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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **715**

02/20/2013 Authored by Mullery

The bill was read for the first time and referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to civil actions; requiring notice and other actions before a civil action or
1.3 arbitration proceeding may be commenced to collect a purchased debt; regulating
1.4 default judgments; proposing coding for new law in Minnesota Statutes, chapter
1.5 544.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[544.43] ACTIONS TO COLLECT PURCHASED DEBT.**

1.8 Subdivision 1. **Commencement of action or arbitration proceeding to collect**
1.9 **purchased debt.** (a) No person may commence an action or an arbitration proceeding to
1.10 collect a purchased debt, or on behalf of a person owning a purchased debt, unless the
1.11 person provides an "Intent to Commence a Lawsuit" notice to the debtor at least 30 days
1.12 in advance of commencement, containing:

1.13 (1) a heading, in bold type, in at least 18-point font, reading "Intent to File Lawsuit";
1.14 (2) notice that the person intends to file a lawsuit to collect the purchased debt;
1.15 (3) the name, address, and telephone number of the person;
1.16 (4) proof of the ownership of the specific debt instrument or account at issue;
1.17 (5) the name of the original creditor;
1.18 (6) the debtor's original account number;
1.19 (7) a copy of the contract or other document evidencing the debt;
1.20 (8) an itemized accounting of all amounts claimed to be owed and a record of all
1.21 payments and how the balance owed has been computed; and
1.22 (9) in bold type, prominently displayed in a font size larger than the other text,
1.23 the following verbatim statement:

(i) "If you believe you do not owe this debt or that any of the information contained in this notice is inaccurate, you have the right to dispute this debt. You must send your dispute IN WRITING to (insert address) and provide the reasons for the dispute; and

(ii) you cannot be sued to collect a debt if too much time has passed after you first incurred the debt or after the date you made your last payment. If you are sued, you should talk to a lawyer to make sure that the time within which you can be sued has not run out."

(b) No person may commence an action or an arbitration proceeding to collect a purchased debt, or on behalf of a person owning a purchased debt:

(1) within the 30-day period provided in paragraph (a);

(2) if the person receives written notice from the debtor that the debt is disputed, until the person investigates the reasons stated by the debtor for disputing the debt and responds in writing to each of the reasons stated; or

(3) if the applicable statute of limitations period for commencing the action or arbitration proceeding has expired.

(c) No person may commence an action or an arbitration proceeding to collect a purchased debt, or on behalf of a person owning a purchased debt, unless the person attaches to the summons and complaint:

(1) a copy of the assignment or other writing establishing that the person is the owner of the debt or the person is collecting on behalf of the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased;

(2) a copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant, or, if no contract exists, an affidavit from the seller, executed under oath, substantiating the debt; and

(3) an affidavit stating the date and amount of the last payment made by the debtor and the name and address of the person or persons to whom the payment was made.

Subd. 2. **Effect of certain activities on statute of limitations.** The statute of limitations is not revived or tolled by the collection of a payment on an account, a discharge in a bankruptcy proceeding, or an oral or written reaffirmation of the debt.

Subd. 3. **Default judgment.** A default judgment may not be entered regarding purchased debt unless the person has filed with the court:

(1) the documents required to be submitted with the summons and complaint under subdivision 1, paragraph (c);

3.1 (2) properly authenticated business records sufficient to establish the defendant in
3.2 fact is the debtor and the amount and nature of the debt;

3.3 (3) the original account number;

3.4 (4) the original creditor;

3.5 (5) the amount of the original debt;

3.6 (6) an itemization of charges and fees claimed to be owed;

3.7 (7) the original charge-off balance, or, if the balance has not been charged off, an
3.8 explanation of how the balance was calculated;

3.9 (8) an itemization of postcharge-off additions, where applicable;

3.10 (9) the date of last payment;

3.11 (10) a record of all payments and how the balance was computed; and

3.12 (11) the amount of interest claimed and the basis for the interest charged.

3.13 Subd. 4. **Remedies.** (a) A person who violates this section is liable to the debtor for:

3.14 (1) actual, statutory, incidental, and consequential damages; and

3.15 (2) costs, disbursements, and reasonable attorney fees.

3.16 (b) The court shall award the following statutory damages:

3.17 (1) \$2,500 for a violation of subdivision 1, paragraph (a) or (b); or

3.18 (2) \$5,000 for a violation of subdivision 1, paragraph (c).

3.19 (c) A debtor may sue for a declaratory judgment or for temporary or permanent
3.20 injunctive or other equitable relief. A court must grant injunctive relief on a showing
3.21 that the defendant has violated any provision under subdivision 1, or in the case of a
3.22 temporary injunction, on a showing that the debtor is likely to prevail on allegations that
3.23 the defendant has violated any provision under subdivision 1.

3.24 (d) A person who violates any provision of subdivision 1 is liable to the named
3.25 plaintiffs in a class action for the amount that each named plaintiff could recover under
3.26 this subdivision and to the other class members for such amount as the court may allow.

3.27 (e) A person filing a false affidavit is liable for a civil fine of \$5,000.

3.28 (f) The remedies in this subdivision are cumulative.