

RECENT STATUTES REGULATING DEBT COLLECTION, OR NUNC, DE MINIMIS CURAT LEX

I. INTRODUCTION

Shylock. *I'll have my bond: speak not against
my bond.*

*I have sworn an oath that I will have my bond.
Thou call'dst me dog before thou hadst a cause:
But, since I am a dog, beware my fangs:
The duke shall grant me justice.*

*Act 3, Scene 3
The Merchant of Venice*

The lengths to which lenders of credit carry efforts to collect claims have not recently included attempted exaction of a pound of flesh. Yet some of the extrajudicial tactics they and their agents have employed in collecting consumer debts go beyond request, persuasion, and blunt demand. Some of the means include late hour and continual phone calls to the debtor, to his friends, neighbors, and relatives,¹ the sending of multitudinous or threatening letters,² contact with the debtor's employer,³ publication of "deadbeat lists,"⁴ and express or implied threats to pursue action that cannot legally be pursued or which the collector does not truly intend to pursue.⁵ Other documented tactics include visits to the debtor by a collector costumed as a public officer, sending of documents that appear to be judicial process, use of obscene or profane language, impersonating an attorney, and attempting to collect amounts that are unquestionably not due from the alleged debtor.⁶ While there are reputable collection agencies that eschew use of these methods,⁷ approximately one-fourth of surveyed consumer debtors who had defaulted in four major cities said they had been subjected to one or more forms of such harassment.⁸ The

¹ E.g., *LaSalle Extension Univ. v. Fogarty*, 126 Neb. 457, 253 N.W. 424 (1934).

² E.g., *Duty v. General Fin. Co.*, 154 Tex. 16, 273 S.W.2d 64 (1954).

³ E.g., *Housh v. Peth*, 165 Ohio St. 35, 133 N.E.2d 340 (1956).

⁴ E.g., *Turner v. Brien*, 184 Iowa 320, 167 N.W. 584 (1918).

⁵ E.g., *Christensen v. Swedish Hosp.*, 59 Wash. 2d 545, 368 P.2d 897 (1962).

⁶ An exhaustive catalogue of cases illustrating the various tactics employed appears in Greenfield, *Coercive Collection Tactics—An Analysis of the Interests and the Remedies*, 1972 Wash. U.L.Q. 1.

⁷ A former president of the American Collectors Association, Carl Williams, stated: A good collection agency licensing law should be designed to raise the collection business to a professional level and there should be nothing in that law that should cause any person to fear such a regulatory act if he truthfully and honestly wants to operate a collection agency on an ethical level.

American Collectors Association, *Compiled Collection Agency Laws of the United States and Canada*, Introduction (1969).

⁸ D. Caplovitz, *Debtors in Default 10-4 to 10-7* (Bureau of Applied Social Research, Columbia University, 1971).

same survey indicated that the amount of harassment did not vary according to whether the collector was an original grantor of credit, a holder in due course of the obligation, or a collection agency.⁹ In another recent survey a sample of legal services attorneys were asked to specify the consumer-client problems that occurred in their practice "often" or "very often." Of forty-five designated consumer problems, "debtor harassment" was the most frequent reply.¹⁰ Sensitivity to the existence of debtor harassment in recent years is probably not wholly a product of increasing awareness of consumer problems but is also a product of the increasing credit-orientation of our economy.¹¹ As more credit is extended by merchants to consumers, the collection of delinquent accounts becomes more of a mass operation less given to polite and persuasive individual contact and more given to uniform sledgehammer techniques designed to collect as many claims as possible from the many who owe.¹² As the number of creditors for each debtor grows, it becomes more critical for each creditor that he reach the debtor's dwindling assets early, before there may be nothing left.¹³ Recent restrictions on judicially enforced methods of collection such as prejudgment garnishment¹⁴ might force the debt collector into a corner from which he might attempt to extricate himself by more intense and vigorous use of harassment techniques.¹⁵

Whatever may be the prevalence of, or the reasons for, the use of these harassment techniques, five states¹⁶ have recently passed legislation specifically granting the consumer-debtor relief against their use. The statutes vary among themselves in important particulars. Yet they can be distinguished from all prior statutory regulation of debt collection in that they create a right of civil action in the party

⁹ Id. at 10-10.

