraph (2)(B);

(C) shall not be effective after the date on which the consumer notifies the agency, through the notification system established by the agency under paragraph (5), that the election is no longer effective; and

(D) shall be effective with respect to each affiliate of the agency.

(5) Notification system.

(A) In general. Each consumer reporting agency that, under subsection (c)(1)(B), furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer, shall

(i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and

(ii) publish by not later than 365 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996, and not less than annually thereafter, in a publication of general circulation in the area served by the agency

(I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and

(II) the address and toll-free telephone number for consumers to use to notify the agency of the consumer's election under clause (I).

(B) Establishment and maintenance as compliance. Establishment and maintenance of a notification system (including a toll-free telephone number) and publication by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.

(6) Notification system by agencies that operate nationwide. Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.

(f) Certain use or obtaining of information prohibited. A person shall not use or obtain a consumer report for any purpose unless

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 607 [§ 1681e] by a prospective user of the report through a general or specific certification.

(g) Furnishing reports containing medical information. A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless the consumer consents to the furnishing of the report.

§ 605. Requirements relating to information contained in consumer reports [15 U.S.C. § 1681c]

(a) Information excluded from consumer reports. Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Cases under title 11 [United States Code] or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.(1)

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.1

(b) Exempted cases. The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000, or more.

(c) Running of reporting period.

(1) In general. The 7-year period referred to in paragraphs (4) and (6) ** of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) Effective date. Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996.

(d) Information required to be disclosed. Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11, United States Code, shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11, United States Code, is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(e) Indication of closure of account by consumer. If a consumer reporting agency is notified pursuant to section 623(a)(4) [§ 1681s-2] that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) Indication of dispute by consumer. If a consumer reporting agency is notified pursuant to section 623(a)(3) [§ 1681s-2] that information regarding a consumer who was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

§ 606. Disclosure of investigative consumer reports [15 U.S.C. § 1681d]

(a) Disclosure of fact of preparation. A person may not procure or cause to be prepared an investigative consumer report on any consumer unless

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made, and such disclosure

(A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and

(B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section and the written summary of the rights of the consumer prepared pursuant to section 609(c) [§ 1681g]; and

(2) the person certifies or has certified to the consumer reporting agency that

(A) the person has made the disclosures to the consumer required by paragraph (1); and

(B) the person will comply with subsection (b).

(b) Disclosure on request of nature and scope of investigation. Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section, make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) Limitation on liability upon showing of reasonable procedures for compliance with provisions. No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section.

(d) Prohibitions.

(1) Certification. A consumer reporting agency shall not prepare or furnish investigative consumer report unless the agency has received a certification under subsection (a)(2) from the person who requested the report.

(2) Inquiries. A consumer reporting agency shall not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer

would violate any applicable Federal or State equal employment opportunity law or regulation.

(3) Certain public record information. Except as otherwise provided in section 613 [§ 1681k], a consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

(4) Certain adverse information. A consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of such item of information, unless

(A) the agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information; or

(B) the person interviewed is the best possible source of the information.
§ 607. Compliance procedures [15 U.S.C. § 1681e]

(a) Identity and purposes of credit users. Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 [§ 1681c] and to limit the furnishing of consumer reports to the purposes listed under section 604 [§ 1681b] of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604 [§ 1681b] of this title.

(b) Accuracy of report. Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) Disclosure of consumer reports by users allowed. A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.

(d) Notice to users and furnishers of information.

(1) Notice requirement. A consumer reporting agency shall provide to any person

(A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or

(B) to whom a consumer report is provided by the agency;

a notice of such person's responsibilities under this title.

(2) Content of notice. The Federal Trade Commission shall prescribe the content of notices under paragraph (1), and a consumer reporting agency shall be in compliance with this subsection if it provides a notice under paragraph (1) that is substantially similar to the Federal Trade Commission prescription under this paragraph.

(e) Procurement of consumer report for resale.

(1) Disclosure. A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the consumer reporting agency that originally furnishes the report

(A) the identity of the end-user of the report (or information); and

(B) each permissible purpose under section 604 [§ 1681b] for which the report is furnished to the end-user of the report (or information).

(2) Responsibilities of procurers for resale. A person who procures a consumer report for purposes of reselling the report (or any information in the report) shall

(A) establish and comply with reasonable procedures designed to ensure that the report (or information) is resold by the person only for a purpose for which the report may be furnished under section 604 [§ 1681b], including by requiring that each person to which the report (or information) is resold and that resells or provides the report (or information) to any other person

(i) identifies each end user of the resold report (or information);

(ii) certifies each purpose for which the report (or information) will be used; and

(iii) certifies that the report (or information) will be used for no other purpose; and

(B) before reselling the report, make reasonable efforts to verify the identifications and certifications made under subparagraph (A).

(3) Resale of consumer report to a federal agency or department. Notwithstanding paragraph (1) or (2), a person who procures a consumer report for purposes of reselling the report (or any information in the report) shall not disclose the identity of the end-user of the report under paragraph (1) or (2) if --

(A) the end user is an agency or department of the United States Government which procures the report from the person for purposes of determining the eligibility of the consumer concerned to receive access or continued access to classified information (as defined in section 604(b)(4)(E)(i)); and

(B) the agency or department certifies in writing to the person reselling the report that nondisclosure is necessary to protect classified information or the safety of persons employed by or contracting with, or undergoing investigation for work or contracting with the agency or department.

§ 608. Disclosures to governmental agencies [15 U.S.C. § 1681f]

Notwithstanding the provisions of section 604 [§ 1681b] of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

§ 609. Disclosures to consumers [15 U.S.C. § 1681g]

(a) Information on file; sources; report recipients. Every consumer reporting agency shall, upon request, and subject to 610(a)(1) [§ 1681h], clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) (A) Identification of each person (including each end-user identified under section 607(e)(1) [§ 1681e]) that procured a consumer report

(i) for employment purposes, during the 2-year period preceding the date on which the request is made; or

(ii) for any other purpose, during the 1-year period preceding the date on which the request is made.

(B) An identification of a person under subparagraph (A) shall include

(i) the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

(ii) upon request of the consumer, the address and telephone number of the person.

(C) Subparagraph (A) does not apply if--

(i) the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in section 604(b)(4)(E)(i)); and

(ii) the head of the agency or department makes a written finding as prescribed under section 604(b)(4)(A).

(4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

(5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(b) Exempt information. The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(c) Summary of rights required to be included with disclosure.

(1) Summary of rights. A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section

(A) a written summary of all of the rights that the consumer has under this title; and

(B) in the case of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours.

