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PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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PENNSYLVANIA STATUTES  
TITLE 73. TRADE AND COMMERCE  
CHAPTER 42. FAIR CREDIT EXTENSION UNIFORMITY ACT

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*73 P.S. § 2270.4 (2007)*

§ 2270.4. Unfair or deceptive acts or practices

(a) BY DEBT COLLECTORS.-- It shall constitute an unfair or deceptive debt collection act or practice under this act if a debt collector violates any of the provisions of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.).

(b) BY CREDITORS.-- With respect to debt collection activities of creditors in this Commonwealth, it shall constitute an unfair or deceptive debt collection act or practice under this act if a creditor violates any of the following provisions:

(1) Any creditor communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

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

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

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

(iv) not communicate by postcard;

(v) 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 communication relates to the collection of a debt; and

(vi) after the creditor 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 communication from the creditor.

(2) Without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction, a creditor may not communicate with a consumer in connection with the collection of any debt:

(i) 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 creditor shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location;

(ii) if the creditor 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 creditor or unless the attorney consents to direct communication with the consumer; or

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

(3) Except as provided in paragraph (1), without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a creditor may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, a debt collector, the attorney of the debt collector or the attorney of the creditor.

(4) A creditor 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 paragraph:

(i) The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.

(ii) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(iii) 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 1681a(f) or 1681b(a)(3) of the

Fair Credit Reporting Act (Public Law 91-508, *15 U.S.C. § 1681 et seq.*).

(iv) The advertisement for sale of any debt to coerce payment of the debt.

(v) 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.

(vi) Except as provided in paragraph (1), the placement of telephone calls without meaningful disclosure of the caller's identity.

(5) A creditor 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 paragraph:

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

(ii) The false representation of the character, amount or legal status of any debt.

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

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

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

(vi) The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to lose any claim or defense to payment of the debt or become subject to any practice prohibited by this act.

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

(viii) 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 debt is disputed.

(ix) 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.

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

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

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

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

(6) A creditor 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 paragraph:

(i) 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.

(ii) The acceptance by a creditor from any person of a check or other payment instrument postdated by more than five days unless such person will be notified in writing of the creditor's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(iii) The solicitation by a creditor of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(iv) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(v) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

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

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(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 .

(vii) Communicating with a consumer regarding a debt by postcard.

(viii) Using any language or symbol, other than the creditor's address, on any envelope when communicating with a consumer by use of the mails or by telegram, provided that a creditor may use its business name.

(c) DEFINITION.-- For the purpose of subsection (b)(2) and (3), the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor or administrator.

**HISTORY:** Act 2000-7 (S.B. 1038), § 4, approved Mar. 28, 2000, eff. in 90 days.

LexisNexis (R) Notes:

#### CASE NOTES

1. Supplemental jurisdiction existed under *28 U.S.C.S. § 1367(a)* over a Chapter 13 debtor's claims that a mortgage servicing company violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law, in connection with the assessment of attorney fees and costs, as the debtor had stated a federal claim under *15 U.S.C.S. § 1692e* of the Fair Debt Collection Practices Act with respect to the same allegations; the claim was not preempted by the Bankruptcy Code because there was no risk of conflict between enforcement of state law and the bankruptcy laws. *Dougherty v. Wells Fargo Home Loans, Inc.*, 425 F. Supp. 2d 599, 2006 U.S. Dist. LEXIS 13606 (E.D. Pa. 2006).

2. Under *73 P.S. § 2270.4(a)*, to the extent that a judgment debtor had alleged a Fair Debt Collection Practices Act, *15 U.S.C.S. § 1692* et seq., claim against attorneys and an individual hired to serve process on the debtor, the debtor also stated a claim under the *Pennsylvania Fair Credit Extension Uniformity Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law*. *Flamm v. Sarner & Assocs., P.C.*, 2006 U.S. Dist. LEXIS 308 (E.D. Pa. Jan. 3 2006).

3. Under *73 P.S. § 2270.4(a)*, to the extent that a judgment debtor had alleged a Fair Debt Collection Practices Act, *15 U.S.C.S. § 1692* et seq., claim against attorneys and an individual hired to serve process on the debtor, the debtor also stated a claim under the *Pennsylvania Fair Credit Extension Uniformity Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law*. *Flamm v. Sarner & Assocs., P.C.*, 2006 U.S. Dist. LEXIS 308 (E.D. Pa. Jan. 3

2006).

4. Where limited liability company's debt was not incurred primarily for personal, family or household purposes, it was not a "debt" as defined by 15 U.S.C.S. § 1692a(5), and the company was not entitled to maintain a counterclaim for violation of the Fair Debt Collection Practices Act, 15 U.S.C.S. § 1962 et seq.; because the company failed to state a claim under the Act, it also failed to state a claim under Pennsylvania's Fair Credit Extension Uniformity Act, 73 Pa. Stat. § 2270.4(a). *Lyon Fin. Servs. v. Woodlake Imaging, LLC*, 2005 U.S. Dist. LEXIS 2011 (E.D. Pa. Feb. 9 2005).