¹⁰ Of 145 replies, 87% said that debtor harassment was a problem that arose either "often" or "very often" (37% said "often," 49% "very often"). The 87% reply indicating debtor harassment represented the most frequently noted consumer law problem, out of the 45 designated categories. 2 Office of Economic Opportunity, Legal Services Training Program Report for 1971-72, at 38-42 (Fall 1972) (survey of limited circulation, available at ABT Associates, Cambridge, Mass.). See also Summary of Hearings on Debt Collection Practices, National Commission on Consumer Finance, 88 Banking L.J. 291 (1971); Harassing the Debtor, Consumer Reports, Feb. 1973, at 136.

¹¹ Total consumer credit rose from \$8.338 billion in 1940 to \$56.161 billion in 1960, and then to \$157.582 billion in February 1973. 59 Fed. Res. Bull. A54 (April 1973).

¹² Interview with Blair Shick, Assistant Director of the National Consumer Law Center, in Boston, Mass., March 7, 1973.

¹³ Id. For an extensive analysis of the psychological and economic forces at play in debt collection, see also Leff, Injury, Ignorance and Spite—The Dynamics of Coercive Collection, 80 Yale L.J. 1 (1970). It evoked a series of replies in Symposium: 1971 A.A.L.S. Bankruptcy Round Table Papers, 33 U. Pitt. L. Rev. 667 (1972).

¹⁴ E.g., *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969). See generally McDonnell, *Sniadach*, The *Replevin Cases* and Self-Help Repossession—Due Process Tokenism?, 14 B.C. Ind. & Com. L. Rev. 437 (1973).

¹⁵ Interview with Blair Shick, Assistant Director of the National Consumer Law Center, in Boston, Mass., March 7, 1973.

¹⁶ The states which have enacted new statutes are Florida, Maryland, Massachusetts, Washington, and Wisconsin. They are discussed in detail in text at notes 48-96 *infra*.

against whom the practices have been used. Furthermore, under four of the five new statutes the debtor need not show the particular amount of damage that he suffered as the result of the prohibited harassment.¹⁷ He need only show that a specifically prohibited practice was used to his detriment in order to recover a statutory dollar amount.¹⁸ These new statutes stand sharply against a background comprised of three major schemes of debt collection regulation: traditional tort theories of recovery, state debt collection agency licensing statutes and trade practice acts. These regulatory schemes will be examined briefly, and the new statutes will then be examined in detail and compared with the prior forms of regulation which remain the sole forms of regulation in the great majority of states.

II. BACKGROUND

Most of the tactics that are actually employed tend to invade rights protected by the tort theories of intentional infliction of emotional distress,¹⁹ defamation,²⁰ invasion of privacy,²¹ intentional interference with contractual relations,²² and malicious prosecution.²³

The stringent and sometimes elaborate requirements necessary for recovery under these common law torts reflect to some degree the notion that commerce among men would be unduly impeded if recovery were more readily available,²⁴ that it is not the proper office of the law

¹⁷ Fla. Stat. Ann. § 559.77 (Supp. 1972); Mass. Gen. Laws Ann. ch. 93A, § 9 (1972); Wash. Rev. Code Ann. § 19.16.450 (Supp. 1972); Wis. Stat. Ann. §§ 425.304, 427.105 (Spec. Pamphlet 1973).

¹⁸ For a detailed discussion of these remedies under the new statutes, see text at notes 70-78 *infra*.

¹⁹ To be actionable the intentional conduct must be outrageous or extreme and the damage caused must be severe. W. Prosser, *Law of Torts* § 12, at 56 (4th ed. 1971). Although many states require accompanying physical injury, there is a trend toward allowing recovery in the absence of such a showing. *George v. Jordon Marsh Co.*, 1971 Mass. Adv. Sh. 563, 268 N.E.2d 915 (1971). Texas allows recovery for negligent behavior. *United Fin. & Thrift Corp. v. Bain*, 393 S.W.2d 429 (Tex. Civ. App. 1965).