(2) Specific items required to be included. The summary of rights required under paragraph (1) shall include

(A) a brief description of this title and all rights of consumers under this title;

(B) an explanation of how the consumer may exercise the rights of the consumer under this title;

(C) a list of all Federal agencies responsible for enforcing any provision of this title and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

(D) a statement that the consumer may have additional rights under State law and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general to learn of those rights; and

(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from a consumer's file, unless the information is outdated under section 605 [§ 1681c] or cannot be verified.

(3) Form of summary of rights. For purposes of this subsection and any disclosure by a consumer reporting agency required under this title with respect to consumers' rights, the Federal Trade Commission (after consultation with each Federal agency referred to in section 621(b) [§ 1681s]) shall prescribe the form and content of any such disclosure of the rights of consumers required under this title. A consumer reporting agency shall be in compliance with this subsection if it provides disclosures under paragraph (1) that are substantially similar to the Federal Trade Commission prescription under this paragraph.

(4) Effectiveness. No disclosures shall be required under this subsection until the date on which the Federal Trade Commission prescribes the form and content of such disclosures under paragraph (3).

§ 610. Conditions and form of disclosure to consumers [15 U.S.C. § 1681h]

(a) In general.

(1) Proper identification. A consumer reporting agency shall require, as a condition of making the disclosures required under section 609 [§ 1681g], that the consumer furnish proper identification.

(2) Disclosure in writing. Except as provided in subsection (b), the disclosures required to be made under section 609 [§ 1681g] shall be provided under that section in writing.

(b) Other forms of disclosure.

(1) In general. If authorized by a consumer, a consumer reporting agency may make the disclosures required under 609 [§ 1681g]

(A) other than in writing; and

(B) in such form as may be

(i) specified by the consumer in accordance with paragraph (2); and

(ii) available from the agency.

(2) Form. A consumer may specify pursuant to paragraph (1) that disclosures under section 609 [§ 1681g] shall be made

(A) in person, upon the appearance of the consumer at the place of business of the consumer reporting agency where disclosures are regularly provided, during normal business hours, and on reasonable notice;

(B) by telephone, if the consumer has made a written request for disclosure by telephone;

(C) by electronic means, if available from the agency; or

(D) by any other reasonable means that is available from the agency.

(c) Trained personnel. Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609 [§ 1681g] of this title.

(d) Persons accompanying consumer. The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Limitation of liability. Except as provided in sections 616 and 617 [§§ 1681n and 1681o] of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615 [§§ 1681g, 1681h, or 1681m] of this title or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report,

except as to false information furnished with malice or willful intent to injure such consumer.

§ 611. Procedure in case of disputed accuracy [15 U.S.C. § 1681i]

(a) Reinvestigations of disputed information.

(1) Reinvestigation required.

(A) In general. If the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of such dispute, the agency shall reinvestigate free of charge and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(B) Extension of period to reinvestigate. Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.

(C) Limitations on extension of period to reinvestigate. Subparagraph (B) shall not apply to any reinvestigation in which, during the 30-day period described in subparagraph (A), the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

(2) Prompt notice of dispute to furnisher of information.

(A) In general. Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer.

(B) Provision of other information from consumer. The consumer reporting agency shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).

(3) Determination that dispute is frivolous or irrelevant.

(A) In general. Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.

(B) Notice of determination. Upon making any determination in accordance with subparagraph (A) that a dispute is frivolous or irrelevant, a consumer reporting agency

shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.

(C) Contents of notice. A notice under subparagraph (B) shall include

(i) the reasons for the determination under subparagraph (A); and

(ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(4) Consideration of consumer information. In conducting any reinvestigation under paragraph (1) with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in paragraph (1)(A) with respect to such disputed information.

(5) Treatment of inaccurate or unverifiable information.

(A) In general. If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall promptly delete that item of information from the consumer's file or modify that item of information, as appropriate, based on the results of the reinvestigation.

(B) Requirements relating to reinsertion of previously deleted material.

(i) Certification of accuracy of information. If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.

(ii) Notice to consumer. If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.

(iii) Additional information. As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion

(I) a statement that the disputed information has been reinserted;

(II) the business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and

(III) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

(C) Procedures to prevent reappearance. A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to this paragraph (other than information that is reinserted in accordance with subparagraph (B)(i)).

(D) Automated reinvestigation system. Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

(6) Notice of results of reinvestigation.

(A) In general. A consumer reporting agency shall provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.

(B) Contents. As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A)

(i) a statement that the reinvestigation is completed;

(ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;

(iii) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;

(iv) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(v) a notice that the consumer has the right to request under subsection (d) that the consumer reporting agency furnish notifications under that subsection.

(7) Description of reinvestigation procedure. A consumer reporting agency shall provide to a consumer a description referred to in paragraph (6)(B)(iii) by not later than 15 days after receiving a request from the consumer for that description.

(8) Expedited dispute resolution. If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved in accordance with paragraph (5)(A) by the deletion of the disputed information by not later than 3 business days after the date on which the agency receives notice of the dispute from the consumer in accordance with paragraph (1)(A), then the agency shall not be required to comply with paragraphs (2), (6), and (7) with respect to that dispute if the agency (A) provides prompt notice of the deletion to the consumer by telephone;

(B) includes in that notice, or in a written notice that accompanies a confirmation and consumer report provided in accordance with subparagraph (C), a statement of the consumer's right to request under subsection (d) that the agency furnish notifications under that subsection; and

(C) provides written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion, not later than 5 business days after making the deletion.

(b) Statement of dispute. If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Notification of consumer dispute in subsequent consumer reports. Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Notification of deletion of disputed information. Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

§ 612. Charges for certain disclosures [15 U.S.C. § 1681j]

(a) Reasonable charges allowed for certain disclosures.

(1) In general. Except as provided in subsections (b), (c), and (d), a consumer reporting agency may impose a reasonable charge on a consumer

(A) for making a disclosure to the consumer pursuant to section 609 [§ 1681g], which charge

(i) shall not exceed \$8; and

(ii) shall be indicated to the consumer before making the disclosure; and

(B) for furnishing, pursuant to 611(d) [§ 1681i], following a reinvestigation under section 611(a) [§ 1681i], a statement, codification, or summary to a person designated by the consumer under that section after the 30-day period beginning on the date of notification of the consumer under paragraph (6) or (8) of section 611(a) [§ 1681i] with respect to the reinvestigation, which charge

(i) shall not exceed the charge that the agency would impose on each designated recipient for a consumer report; and

(ii) shall be indicated to the consumer before furnishing such information.

