

Student Legal Services

Enrollment Management & Student Affairs

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March 20, 2013

Senator Chip Shields, Chair
Senate General Government, Small Business and Consumer Protection
Committee Services Office
900 Court St. NE, Room 453
Salem, OR 97301

Re: Support for Consumer Credit Fairness Act: SB 525

Dear Chair Shields and Committee Members:

My name is Lynn Clark. I am the Assistant Director of Student Legal Services at Portland State University. We are a free legal service funded by student fees as a service to PSU students who are enrolled for at least 4 undergraduate credits or 3 graduate credits. This bill will provide important protections to PSU students.

Because the age of the average PSU student is older, and because many people are returning to school later in life during this economic downturn, our office sees more consumer debt issues than the average student legal service office. During the 2011-2012 fiscal year, 9% of our cases dealt directly with the sorts of issues addressed by the Consumer Credit Fairness Act. Between 2010 and 2012, we opened 206 files related to debtor creditor issues. Of these, 134 did not pursue the matter further or were coached to self-remedy and 72 were resolved. Of those that were resolved, in 15, the debt buyer could establish no legitimate claim whatsoever, 25 settled before filing in court, 23 settled after filing in court, and we prevailed in court in 9 cases. We were able to reduce the amount claimed to be owed by the students by \$81,807.54. Without access to free legal services, it is likely these students would have paid more than they should have to resolve these disputes.

In the majority of cases we see, students are being sued for old debts that they are not even sure they owe. Because the debt has been purchased by a third party, the student has no idea if the debt buyer even has a right to sue on the debt. Because the debt buyers never provide verification of the debt or an accounting with the complaint, the student has no idea how the debt buyer came to the amount they are attempting to collect.

When a student comes to us, in some cases we coach them to immediately send a letter to the opposing law firm asking them to verify the debt. In other cases, we send the debt verification letter ourselves. More often than not, the opposing law firm does not have the debt verification in their possession, even though they have filed suit. In one case where the student sent their own debt verification request, the law firm responded with a one page letter saying they had reviewed

the documentation and the student owed the debt. An unsophisticated, unrepresented party might believe that this is sufficient proof of the debt, when it is not.

When we do seek formal discovery, some debt buyer law firms do not respond. If they do, the documentation they provide is often insufficient to prove the validity of the debt. When the court issues a notice to the debt buyer that it will dismiss the suit for want of prosecution, the debt buyer often asks the court for additional time to obtain documentation of the underlying debt before dismissing the lawsuit. If the debt buyer is not able to come up with the documentation, they will dismiss the suit, file again, and hope to come up with the documentation at a later time. We know from personal experience that attorneys for debt buyers are filing lawsuits based only on the word of their client that the debt is owed. This bill would prevent that from happening.

In those cases where the debt buyer does produce documentation of the debt, the documentation rarely, if ever, includes the original contract, and often consists solely of a “robo-signed” affidavit of questionable origin claiming that the debt buyer bought the debt. The passage of the Consumer Credit Fairness Act will prevent this from happening.

We have seen several cases where the debt buyer is suing on a time barred debt. Without access to free legal services, a consumer might be lulled into making a payment, thereby starting the statute of limitations running all over again. Debt buyers prey on the ignorance of unrepresented parties to collect debts that the debt buyer cannot prove it has a right to collect on. Reputable law firms might agree to dismiss a time barred claim when this is brought to their attention. The less than reputable ones will not, attempting to extract an agreement not to file an unlawful debt collection suit in exchange for dismissing a suit they should not have filed in the first place.

Sometimes students have had default judgments taken against them. In some cases, it is their own fault, in other cases, it is not. Whatever the case is, I am amazed by the differing amounts of proof required by court clerks and judges to enter a default judgment. Some judges require nothing more than a robo-signed affidavit that the debt is owed. Others require all the evidence that would be required by this law. This inconsistency is unfair to the consumer and would be eliminated by this bill.

The Consumer Credit Fairness Act addresses all these problems.

- If a student receives a 30 day notice from the debt buyer or their attorney and all of the supporting verification required by this law, they can bring it to us and we will know to advise whether this is a legitimate debt and what to do about it.
- If a student is sued and they bring us the complaint and the complaint includes documentation required by the statute to establish the debt, we have all the information we need to be able to answer the complaint or settle the debt.

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- If a consumer fails to respond to a complaint after being served, defaults are granted only after providing the required proof of the underlying debt. If the default was the result of identity theft or mistaken identity and was entered against the wrong person, that person will be able to obtain a copy of the court file that will enable them to unravel a default that was taken against the wrong person. All of these protections are good for the consumer and are good for the courts.

These protections are good for the debt buyers and their attorneys too. There are reputable debt buyers and attorneys who collect debts for debt buyers. They collect legitimate debts from individuals who truly owe the debt and have all the necessary evidence proving their right to do so. For these debt buyers and their attorneys, the playing field will be leveled. They won't be forced to compete against debt buyers and law firms who cut corners and bring lawsuits before they have documentation in their possession to establish the debt.

For these reasons, Portland State University Student Legal Services urge you to pass the Consumer Protection Fairness Act out of committee. Thank you for your consideration.

Sincerely yours,



Lynn M. Clark