²⁰ Defamation allows recovery for published statements that damage the debtor's reputation. Although the defense of truth may prevent recovery for publication of the fact that a debt exists, it may not prevent recovery when untrue representations as to the debtor's general credit worthiness are implied therein. *Turner v. Brien*, 184 Iowa 320, 167 N.W. 584 (1918). The privilege of business necessity, which protects communications made when the information is commercially useful, may be lost if the reporting to a credit bureau is made to coerce collection. *Altoona Clay Prods., Inc. v. Dun & Bradstreet, Inc.*, 286 F. Supp. 899 (W.D. Pa. 1968).

²¹ Generally, there must be an unreasonable bothering that would be highly offensive to the reasonable man. *Housh v. Peth*, 165 Ohio St. 35, 133 N.E.2d 340 (1956).

²² Recovery for intentional interference requires that the defendant act with knowledge of the contractual relation and intent and that the contractual relation cease. *Long v. Newby*, 488 P.2d 719 (Alas. 1971).

²³ Recovery based on malicious prosecution requires that a criminal prosecution have been initiated by the defendant with malice and without probable cause, and that the prosecution have terminated in favor of the plaintiff. W. Prosser, *supra* note 19, § 119, at 835.

²⁴ "For the sake of reasonable freedom of action, in our own interest and that of

to elevate every unpleasantness to the dignity of an actionable wrong. The tort recovery requirements also reflect skepticism as to whether serious harm could flow from mere harassment.²⁵ These theories of recovery were not developed with a view toward the debtor-creditor relationship and thus do not take special note of the problems in that area. Their force in the regulation of collection harassment or as sources of recovery for the debtor is weak. From the debtor's standpoint, it is safe to assume that fewer suits will be brought on facts that publicly describe the plaintiff as a delinquent debtor than would otherwise be brought. In addition, it has been suggested that many debtors, if not most, do not pay because they cannot pay.²⁶ If it is true that they have not the means to pay the debt, they will hardly have the means to pay the cost of litigating the many issues of liability and proof of damages that these traditional theories require. Furthermore, tort doctrines must be developed case by case, so that a long line of cases may be needed before a truly comprehensive body of precedent specifically relevant to debt collection practices can emerge.²⁷ Legislatures are far better suited to the gathering of facts and the promulgation of a comprehensive code of conduct than is a court whose primary function is to settle the dispute before it.

Many states have comprehensive statutes requiring debt collection agencies to procure a license as a condition of doing business within the state.²⁸ Nearly all the licensing statutes list unlawful practices, or provide for an administrator to promulgate regulations governing collection agency practices.²⁹ These afford the debtor some protection in almost all instances, and varying degrees of protection from state to state. Some of the lists of prohibited practices are fairly exhaustive,³⁰ and frequently include a catchall proscription of the use of

society, we need the privilege of being careless whether we inflict mental distress on our neighbors." *Clark v. Associated Retail Credit Men*, 105 F.2d 62, 64 (D.C. Cir. 1939).

²⁵ There is no occasion for the law to intervene with balm for wounded feelings in every case where a flood of billingsgate is loosed in an argument over a back fence. The plaintiff must necessarily be expected and required to be hardened to a certain amount of rough language, and to acts that are definitely inconsiderate and unkind.

W. Prosser, *supra* note 19, § 12, at 54. The attitude that the law should, and does, mirror the societal norm of accepted conduct is reflected in the statement: "He intentionally hurt my feelings" does not yet sound in tort, though it may in a more civilized time." *Clark v. Associated Retail Credit Men*, 105 F.2d 62, 64 (D.C. Cir. 1939).

²⁶ The testimony of Ralph Nader before the National Commission on Consumer Finance states that many, if not most, debtors fail to pay either because of some unexpected personal mishap such as sickness or injury or because of an erroneous estimation of their future ability to repay obligations. Summary of Hearings on Debt Collection Practices, National Commission on Consumer Finance, 88 *Banking L.J.* 291, 300 (1971). See also Shenfeld, *Current Trends in the Restriction of Creditors' Collection Activities*, 9 *Houston L. Rev.* 615, 618 (1972).