(2) Modification of amount. The Federal Trade Commission shall increase the amount referred to in paragraph (1)(A)(I) on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

(b) Free disclosure after adverse notice to consumer. Each consumer reporting agency that maintains a file on a consumer shall make all disclosures pursuant to section 609 [§ 1681g] without charge to the consumer if, not later than 60 days after receipt by such consumer of a notification pursuant to section 615 [§ 1681m], or of a notification from a debt collection agency affiliated with that consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 [§ 1681g].

(c) Free disclosure under certain other circumstances. Upon the request of the consumer, a consumer reporting agency shall make all disclosures pursuant to section 609 [§ 1681g] once during any 12-month period without charge to that consumer if the consumer certifies in writing that the consumer

(1) is unemployed and intends to apply for employment in the 60-day period beginning on the date on which the certification is made;

(2) is a recipient of public welfare assistance; or

(3) has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud.

(d) Other charges prohibited. A consumer reporting agency shall not impose any charge on a consumer for providing any notification required by this title or making any disclosure required by this title, except as authorized by subsection (a).

§ 613. Public record information for employment purposes [15 U.S.C. § 1681k]

(a) In general. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

(b) Exemption for national security investigations. Subsection (a) does not apply in the case of an agency or department of the United States Government that seeks to obtain

and use a consumer report for employment purposes, if the head of the agency or department makes a written finding as prescribed under section 604(b)(4)(A).

§ 614. Restrictions on investigative consumer reports [15 U.S.C. § 1681l]

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

§ 615. Requirements on users of consumer reports [15 U.S.C. § 1681m]

(a) Duties of users taking adverse actions on the basis of information contained in consumer reports. If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall

(1) provide oral, written, or electronic notice of the adverse action to the consumer;

(2) provide to the consumer orally, in writing, or electronically

(A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

(B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

(3) provide to the consumer an oral, written, or electronic notice of the consumer's right

(A) to obtain, under section 612 [§ 1681j], a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) to dispute, under section 611 [§ 1681i], with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

(b) Adverse action based on information obtained from third parties other than consumer reporting agencies.

(1) In general. Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user

of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(2) Duties of person taking certain actions based on information provided by affiliate.

(A) Duties, generally. If a person takes an action described in subparagraph (B) with respect to a consumer, based in whole or in part on information described in subparagraph (C), the person shall

(i) notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii); and

(ii) upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (I), disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request.

(B) Action described. An action referred to in subparagraph (A) is an adverse action described in section 603(k)(1)(A) [§ 1681a], taken in connection with a transaction initiated by the consumer, or any adverse action described in clause (i) or (ii) of section 603(k)(1)(B) [§ 1681a].

(C) Information described. Information referred to in subparagraph (A)

(i) except as provided in clause (ii), is information that (I) is furnished to the person taking the action by a person related by common ownership or affiliated by common corporate control to the person taking the action; and

(II) bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and

(ii) does not include

(I) information solely as to transactions or experiences between the consumer and the person furnishing the information; or

(II) information in a consumer report.

(c) Reasonable procedures to assure compliance. No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of this section.

(d) Duties of users making written credit or insurance solicitations on the basis of information contained in consumer files.

(1) In general. Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, that is provided to that person under section 604(c)(1)(B) [§ 1681b], shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that

(A) information contained in the consumer's consumer report was used in connection with the transaction;

(B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer;

(C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;

(D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and

(E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [§ 1681b].

(2) Disclosure of address and telephone number. A statement under paragraph (1) shall include the address and toll-free telephone number of the appropriate notification system established under section 604(e) [§ 1681b].

(3) Maintaining criteria on file. A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the 3-year period beginning on the date on which the offer is made to the consumer.

(4) Authority of federal agencies regarding unfair or deceptive acts or practices not affected. This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer.

§ 616. Civil liability for willful noncompliance [15 U.S.C. § 1681n]

(a) In general. Any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of

(1) (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance. Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.

(c) Attorney's fees. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

§ 617. Civil liability for negligent noncompliance [15 U.S.C. § 1681o]

(a) In general. Any person who is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees. On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

§ 618. Jurisdiction of courts; limitation of actions [15 U.S.C. § 1681p]

An action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

§ 619. Obtaining information under false pretenses [15 U.S.C. § 1681q]

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

§ 620. Unauthorized disclosures by officers or employees [15 U.S.C. § 1681r]

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

§ 621. Administrative enforcement [15 U.S.C. § 1681s]

(a) (1) Enforcement by Federal Trade Commission. Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act [15 U.S.C. §§ 41 et seq.] by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. § 45(a)] and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof [15 U.S.C. § 45(b)] with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

2) (A) In the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than \$2,500 per violation.

(B) In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(3) Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1) [§ 1681s-2] unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

(4) Neither the Commission nor any other agency referred to in subsection (b) may prescribe trade regulation rules or other regulations with respect to this title.

(b) Enforcement by other agencies. Compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) of section 615 [§ 1681m] shall be enforced under

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818], in the case of

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) [25A] of the Federal Reserve Act [12 U.S.C. §§ 601 et seq., §§ 611 et seq], by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act [12 U.S.C. §§ 1751 et seq.], by the Administrator of the National Credit Union Administration [National Credit Union Administration Board] with respect to any Federal credit union;

(4) subtitle IV of title 49 [49 U.S.C. §§ 10101 et seq.], by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(5) the Federal Aviation Act of 1958 [49 U.S.C. Appx §§ 1301 et seq.], by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act [49 U.S.C. Appx §§ 1301 et seq.]; and

(6) the Packers and Stockyards Act, 1921 [7 U.S.C. §§ 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. §§ 226 and 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. § 3101).

(c) State action for violations.

(1) Authority of states. In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover

(i) damages for which the person is liable to such residents under sections 616 and 617 [§§ 1681n and 1681o] as a result of the violation;

(ii) in the case of a violation of section 623(a) [§ 1681s-2], damages for which the person would, but for section 623(c) [§ 1681s-2], be liable to such residents as a result of the violation; or

(iii) damages of not more than \$1,000 for each willful or negligent violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of federal regulators. The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(3) Investigatory powers. For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation on state action while federal action pending. If the Federal Trade Commission or the appropriate Federal regulator has instituted a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission or the appropriate Federal regulator for any violation of this title that is alleged in that complaint.

(5) Limitations on state actions for violation of section 623(a)(1) [§ 1681s-2].

(A) Violation of injunction required. A State may not bring an action against a person under paragraph (1)(B) for a violation of section 623(a)(1) [§ 1681s-2], unless

(i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and

(ii) the person has violated the injunction.

