

## Retail Detail



### Massachusetts First State to Require Creditors to Validate Consumer Debts

On March 2, 2012, the Massachusetts Attorney General published new consumer debt collection practice regulations which will be particularly onerous to retailers who extend credit directly to their consumers. These regulations purport to govern all businesses and persons nationwide who engage in collecting a consumer debt (defined as any debt resulting from a purchase, lease or loan of goods, services or real or personal property or for a loan of money obtained for personal, family or household purposes, whether or not reduced to a judgment) from a person located within Massachusetts, and their violation constitutes an unfair trade practice.

They are extraordinary in that, among other things, they impose validation and verification requirements on creditors collecting their own debts, rather than just on third party debt collectors or purchasers of defaulted debt as under the federal Fair Debt Collection Practices Act.

Specifically, 940 CMR 7.08 requires that during or within 5 days of its initial communication with a Massachusetts debtor in connection with the collection of a consumer debt that has become more than 30 days past due (unless a different period is agreed to by the debtor), the creditor (defined to mean any person or entity and their agents, servants, employees or attorneys, or a buyer of a delinquent debt who hires a third party or an attorney to collect it) must provide the debtor with (a) the amount of the debt; (b) the name of the creditor to whom the debt is owed; (c) a statement that unless the debtor, within 30 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 creditor; and (d) a statement that if the debtor notifies the creditor in writing within 30 days after receipt of this notice that the debt, or any portion thereof is disputed, the creditor will obtain verification of the debt and provide the debtor, or an attorney for the debtor, additional materials.

If the debtor or the debtor's attorney notifies the creditor in writing within the 30-day period that the debt is disputed, the creditor must cease collection of the debt until the creditor verifies the debt and provides the debtor or any attorney for the debtor with copies of: (a) all documents, including electronic records or images, which bear the signature of the debtor and which concern the debt being collected; (b) a ledger, account card, account statement copy, or similar record, whether paper or electronic, which reflects the date and amount of payments, credits, balances, and charges concerning the debt, including but not limited to interest, fees, charges or expenses incidental to the principal obligation which the creditor is expressly authorized to collect by the agreement creating the debt or permitted to collect by law; (c) the name and address of the original creditor, if different from the collecting creditor; and (d) a copy of any judgment against the debtor. If the creditor does not possess, have custody of, or control these materials, the creditor must cease collection of the debt until the creditor has made reasonable efforts to obtain them and provide them to the debtor.

The validation requirement poses substantial compliance challenges. Although "conduct which is not the collection of debts" is excluded from coverage (940 CMR 7.02), the regulations do not define what conduct constitutes or does not

## Seyfarth Shaw — Retail Detail

constitute the collection of debts. For example, is the validation requirement triggered when a creditor sends a monthly billing statement which requests payment to a Massachusetts debtor on a past due account? Does a creditor commit an unfair trade practice when it fails to provide a validation notice after a debtor's initiation of the initial communication in connection with the collection of a past due debt with any one of the creditor's employees, agents or attorneys?

Also, among other requirements and prohibitions, the regulations limit the number or telephone calls or text messages that a creditor may send to a Massachusetts consumer to two communications in each 7 day period for each debt, and to the hours of 8:00 a.m. and 9:00 p.m. Eastern. 940 CMR 7.04(f) & (g). They deem a creditor's stating that it will take any action, including legal action, that it does not actually take or attempt to take to be an unfair trade practice, unless an additional payment or new agreement to pay has occurred within the stated time period. 940 CMR 7.04(m). They provide that it is an unfair trade practice to fail to disclose the telephone number and office hours of the creditor or his agents on all written communications with the debtor. 940 CMR 7.07(22). They impose a number of limitations regarding contact with other persons living in the debtor's home and third parties. 940 CMR 7.05, 7.06. And they prohibit a creditor from collecting or attempting to collect from any person payment of a debt that the creditor knows or has reason to know is time-barred, or from seeking or obtaining from any person an admission, affirmation, acknowledgement of a new promise to pay, or any waiver of legal rights or defenses with respect to such a debt, unless the creditor discloses in a prescribed format that the debt may be unenforceable through a lawsuit because the time for filing suit may have expired, and that the debtor is not required by law to do what the creditor is requesting. 940 CMR 7.07(24).

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