5. Where a consumer showed that 148 individuals suffered an ascertainable loss under the Fair Credit Extension Uniformity Act (FCEUA), Pa. Stat. Ann. tit. 73, § 2270.1 et seq., and the Unfair Trade Practices and Consumer Protection Law (UTPCPL), Pa. Stat. Ann. tit. 73, § 201-1 et seq., by paying attorney's fees in order to settle water and sewer obligations to a city, the proposed FCEUA and UTPCPL class met the numerosity requirement of Fed. R. Civ. P. 23(a) for class certification. *Piper v. Portnoff Law Assocs.*, 216 F.R.D. 325, 2003 U.S. Dist. LEXIS 11699 (E.D. Pa. 2003).

6. Borrower's claim that a mortgage refinancing lender violated 73 P.S. § 2270.4 of the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1 et seq., survived summary judgment. The borrower alleged that the lender provided inaccurate or incomplete disclosures, which would have violated 73 P.S. § 2270.4(b)(5)(ii), and the lender had not addressed the claims that it gave a false impression of the character, amount, or legal status of the debt; also, there was a fact issue as to whether the lender correctly characterized the prepaid finance charges. *Jefferies v. Ameriquest Mortg. Co.*, 2008 U.S. Dist. LEXIS 9741 (Feb. 11, 2008).

7. Where a consumer showed that 148 individuals suffered an ascertainable loss under the Fair Credit Extension Uniformity Act (FCEUA), Pa. Stat. Ann. tit. 73, § 2270.1 et seq., and the Unfair Trade Practices and Consumer Protection Law (UTPCPL), Pa. Stat. Ann. tit. 73, § 201-1 et seq., by paying attorney's fees in order to settle water and sewer obligations to a city, the proposed FCEUA and UTPCPL class met the numerosity requirement of Fed. R. Civ. P. 23(a) for class certification. *Piper v. Portnoff Law Assocs.*, 216 F.R.D. 325, 2003 U.S. Dist. LEXIS 11699 (E.D. Pa. 2003).

8. Supplemental jurisdiction existed under 28 U.S.C.S. § 1367(a) over a Chapter 13 debtor's claims that a mortgage servicing company violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law, in connection with the assessment of attorney fees and costs, as the debtor had stated a federal claim under 15 U.S.C.S. § 1692e of the Fair Debt Collection Practices Act with respect to the same allegations; the claim was not preempted by the Bankruptcy Code because there was no risk of conflict between enforcement of state law and the bankruptcy laws. *Dougherty v. Wells Fargo Home Loans, Inc.*, 425 F. Supp. 2d 599, 2006 U.S. Dist. LEXIS 13606 (E.D. Pa. 2006).

9. Where a consumer showed that 148 individuals suffered an ascertainable loss under the Fair Credit Extension Uniformity Act (FCEUA), Pa. Stat. Ann. tit. 73, § 2270.1 et seq., and the Unfair Trade Practices and Consumer Protection Law (UTPCPL), Pa. Stat. Ann. tit. 73, § 201-1 et seq., by paying attorney's fees in order to settle water and sewer obligations to a city, the proposed FCEUA and UTPCPL class met the numerosity requirement of Fed. R. Civ. P. 23(a) for class certification. *Piper v. Portnoff Law Assocs.*, 216 F.R.D. 325, 2003 U.S. Dist. LEXIS 11699 (E.D. Pa. 2003).

10. Supplemental jurisdiction existed under 28 U.S.C.S. § 1367(a) over a Chapter 13 debtor's claims that a mortgage servicing company violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law, in connection with the assessment of attorney fees and costs, as the debtor had stated a federal claim under 15 U.S.C.S. § 1692e of the Fair Debt Collection Practices Act with respect to the same allegations; the claim was not preempted by the Bankruptcy Code because there was no risk of conflict between enforcement of state law and the bankruptcy laws. *Dougherty v. Wells Fargo Home Loans, Inc.*, 425 F. Supp. 2d 599, 2006 U.S. Dist. LEXIS 13606 (E.D. Pa. 2006).

11. Where limited liability company's debt was not incurred primarily for personal, family or household purposes, it was not a "debt" as defined by 15 U.S.C.S. § 1692a(5), and the company was not entitled to maintain a counterclaim for violation of the Fair Debt Collection Practices Act, 15 U.S.C.S. § 1962 et seq.; because the company failed to state a claim under the Act, it also failed to state a claim under Pennsylvania's Fair Credit Extension Uniformity Act, 73 Pa. Stat. § 2270.4(a). *Lyon Fin. Servs. v. Woodlake Imaging, LLC*, 2005 U.S. Dist. LEXIS 2011 (E.D. Pa. Feb. 9 2005).

12. Where limited liability company's debt was not incurred primarily for personal, family or household purposes, it was not a "debt" as defined by 15 U.S.C.S. § 1692a(5), and the company was not entitled to maintain a counterclaim for violation of the Fair Debt Collection Practices Act, 15 U.S.C.S. § 1962 et seq.; because the company failed to state a claim under the Act, it also failed to state a claim under Pennsylvania's Fair Credit Extension Uniformity Act, 73 Pa. Stat. § 2270.4(a). *Lyon Fin. Servs. v. Woodlake Imaging, LLC*, 2005 U.S. Dist. LEXIS 2011 (E.D. Pa. Feb. 9 2005).

#### TREATISES AND ANALYTICAL MATERIALS

1. *1 P.L.E. TRADE AND COMMERCE § 14*, Pennsylvania Law Encyclopedia, TRADE AND COMMERCE, § 14 Credit Services Act and Other Acts Relating to the Credit Industry, Copyright 2006, Matthew Bender & Company, Inc., a member of the LexisNexis Group.