(B) Limitation on damages recoverable. In an action against a person under paragraph (1)(B) for a violation of section 623(a)(1) [§ 1681s-2], a State may not recover any

damages incurred before the date of the violation of an injunction on which the action is based.

(d) Enforcement under other authority. For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law. Notwithstanding the preceding, no agency referred to in subsection (b) may conduct an examination of a bank, savings association, or credit union regarding compliance with the provisions of this title, except in response to a complaint (or if the agency otherwise has knowledge) that the bank, savings association, or credit union has violated a provision of this title, in which case, the agency may conduct an examination as necessary to investigate the complaint. If an agency determines during an investigation in response to a complaint that a violation of this title has occurred, the agency may, during its next 2 regularly scheduled examinations of the bank, savings association, or credit union, examine for compliance with this title.

(e) Interpretive authority. The Board of Governors of the Federal Reserve System may issue interpretations of any provision of this title as such provision may apply to any persons identified under paragraph (1), (2), and (3) of subsection (b), or to the holding companies and affiliates of such persons, in consultation with Federal agencies identified in paragraphs (1), (2), and (3) of subsection (b).

§ 622. Information on overdue child support obligations [15 U.S.C. § 1681s-1]

Notwithstanding any other provision of this title, a consumer reporting agency shall include in any consumer report furnished by the agency in accordance with section 604 [§ 1681b] of this title, any information on the failure of the consumer to pay overdue support which

(1) is provided

(A) to the consumer reporting agency by a State or local child support enforcement agency; or

(B) to the consumer reporting agency and verified by any local, State, or Federal government agency; and

(2) antedates the report by 7 years or less.

§ 623. Responsibilities of furnishers of information to consumer reporting agencies [15 U.S.C. § 1681s-2]

(a) Duty of furnishers of information to provide accurate information.

(1) Prohibition.

(A) Reporting information with actual knowledge of errors. A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or consciously avoids knowing that the information is inaccurate.

(B) Reporting information after notice and confirmation of errors. A person shall not furnish information relating to a consumer to any consumer reporting agency if

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) No address requirement. A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(2) Duty to correct and update information. A person who

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) Duty to provide notice of dispute. If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) Duty to provide notice of closed accounts. A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) Duty to provide notice of delinquency of accounts. A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

(b) Duties of furnishers of information upon notice of dispute.

(1) In general. After receiving notice pursuant to section 611(a)(2) [§ 1681i] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§ 1681i];

(C) report the results of the investigation to the consumer reporting agency; and

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

(2) Deadline. A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) [§ 1681i] within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) Limitation on liability. Sections 616 and 617 [§§ 1681n and 1681o] do not apply to any failure to comply with subsection (a), except as provided in section 621(c)(1)(B) [§ 1681s].

(d) Limitation on enforcement. Subsection (a) shall be enforced exclusively under section 621 [§ 1681s] by the Federal agencies and officials and the State officials identified in that section.

§ 624. Relation to State laws [15 U.S.C. § 1681t]

(a) In general. Except as provided in subsections (b) and (c), this title does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.

(b) General exceptions. No requirement or prohibition may be imposed under the laws of any State

(1) with respect to any subject matter regulated under

(A) subsection (c) or (e) of section 604 [§ 1681b], relating to the prescreening of consumer reports;

(B) section 611 [§ 1681i], relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996;

(C) subsections (a) and (b) of section 615 [§ 1681m], relating to the duties of a person who takes any adverse action with respect to a consumer;

(D) section 615(d) [§ 1681m], relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

(E) section 605 [§ 1681c], relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996; or

(F) section 623 [§ 1681s-2], relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996);

(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996); or

(3) with respect to the form and content of any disclosure required to be made under section 609(c) [§ 1681g].

(c) Definition of firm offer of credit or insurance. Notwithstanding any definition of the term "firm offer of credit or insurance" (or any equivalent term) under the laws of any State, the definition of that term contained in section 603(l) [§ 1681a] shall be construed to apply in the enforcement and interpretation of the laws of any State governing consumer reports.

(d) Limitations. Subsections (b) and (c)

(1) do not affect any settlement, agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996; and

(2) do not apply to any provision of State law (including any provision of a State constitution) that

(A) is enacted after January 1, 2004;

(B) states explicitly that the provision is intended to supplement this title; and

(C) gives greater protection to consumers than is provided under this title.

§ 625. Disclosures to FBI for counterintelligence purposes [15 U.S.C. § 1681u]

(a) Identity of financial institutions. Notwithstanding section 604 [§ 1681b] or any other provision of this title, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978 [12 U.S.C. § 3401]) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee, which certifies compliance with this section. The Director or the Director's designee may

make such a certification only if the Director or the Director's designee has determined in writing that

(1) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

(2) there are specific and articulable facts giving reason to believe that the consumer

(A) is a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. § 1801]) or a person who is not a United States person (as defined in such section 101) and is an official of a foreign power; or

(B) is an agent of a foreign power and is engaging or has engaged in an act of international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. § 1801(c)]) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

(b) Identifying information. Notwithstanding the provisions of section 604 [§ 1681b] or any other provision of this title, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that

(1) such information is necessary to the conduct of an authorized counterintelligence investigation; and

(2) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. § 1801]).

(c) Court order for disclosure of consumer reports. Notwithstanding section 604 [§ 1681b] or any other provision of this title, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that

(1) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and

(2) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought

(A) is an agent of a foreign power, and

(B) is engaging or has engaged in an act of international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. § 1801(c)]) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

(d) Confidentiality. No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c), and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

(e) Payment of fees. The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

(f) Limit on dissemination. The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

(g) Rules of construction. Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, in connection with a judicial or administrative proceeding to enforce the provisions of this Act. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

(h) Reports to Congress. On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c).

(i) Damages. Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of

(1) \$100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the consumer as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

(j) Disciplinary actions for violations. If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

(k) Good-faith exception. Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(l) Limitation of remedies. Notwithstanding any other provision of this title, the remedies and sanctions set forth in this section shall be the only judicial remedies and sanctions for violation of this section.

(m) Injunctive relief. In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.

Legislative History

House Reports: No. 91-975 (Comm. on Banking and Currency) and No. 91-1587 (Comm. of Conference)

Senate Reports: No. 91-1139 accompanying S. 3678 (Comm. on Banking and Currency)

Congressional Record, Vol. 116 (1970)

May 25, considered and passed House.

Sept. 18, considered and passed Senate, amended.

Oct. 9, Senate agreed to conference report.

Oct. 13, House agreed to conference report.

Enactment:

Public Law No. 91-508 (October 26, 1970):

Amendments: Public Law Nos.

