

Debt Collectors Lobby to Block Tougher Rules

By Carter Dougherty - Sep 21, 2011

A wave of U.S. state laws that require debt collectors to document exactly who owes what has triggered a state-by-state lobbying battle over rules of evidence that the industry says could slice into profitability.

A 2009 law in [North Carolina](#) requiring collectors to provide original contracts and imposing penalties for erroneous litigation has slowed the industry's work in that state. Other states, including [Massachusetts](#), [Florida](#), California and Oregon, have followed North Carolina's law with similar proposals. Consumer advocates say the laws are necessary to curb abuses.

Though a new federal agency, the Consumer Financial Protection Bureau, will have jurisdiction over debt collectors, the industry is ramping up its lobbying primarily at the state level, hiring former Georgia attorney general Thurbert Baker to spearhead an effort to modify the state bills.

"We don't have lobbyists in 50 states but we do have internal resources that are talking, certainly, to all the large states," Steven Fredrickson, chief executive officer of Portfolio Recovery Associates, Inc., the largest publicly traded debt collector, said in a May 11 conference call.

New state legislation is typically aimed at debt buyers, who acquire and service portfolios of debt from the original creditors, often for pennies on the dollar. Debt buyers have stepped up the number of lawsuits they have filed in recent years to obtain payment.

Pattern of Misconduct

Consumer groups see a pattern of misconduct. Al Ripley, director of consumer affairs for the North Carolina Justice Center, an advocacy group, said state legislators passed the new law in part because "they have friends and family members with experience" with collectors.

Tougher state laws could erode revenue at Portfolio Recovery and other major firms, such as Encore Capital Group Inc., [Asta Funding Inc. \(ASF\)](#), and the largest player by revenue, NCO Group, a unit of [JPMorgan Chase & Co. \(JPM\)](#)'s private equity arm, One Equity Partners.

"We are becoming much more regulated in this industry than in the past," said Phillip Duff, president of [Lighthouse Consulting Inc.](#), a research firm whose focus includes debt buying. "Part of the problem

is the reputation of the industry.”

The accounts-receivable industry had revenues of \$17 billion in 2010, according to [Kaulkin Ginsberg](#), a Rockville, Maryland-based consulting firm. It includes debt buyers, who purchase written-off portfolios of debt from the original creditors, mainly credit-card issuers. Debt collectors, who try to get debtors to pay and often work with buyers, and law firms who sue debtors, are also part of the industry.

Tighter Laws

Consumer groups and some state officials have pushed for tighter laws on the debt-collection industry, citing what they call its record of using bad documentation in litigation.

“It’s like Napster: They said, ‘What copyright law?’ and debt buyers say, ‘What evidence?’” said Robert Hobbs, deputy director of the [National Consumer Law Center](#).

In one recent case in [New Mexico](#), a woman named Lucinda Yazzie won \$1.26 million in a lawsuit against a collector that changed a Social Security number in its own database to match hers on a bill owed by a woman of the same name. According to a court document, the collector acknowledged that its records were changed, saying that its effort to seek payment from the wrong Yazzie was a “bona fide error.”

In another case, a debt collector tried to garnish the wages of the wrong Lou Correa, a man who happened to be a California state senator, according to media [reports](#). Correa’s office did not return calls requesting comment.

Mistakes ‘Rampant’

“When you have no control of the paper, and none on how the data is changed, you have a system where mistakes are rampant,” Rob Treinen, Yazzie’s lawyer, said in an interview.

The lobbying power of the big debt buyers could produce regulations that are too expensive for smaller firms, Paul Grinberg, Encore’s chief financial officer, said.

“Companies of size and scale will be able to work with regulators to create meaningful legislation that, unfortunately, will probably drive out smaller players,” Grinberg said in a June 15 conference call.

DBA International, the debt-buying industry’s trade association, hired Baker, the former Georgia attorney general, to cultivate relationships with key regulators in advance of state legislative sessions in early 2013. That way, Baker said in an interview, the industry will be “at the table to help draft legislation, if it comes to that.”

The wake-up call for the industry was the North Carolina rules, signed into law on Sept. 9, 2009, that imposed the state's first explicit requirements for evidence.

Under North Carolina's new rules, collectors must produce the original signed contract for the account and the full account history. The law also allowed penalties of about \$10,000 against litigants who bring unsubstantiated claims.

'Screeched to a Halt'

"In the first year, you could hear the brakes as the train screeched to a halt," said Pedro Zabala, a Raleigh, North Carolina-based attorney. "Little-by-little, the lawyers are trying to get the train going again."

Portfolio Recovery Associates filed 6,709 lawsuits in 2009, before the law went into effect. In 2010, it filed 819, according to the company. Fredrickson, the firm's chief executive, said that in addition to raising documentation requirements, the law limits flexibility in offering settlements to consumers who can pay a percentage of the debt.

"We have an extremely high standard to achieve before we can make a phone call, and it's a standard unlike any other state," Fredrickson said in an interview.

The industry has complained that the North Carolina law requires information about a debt that the original lender, often a credit card company, does not provide.

More Research

"You can't require that of a debt buyer or debt collector that which a creditor does not collect," Barbara Sinsley, general counsel for DBA International, said in an interview. Sinsley said the industry does additional research, like matching Social Security numbers or common given names, before trying to collect.

The law's effect in North Carolina emboldened consumer groups and their legislative allies to push ahead in other states, and mobilized industry opposition as well. In December 2010, a similar bill in [Oregon](#) faced organized industry opposition at a hearing, and died in committee.

"I was surprised at the degree of lobbying to stop this," said Angela Martin, executive director of Economic Fairness Oregon, a consumer group. "We thought we had a consensus bill."

Three months later, Alice Vickers, a lawyer for the non-profit Florida Legal Services, walked into a hearing of the Florida Senate on a similar bill. In addition to representatives of the debt-buying industry, the Florida Bankers Association and the Florida Retail Association were already in the room.

The bill stalled in committee.

“The industry came out of the woodwork in opposition,” Vickers said in an interview.

Senator Mark Leno, a Democrat, pushed a similar bill through committee in [California](#) before the session ended. Under the legislature’s rules, he can bring it up in January.

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