

In Introducing EDCAA, the Senate's Funnyman Al Franken Sees No Humor in Debt Collection Abuses

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Sen. Al Franken (D-MN), a Saturday Night Live sketch comedian (think "Daily Affirmation with Stuart Smalley"), writer, actor, and author, recently introduced legislation in the U.S. Senate to tighten and modernize the nation's Fair Debt Collection Practices Act (FDCPA). The FDCPA attempts to regulate what and how debt collectors can attempt to collect consumers debts. Passed in 1978, the FDCPA has undergone light amendments through the decades.

Consumer Rights Attorneys and debt collectors, rarely able to agree on anything, do agree that the FDCPA needs to be updated and brought into the 21st Century. How the FDCPA should be amended remains a heated disagreement, though.

Sen. Franken's "End Debt Collector Abuse Act of 2012" (**EDCAA**), bill no. S.3350, was introduced on June 27, 2012, and referred to the Committee on Banking, Housing, and Urban Affairs for committee consideration. If passed into law, EDCAA will amend the FDCPA in several key respects.

EDCAA Will Make Penalties More Expensive than "Just a Cost of Doing Business"

In 1978 the FDCPA's maximum statutory damages "penalty" of \$1000.00 for violations was a significant amount of money to owe if you were the typical debt collector of the day: a mom and pop operation or a small local agency. While the penalty remained stagnant over the next 30+ years, the debt collection industry coalesced into billion-dollar behemoths some of which are publicly traded on American stock exchanges.

EDCAA seeks to revalue the \$1000.00 penalty into today's dollars based on the Consumer Price Index. This provision would recalculate the \$1000.00 into 2012 dollars. Thereafter, EDCAA will permit the Consumer Price Index to control further movement in the FDCPA penalty.

Consumer Rights Attorneys see Sen. Franken's EDCAA as a much-needed remedy to re-incentivize debt collectors to obey the FDCPA. "When you're a billion-dollar debt collection company, a thousand dollars thrown around to the few consumers who seek to collect is miniscule," said Joseph A. Mullaney, III, a Philadelphia-area FDCPA attorney.

Not surprisingly, debt collectors oppose what may amount to a significant increase in the penalty. If EDCAA becomes law, the penalty should be revised to \$3,500.00 (\$3,524.77 rounded to the nearest \$100.00 based on the 1978 CPI as provided in an EDCAA provision). "\$3,500.00 oughta make a debt collector think twice before abusing a consumer," Mullaney remarked with a slight grin.

"I predict that EDCAA if passed in its current state will cut reported debt collection complaints by 1/3 after its first year and fully by half in 5 years."

Medical Debts Under the EDCAA

Medical debt collection is in the news particularly when it was recently revealed that debt collectors were collecting money from patients laying on ER gurneys. EDCAA would "protect patients by prohibiting collectors from contacting consumers in hospital emergency rooms, labor and delivery departments, and intensive care units," Sen. Franken said in support of his bill.

“Hospital patients are often sick, scared, and vulnerable; they are in no condition to deal with aggressive debt collectors.”

EDCAA provides for other medical debt regulations including disclosing charity care availability, financial assistance, discounts based on income eligibility, or public or private insurance coverage that may assist in the payment of all or part of the debt. Consonant with other federal laws, EDCAA will also outlaw the withholding, delaying, threatening, or giving an impression that emergency medical services are conditioned on payment of medical debt.

Other EDCAA Provisions

A common consumer complaint regarding debt collection is the receipt of a dunning letter with a single amount often for an alleged account many years old. With the frequent sale of original creditor accounts to junk debt buyers, some many times over, a consumer should not be faulted when he or she does not recognize a balance from years ago now being collected by a junk debt buyer never before heard.

EDCAA will give consumers a new right to seek itemization, principal amounts, fees, interest, and other charges to determine a valid balance. Just as important, EDCAA will require a debt collector to report what charges or fees were added to the account since the last payment. This too should help consumers reconcile what may be in their own financial records with a balance that allegedly increased over the years.

A FDCPA shortcoming was its failure to require debt collectors to advise consumers how they may go about stopping debt collection communications. Though the FDCPA did provide a consumer with the right to cease all collection communications, many consumers are unaware of the right. EDCAA will provide consumers with the information they need to make intelligent decisions about communicating with debt collectors.

Closing Up Loopholes that Allow Debtors Prison

Debtors Prison or the concept that a debtor should be arrested or imprisoned for failing to pay a debt was not “abolished” all that long ago as some consumers think. The federal government did away with Debtors Prison in 1833, but the practice lingered in some of the states. It is reported that some states still allow debt collectors to seek arrest warrants for debtors when all other collection attempts have failed. Arkansas, Arizona, Indiana, Minnesota, and Washington are believed to still permit Debtors Prison but recent records show confusion on how frequent consumers are placed in Debtors Prison.