95-473 (October 17, 1978)

95-598 (November 6, 1978)

98-443 (October 4, 1984)

101-73 (August 9, 1989)

102-242 (December 19, 1991)

102-537 (October 27, 1992)

102-550 (October 28, 1992)

103-325 (September 23, 1994)

104-88 (December 29, 1995)

104-93 (January 6, 1996)

104-193 (August 22, 1996)

104-208 (September 30, 1996)

105-107 (November 20, 1997)

105-347 (November 2, 1998)

1. The reporting periods have been lengthened for certain adverse information pertaining to U.S. Government insured or guaranteed student loans, or pertaining to national direct student loans. See sections 430A(f) and 463(c)(3) of the Higher Education Act of 1965, 20 U.S.C. 1080a(f) and 20 U.S.C. 1087cc(c)(3), respectively.

** Should read "paragraphs (4) and (5) ..." Prior Section 605(a)(6) was amended and redesignated as Section 605(a)(5) in November 1998.

Appendix D - THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996)

To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

TITLE VIII - DEBT COLLECTION PRACTICES [Fair Debt Collection Practices Act]

Sec.

- 801. Short Title
- 802. Congressional findings and declaration of purpose
- 803. Definitions
- 804. Acquisition of location information
- 805. Communication in connection with debt collection
- 806. Harassment or abuse
- 807. False or misleading representations
- 808. Unfair practice
- 809. Validation of debts
- 810. Multiple debts
- 811. Legal actions by debt collectors
- 812. Furnishing certain deceptive forms
- 813. Civil liability
- 814. Administrative enforcement
- 815. Reports to Congress by the Commission
- 816. Relation to State laws
- 817. Exemption for State regulation
- 818. Effective date

§ 801. Short Title [15 USC 1601 note]

This title may be cited as the "Fair Debt Collection Practices Act."

§ 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.

(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.

§ 803. Definitions [15 USC 1692a]

As used in this title --

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include --

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a

debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information [15 USC 1692b]

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that

attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

§ 805. Communication in connection with debt collection [15 USC 1692c]

(a) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) COMMUNICATION WITH THIRD PARTIES. Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) CEASING COMMUNICATION. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 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)1 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.

§ 807. False or misleading representations [15 USC 1962e]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) The false representation of --
 - (A) the character, amount, or legal status of any debt; or
 - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

§ 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 propose 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.

§ 809. Validation of debts [15 USC 1692g]

- (a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --
 - (1) the amount of the debt;
 - (2) the name of the creditor to whom the debt is owed;
 - (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
 - (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will

obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

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

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

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

§ 810. Multiple debts [15 USC 1692h]

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 811. Legal actions by debt collectors [15 USC 1692i]

(a) Any debt collector who brings any legal action on a debt against any consumer shall -

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity --

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

§ 812. Furnishing certain deceptive forms [15 USC 1692j]

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

§ 813. Civil liability [15 USC 1692k]

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of --

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

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors --

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

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

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 814. Administrative enforcement [15 USC 1692]

(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title shall be enforced under --

(1) section 8 of the Federal Deposit Insurance Act, in the case of --

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directing or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

§ 815. Reports to Congress by the Commission [15 USC 1692m]

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996)

To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

TITLE VIII - DEBT COLLECTION PRACTICES [Fair Debt Collection Practices Act]

Sec.

- 801. Short Title
- 802. Congressional findings and declaration of purpose
- 803. Definitions
- 804. Acquisition of location information
- 805. Communication in connection with debt collection
- 806. Harassment or abuse
- 807. False or misleading representations
- 808. Unfair practice
- 809. Validation of debts
- 810. Multiple debts
- 811. Legal actions by debt collectors
- 812. Furnishing certain deceptive forms
- 813. Civil liability
- 814. Administrative enforcement
- 815. Reports to Congress by the Commission
- 816. Relation to State laws
- 817. Exemption for State regulation
- 818. Effective date

§ 801. Short Title [15 USC 1601 note]

This title may be cited as the "Fair Debt Collection Practices Act."

§ 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.

(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.

§ 803. Definitions [15 USC 1692a]

As used in this title --

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or

indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include --

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information [15 USC 1692b]

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of

such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

§ 805. Communication in connection with debt collection [15 USC 1692c]

(a) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) COMMUNICATION WITH THIRD PARTIES. Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) CEASING COMMUNICATION. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 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)1 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.

§ 807. False or misleading representations [15 USC 1962e]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of --

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

§ 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 propose 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.

§ 809. Validation of debts [15 USC 1692g]

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is

contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

(1) the amount of the debt;

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

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

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

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

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

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

§ 810. Multiple debts [15 USC 1692h]

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 811. Legal actions by debt collectors [15 USC 1692i]

(a) Any debt collector who brings any legal action on a debt against any consumer shall -

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity --

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

§ 812. Furnishing certain deceptive forms [15 USC 1692j]

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

§ 813. Civil liability [15 USC 1692k]

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of --

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

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors --

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

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

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 814. Administrative enforcement [15 USC 1692]

(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title shall be enforced under --

(1) section 8 of the Federal Deposit Insurance Act, in the case of --

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directing or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

§ 815. Reports to Congress by the Commission [15 USC 1692m]

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

§ 816. Relation to State laws [15 USC 1692n]

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

§ 817. Exemption for State regulation [15 USC 1692o]

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

§ 818. Effective date [15 USC 1692 note]

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

Approved September 20, 1977

ENDNOTES

1. So in original; however, should read "604(a)(3)."

LEGISLATIVE HISTORY:

Public Law 95-109 [H.R. 5294]

HOUSE REPORT No. 95-131 (Comm. on Banking, Finance, and Urban Affairs).

SENATE REPORT No. 95-382 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Apr. 4, considered and passed House.

Aug. 5, considered and passed Senate, amended.

Sept. 8, House agreed to Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 39:

Sept. 20, Presidential statement.

AMENDMENTS:

SECTION 621, SUBSECTIONS (b)(3), (b)(4) and (b)(5) were amended to transfer certain administrative enforcement responsibilities, pursuant to Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 166; Pub. L. 95-630, Title V, § 501, November 10, 1978, 92 Stat. 3680; Pub. L. 98-443, § 9(h), Oct. 4, 1984, 98 Stat. 708.

SECTION 803, SUBSECTION (6), defining "debt collector," was amended to repeal the attorney at law exemption at former Section (6)(F) and to redesignate Section 803(6)(G) pursuant to Pub. L. 99-361, July 9, 1986, 100 Stat. 768. For legislative history, see H.R. 237, HOUSE REPORT No. 99-405 (Comm. on Banking, Finance and Urban Affairs). CONGRESSIONAL RECORD: Vol. 131 (1985): Dec. 2, considered and passed House. Vol. 132 (1986): June 26, considered and passed Senate.

SECTION 807, SUBSECTION (11), was amended to affect when debt collectors must state (a) that they are attempting to collect a debt and (b) that information obtained will be used for that purpose, pursuant to Pub. L. 104-208 § 2305, 110 Stat. 3009 (Sept. 30, 1996).

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection

practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

Appendix E – Basic Credit Repair and Debt Validation Strategies

Credit Repair

Basic Strategy

The basic strategy to repairing your credit is as follows:

1. Get a copy of your credit report and review it.
2. Analyze your credit report.
3. Make a list of all items on your credit report that you consider questionable or negative. Clearly identify each item in your report that you dispute.
4. Write a dispute letter that clearly identifies each item you dispute and why you dispute each item and send the letter to the credit bureaus.
5. Document your efforts. Record when you sent your letters and the results.
6. Wait for the bureaus to investigate your claims and offer their response.
7. Obtain a new copy of your credit report and review it carefully to discover if the disputed item(s) was removed or changed to your satisfaction.
8. Continue steps 1, 2, and 3 until you feel the dispute is settled satisfactorily. Remember there is no charge for a reinvestigation. If you don't get the results you want, dispute the listing again.

For a more detailed strategy, you can purchase our book, *Good Credit is Sexy!* Call Toll Free at **877 933 6932**.

Debt Validation

Basic strategy:

Send a letter requesting validation.

Wait 30 days. Most likely they will not respond or they will respond saying that they received your letter. Only a letter which includes proof that the collection company owns the debt is satisfactory.

If they haven't sent you satisfactory proof, send a copy of your receipt for your registered mail, a copy of the first letter you sent and a statement that they have not complied with the FDCPA and are now in violation of the act. Tell them they need to immediately remove the collection listing from your credit report or you are going to file a lawsuit on the basis of defamation, and violation of the FDCPA, section 809 (b).

Wait 15-20 days. They will either remove it or not respond.

Typically, your work will stop here, as most collection agencies will bow down to your demands and send you a letter agreeing to remove the listing. Now all you have to do is send a copy of the letter to the CRAs.

If the collection agency did not agree to remove the listing, then you need to move on to the next steps.

File a lawsuit in small claims court against the collection agency on the basis of violating the FDCPA.

Have the papers served to the collection agency. (You can find a paper server on the internet for about \$25).

In the meantime, in a parallel effort with your lawsuit against the collection agency:

Contact the credit bureaus, and tell them that the creditors did not verify the debts under the FDCPA, and send copies of your proof. It is **crucial** to contact each creditor before contacting the credit reporting agencies, or filing a lawsuit. Make sure you state that the collection agency did not respond to your request for debt validation.

If the credit bureaus come back to you and say the collection is "verified", it is time to get tough with them. You have just proved that the debt is not verified, since the collection agency did not respond. They may tell you that the request needs to come from the creditor. This is baloney. They are basically being an accessory to the collection agency's illegal act of reporting you in the first place. Tell them so.

File a small claim suit in court on the credit bureaus, on the basis of defamation of character. This is the easiest thing to prove since the fact that a collection exists on your credit report hurts your character.

Have the papers served. (You can find a paper server on the internet for about \$25).

Here is a great link where you can search for the local office of the credit bureau near you. <http://www.llrx.com/columns/roundup14.htm>

Notify the bureaus that you are suing them. The credit bureaus will call the creditors and find out that there is a question about whether the debt is legitimate. They should delete it immediately. If you want more legal ammo, you might also try looking up similar cases to cite.

If you don't want to spend the \$25 to serve the agencies (it is well worth it, though, in my opinion), make sure you note the case number and court in which you filed the suit when you notify the credit bureaus you are suing them.

For a more detailed strategy, you can purchase our book, Good Credit is Sexy! Call Toll Free at **877 933 6932**.

What constitutes a legal debt validation?

FDCPA Section 809. Validation of debts [15 USC 1692g]

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

Appendix F – Lawsuit Docs, Settlement Letters

Sample Offer to Settle

Once you have filed your lawsuit, you should send a letter to the collection agency which includes a copy of the filed lawsuit paperwork (see the Sample Basis of Lawsuit form), along with an offer to settle, saving the hassle of a court appearance. This letter should be used as your opening offer in the negotiation process and should not be used as a contract. The actual agreement letter appears at the end of this appendix.

March 11, 2002

RE: Account:

XXX
P.O. Box XXX
XXX, XX XXXXX

To Whom It May Concern:

I regret to inform you that your company is now the target of a lawsuit due to an endless circle of grief you have caused me. You have violated the Fair Debt Collection Practices Act as well as the Fair Credit Reporting Act on multiple occasions as described in the following lawsuit. I have an extensive paper trail along with substantial proof of these violations.

I am willing to settle this matter and save us both the aggravation of fighting this out in court. I am willing to withdraw the lawsuit upon:

1. A check in the amount of \$2,500.00
2. Deletion of the accounts in question from my credit file with the four national credit-reporting agencies.
3. Receipt of a letter stating the accounts will be blocked from reappearing on my credit files and will not be sold or transferred to another company.

If you wish to settle this matter, you may contact me at the address listed at the top of this letter. If you decline this offer of settlement, I will seek the full amount available in county court and a court order from the judge ordering the information to be removed. I look forward to your response.

Sincerely,

Jane Doe

Sample Basis of Lawsuit to File

When a company refuses to validate your debt, and furthermore decides to contact you after you have sent them notice of your request for validation, they are in clear violation of the FDCPA act. You are within your rights to sue them for damages in small claims court for these violations. To do so, you need to file a basis of Lawsuit document, which will clearly explain to the court and the judge what you are suing for. The more clearly you state your case, the better chances you have of winning, should the case go to court. You need to include all copies of the documentation included here.

Court Name

YOUR NAME

Plaintiff

v.

Evil Collection Agency X

Defendant

Statement of facts

PLAINTIFF, Your name, is an individual living in the Your State.

DEFENDANT, Evil Collection Agency X, is a (corporation, LLC or whatever) formed under the laws of the STATE the business is incorporated in.