In Illinois, however, a payday lender did win arrest warrants against at least four of its customers according to the New York Times. “One [of those arrested] spent five days in an Illinois jail [in] March [2010] after failing to pay a \$275 debt, court filings show,” wrote Jessica Silver-Greenberg, a journalist with the New York Times. Clearly, Debtors Prison has not been abolished in the United States.

Sen. Franken said:

These collection firms are exploiting public resources—lawenforcement agencies and state courts—for their own gain. EDCAA would prohibit collectors from seeking arrest warrants to collect debts, but it would not prohibit courts from issuing warrants if a judge decides it’s merited by the case.

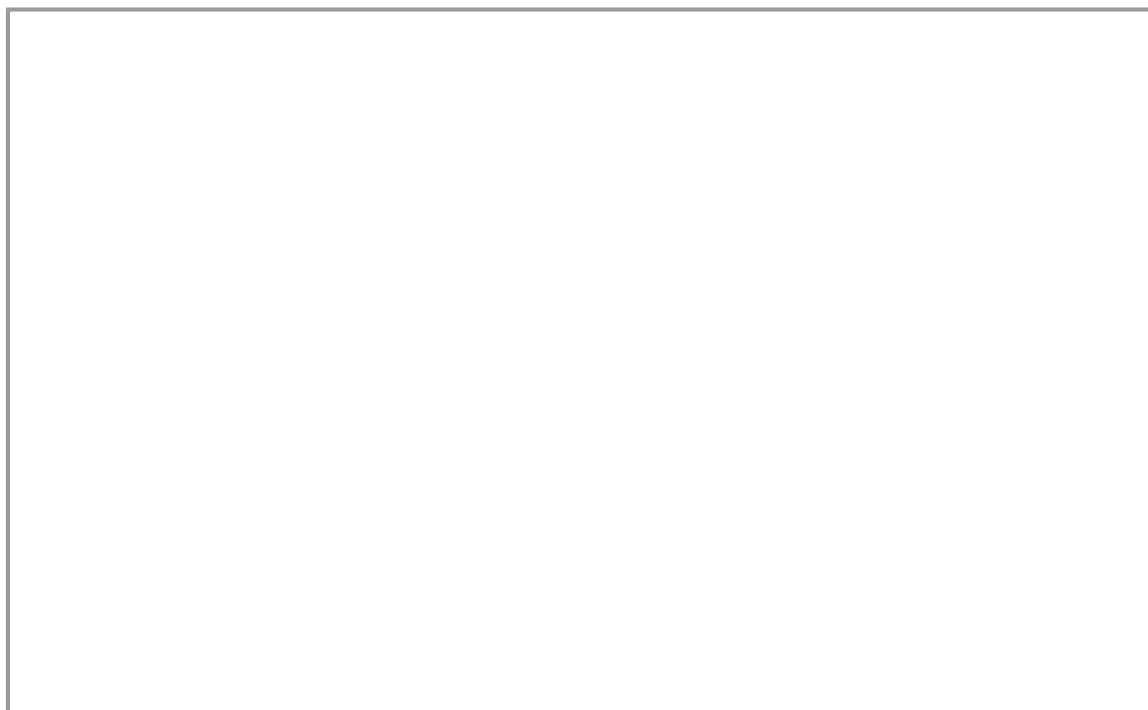
EDCAA will forbid a debt collector from seeking “a warrant for the arrest of a debtor or any other similar request that a debt collector knows or should know would lead to the issuance of an arrest warrant...” However, EDCAA will not prevent “a court to hold a debtor in civil contempt...” on the court’s own initiative.

“Consumers are frequently arrested or subject to arrest in New Jersey,” Mullaney said. “EDCAA cannot come any sooner for New Jersey citizens saddled by judgments in this depressed economy.”

While EDCAA may receive some traction in the Senate given an explosion in debt collection abuses arising from the depressed economy, EDCAA’s chances are much less certain in the House where Republicans are certain to be wary of “new regulations.”

[The EDCAA can be found by clicking on this link.](#)

Watch Sen. Franken’s Floor Statement in Support of EDCAA.



PA & NJ consumers abused by debt collectors or in need of additional information on EDCAA should call us at 610-616-5303 or 856-861-4241 or click this link to contact us.

Tagged as: [debt collection](#), [fair debt](#), [fdcpa](#)