COUNTS

I

Defendant sent a collection notice to Plaintiff on or about January 1, 2001. (Exhibit A)

II

As is Plaintiff's lawful right in accordance with the Fair Debt Collection Practices Act (FDCPA), Plaintiff sent via United States Postal Service Certified Return Receipt, a letter requesting formal debt validation. This letter was sent on January 10, 2002 and signed for by Defendant's office on January 18th, 2002, well within the 30-day period expressly provided by the FDCPA. (Exhibit B validation letter sent to Defendant)(Exhibit C proof of delivery to defendant)

III

Defendant failed to respond with any type of requested validation.

IV

On February 18th, 2002, in a good faith effort to allow Defendant ample opportunity to validate the alleged debts, sent a second letter via Certified mail with return receipt requested, which was signed for by the defendant on February 23rd, 2002. (Exhibit D Letter sent to Defendant) (Exhibit E proof of delivery to defendant)

V

Defendant again failed to respond.

VI

On February 18th, 2002, Plaintiff received a collection notice, this notice informing Plaintiff that this item will be placed on Plaintiff's credit reports, again violating the Plaintiff's rights under the FDCPA.

VII

On February 19th, 2001, Plaintiff contacted the Defendant via telephone, to inform the Defendant of the possible legal ramifications. Defendant then demanded payment of the debt from the Plaintiff, another violation of the FDCPA Section 809 (b), continuance of debt collection before validation of debt.

VIII

On or around February 20th, 2002, this account was reported to Experian in violation of the FDCPA, the FCRA, and an FTC staff opinion letter which clearly state that a collection agency may not report an account to the credit reporting agencies during the pendency of its verification of the account to the debtor, if the debtor has so requested.

IX

On or around March 5th, 2002., this account was reported to Trans Union in violation of the FDCPA, the FCRA, and an FTC staff opinion letter which clearly states that a collection agency may not report an account to the credit reporting agencies during the pendency of its verification of the account to the debtor, if the debtor has so requested.

X

On or around March 5th, 2002, this account was reported to Equifax in violation of the FDCPA, the FCRA, and an FTC staff opinion letter which clearly states that a collection agency may not report an account to the credit reporting agencies during the pendency of its verification of the account to the debtor, if the debtor has so requested.

XI

On March 9th, 2002, Plaintiff received a printout of the original creditors terms of service (TOS) as well as a printout of what appeared to be the last statement from the original creditor. The plaintiff specifically asked for the original contract bearing the plaintiff's signature, as well as the Defendant's right to collect on this debt.

XII

Because of the Defendant's blatant disregard for the Plaintiff's rights as allowed by the FDCPA and FCRA, the Plaintiff has been denied \$8,000 in credit with Plaintiff's current creditor. (Exhibit E and F). The Defendant has also hampered the Plaintiff's ability to obtain a mortgage.

XII

These actions on the part of Defendant demonstrate a willful disregard for federal law and constitute a blatant attempt to injure or ruin the credit rating of Plaintiff since Defendant has demonstrated an inability to validate the alleged debt and subsequently attempted to coerce payment. Plaintiff requests judgment in the amount of \$1000.00 plus accrued court costs plus permanent removal of all Defendant's collection account trade lines from Plaintiff's files with the four national credit reporting agencies (Equifax, Experian, Trans Union and Innovis).

Wherefore PLAINTIFF prays for the following relief:

State the relief you are seeking be sure to include actual, statutory and punitive damages.

PLAINTIFF further prays for the following relief:

- For award of court costs and incurred herein.
- For prejudgment and post judgment interest.
- For such other and further relief deemed just by the court

Sample Basis of Lawsuit 2

The corresponding answer to request by this collection agency's attorneys for discovery follows this sample letter.

In the court of <Your Court's Name> ,

Case #XXXXXX

XXX

and

XXX

Vs

ABC Financial Management Services Inc
Defendant

STATEMENT OF FACTS

COMES NOW XXX, who does hereby file this Complaint for damages of \$5,000 based upon Defendant's violations of the Fair Credit Reporting Act and the Fair Debt Collection Practices Act and states as follows:

- 1) Plaintiff, XXX is a resident of <enter your county, state>.
- 2) Defendant, ABC Financial Management Services Inc, is a bank and/or a collection agency doing business in the state of Maryland.
- 3) On May 2, 2003, Plaintiff received a bill in the mail from Defendant. Plaintiffs had no knowledge of any business relationship with the defendant.
- 4) On May 7, 2003, Plaintiff mailed a dispute letter to the defendant. The dispute letter was mailed via certified mail to the correspondence address listed on the bill. The dispute was a letter disputing the validity of the account under the Fair Credit Billing Act. Plaintiff requested that defendant close the invalid account and delete all references from the negative item on the plaintiff's credit reports if the defendants were reporting anything.
- 5) On May 13, 2003, plaintiff received a phone call from defendant attempting to collect on the debt. Plaintiff notified defendant that validation had been requested and all communication should be in writing. The call from the defendant referred to the letter plaintiff mailed May 7, 2003, but failed to address the dispute of the validity of the account.
- 6) On May 27, 2003, plaintiff received alert from Equifax's Credit Watch service and learned that defendant had entered the trade line on the plaintiff's credit profile.
- 7) On June 6, 2003, Plaintiff initiated an investigation via Equifax regarding the validity of the debt.

7) On June 11, 2003, plaintiff received alert from Equifax's Credit Watch service and learned that defendant had pulled a hard inquiry.

8) On June 17, 2003, plaintiff received investigation results from Equifax showing that the defendant verified the debt.

9) On July 14, 2003, plaintiff mailed a 2nd dispute letter to the defendant requesting validation of the debt.

Sample request for discovery

Sometimes the party you are suing decides to embark on what is known as discovery. Here is an example of a request for discovery, also known as interrogatories. You will not be using this letter, this is only so you know what a request for discovery looks like.

Following this example is a sample of the type of paperwork you should write in response.

1. Identify yourself and state all names by which you have been known, your date of birth, your marital status, date and place of your marriage, occupation, identity of your present employer and your social security number.
2. If you intend to rely upon any documents or other tangible things to support a position that you have taken or intend to take in the action, including a claim for damages, provide a brief description, by category and location, of all such documents and other tangible things, and identify all persons having possession, custody, or control of them (Stand General Interrogatory No. 3).
3. Identify each person, other than a person intended to be called as an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action, including any claim for damages, and state all the subject matter of the information possessed by that person. (Stand General Interrogatory No. 1).
4. Identify all persons who are expected to testify on your behalf as expert witnesses at trial and state the subject matter about which each such person is expected to testify, the substance of the facts and opinions to which each person is expected to testify and a summary of the grounds for each such opinion.
5. State the address of each place where you have ever resided in the last 6 years, the dates thereof, the identity of your landlord and the reason for leaving such residence.
6. State with particularity all facts upon which you rely to support your allegations that the Defendant violated the F.D.C.P.A.
7. State with particularity all facts upon which you rely to support your allegations that the Defendant violated the F.C.R.A.
8. State with particularity, including citations, any and all Maryland laws you allege the Defendant violated.
9. State with particularity all facts upon which you rely to support your allegations that the Defendant violated Maryland State laws.
10. State with particularity all facts upon which you rely to support your allegations that the Defendant defamed you.
11. State with particularity all enabled identity fraud/theft.
12. Attach your Answers to these Interrogatories the following documents:
 - a. any written instrument upon which your claim is founded.

b. any statements concerning the action or its subject matter previously made by the Defendant whether a written statement, signed or otherwise adopted or approved by that party, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement made by the Defendant and contemporaneously recorded; and

c. any written report, whether acquired or developed in anticipation of litigation or for trial, made by an expert whom you expect to call as an expert witness at trial.

Sample Response to Discovery Request

(ANSWERS TO INTERROGATORIES)

DISTRICT COURT IN AND FOR <Your County and State Name>

Case #XXXX-XXXXXXX-03

My Name

PLAINTIFFS,

vs.

ABC Financial Management Services Inc

DEFENDANT.

(My Name)'s ANSWERS TO FIRST SET OF INTERROGATORIES

(My Name), pursuant to <insert proper state statute here> of the <Your State> Rules of Civil Procedure, hereby responds to each numbered paragraph of the Interrogatories propounded by (My Name) follows:

1. My name is XXXXXX. I am also known by my married name of XXXXX. I object to the remainder of the interrogatory as being irrelevant and invasive of my privacy.

2.

- Section 809 (b) of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692g(b).
- Section 813(a) of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692k(a).
- Section 623 of the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2.
- FDCPA Federal Trade Commission Staff Opinion Letter dated December 23, 1997, (LeFevre-Cass).
- FDCPA Federal Trade Commission Staff Opinion Letter dated March 10, 1993, (Wollman).

3. (My Name) has not determined whom her witness or witnesses will be, if any, at trial. (My Name) reserves the right to update this answer to this interrogatory and its subparts at a later time when that decision is made.

4. (My Name) has not determined whom her expert witnesses or witnesses will be, if any, at trial. (My Name) reserves the right to update this answer to this interrogatory and its subparts at a later time when that decision is made.

5. (My Name) currently resides at XXXX Any Street, City, State, Zip. I object to the remainder of the interrogatory as being irrelevant and invasive of my privacy.

6. The FDCPA establishes federal jurisdiction for (My Name)'s cause of action pursuant to 15 U.S.C. §§ 1692 et seq. (My name)'s first cause of action is pursuant to Section 809 (b) of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692g(b). Defendant failed to

provide requested verification and did not cease collection of the alleged debt. (My Name)'s second cause of action is pursuant to Section 813(a) of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692k(a) that states that any debt collector who fails to comply with any provision of 15 U.S.C. §§1692k with respect to any person is liable to such person.

7. The FCRA establishes federal jurisdiction for (My Name)'s cause of action pursuant to 15 U.S.C. § 1681 et seq. (My Name)'s cause of action is pursuant to Section 623 of the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2. Defendant failed to provide notice of dispute to credit reporting agency.

8. The State of Maryland generally adopts the Federal Fair Debt Collection Practices Act under 15 USC §§ 1692-1692 (o).

9. The FDCPA establishes federal jurisdiction for (My Name)'s cause of action pursuant to 15 U.S.C. §§ 1692 et seq. (My Name)'s first cause of action is pursuant to Section 809 (b) of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692g(b). Defendant failed to provide requested verification and did not cease collection of the alleged debt. (My Name)'s second cause of action is pursuant to Section 813(a) of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k(a) that states that any debt collector who fails to comply with any provision of 15 U.S.C. §§1692k with respect to any person is liable to such person.

10. (My Name) contends that Defendant is defaming her character by knowingly and maliciously reporting inaccurate and invalidated information.

11. (My Name) contends that by reporting inaccurate and non-validated information, Defendant is enabling identity fraud.

12. Relevant material attached. (My Name) is presently unaware of any additional such responsive documents, however discovery is just beginning and I reserve the right to introduce any subsequently-discovered documents at trial.

Sample Out of Court Settlement Agreement

KNOW ALL MEN BY THESE PRESENTS that <your name here>, for and in consideration of the sum of ONE THOUSAND FIVE HUNDRED DOLLARS(\$1,500.00) and other good and valuable consideration, by Equifax, INC (the "Released Party"), the receipt of which is hereby acknowledged and other good valuable consideration as set forth herein, and with the intention to be legally bound, do for himself, his heirs and assigns, hereby remise, release, acquit and forever discharge the Released Party, its successors and assigns, and its officers, directors, employees, agents, attorneys, and insurers of and from any and all manner of actions and causes of action, suits, accounts, claims, and demands which they ever had, now have, or hereafter can, shall or may have against the Released Party, resulting from, on account, or in any way arising or growing out of, the erroneous credit reporting and FCRA violations spelled out in the original basis of lawsuit ("Exhibit B") on which this lawsuit was based, but without in any way limiting the foregoing general terms, all claims or causes of action or claims for counsel fees either asserted, or which could have been asserted, in that certain action pending in the STATE OF <Your State>, COUNTY OF <Your County> <County Court Name>, captioned <case name listed here> No: (case number)(the "Lawsuit").

<Your name here> shall execute any document reasonably necessary to effectuate this settlement and to dismiss the Lawsuit with prejudice.

<Your name here> acknowledges that the Released Party denies any liability to <Your name here> and that the settlement is made to compromise disputed claims solely to avoid expense and terminate all controversy between parties.

<Your name here> acknowledges that the information contained in his attached (date here) file disclosure, attached hereto as Exhibit "A" is accurate and correct.

The Released Party agrees to ensure the disputed account ("Exhibit B") does not reappear on Plaintiff's credit report in the present, or any time in the future. Should the Released Party breach these terms of the contract at any point in the present or the future, the Released Party agrees to award damages in the amount of \$10,000 to Plaintiff's, and further agrees to make no effort to dispute the enforceability of the Provision. The Released Party and Plaintiff's agree that this Provision is limited to the account outlined in Exhibit B, and is not transferable towards any remedies or actions Plaintiff's has ever seeked, is seeking, or ever will seek against the Released Party not directly related to Exhibit B.

Except to enforce the terms hereof none of the parties shall disclose any of the terms contained herein except to his counsel or upon order of the court after written notice to the Released Party and an opportunity to be heard.