²⁷ See Comment, *Debt Collection Practices: Remedies for Abuse*, 10 *B.C. Ind. & Com. L. Rev.* 698, 701 (1969).

²⁸ For an analysis of these statutes, see *id.* at 702-09.

²⁹ *Id.* at 704-07.

³⁰ E.g., Ark. Stat. Ann. § 71-2008 (Supp. 1971).

unethical practices or illegal means so as to prevent ingenious ways of harassing within the letter of the law.³¹ The most frequently prescribed penalty for violation of these standards is a discretionary revocation of the agency's license by an administrator or board after a discretionary investigation.³²

These statutes provide the harassed debtor with greater protection than the tort theories because they prohibit certain particular practices that might not be actionable under any tort theory. For example, contact with the debtor's employer may not be actionable as intentional interference with contractual relations if the employer does not discharge the debtor. Yet in some states it is a ground for discretionary license revocation regardless of whether discharge occurs.³³ In addition, no damage to the debtor need be shown: it is the prohibited practice that constitutes the unlawful act. However these statutes offer only limited protection against debtor harassment for several reasons. Firstly, they only regulate collection agencies, defined as persons or firms collecting claims for another or for more than one person or firm.³⁴ Hence these statutes have no effect on the activities of credit grantors who collect their own debts, such as large retail establishments. Secondly, the licensing statutes often delegate the job of enforcement to a board, typically composed of collection industry members.³⁵ Such a scheme of industry self-regulation may result in the policing only of egregious offenders, which may in turn stave off needed, more stringent regulation.³⁶ Even when action is brought, application of the sanction, whether it be suspension or revocation of the license, is discretionary.³⁷ In states where commission of a prohibited act is made a criminal offense,³⁸ effectual enforcement further depends on a district attorney bringing suit, an activity limited by law enforcement priorities and local funds. In addition, enforcement depends on the availability to the enforcing agency of information about violations. Since these statutes provide the debtor with no compensation for a violation, he is not as likely to report violations as he would be if recovery were available to him under the statutes.

Other legislative enactments may have an effect upon the conduct

³¹ E.g., Ark. Stat. Ann. § 71-2008(10) (Supp. 1971) prohibits "engaging in any unethical practices or resorting to any illegal means or methods of collection."

³² E.g., Ark. Stat. Ann. § 71-2004 (Supp. 1971). Many states make violation of the standard of conduct a misdemeanor. See, e.g., Ark. Stat. Ann. § 71-2010 (Supp. 1971).

³³ E.g., Me. Rev. Stat. Ann. tit. 32, § 576 (Supp. 1972).

³⁴ E.g., Mass. Gen. Laws Ann. ch. 93, § 24 (1972).

³⁵ E.g., Ark. Stat. Ann. §§ 71-2003, -2004 (Supp. 1971).

³⁶ See Comment, Debt Collection Practices: Remedies for Abuse, 10 B.C. Ind. & Com. L. Rev. 698, 707 (1969).

³⁷ E.g., Ark. Stat. Ann. § 71-2004 (Supp. 1971).

³⁸ E.g., Ark. Stat. Ann. § 71-2010 (Supp. 1971). Most states that do not provide for licensing criminalize isolated types of collection behavior. See, e.g., Ind. Ann. Stat. § 10-4944 (Supp. 1972) (crime to make harassing and indecent phone calls); R.I. Gen. Laws Ann. § 11-5-6 (Supp. 1972) (crime to commit assault and battery in collecting a loan).

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of debt collection. Several states have passed deceptive trade practice acts.³⁹ Typical enactments list a number of unfair, false or misleading sales and trade practices and provide for injunctive and other relief. In most cases there is no specific reference to debt collection practices. There is usually, however, a general prohibition against "[e]ngaging in any act or practice which is unfair or deceptive to the consumer."⁴⁰ This phrase may be interpreted to include at least some debt collection harassment techniques, especially since a line of cases under the Federal Trade Commission Act⁴¹ as well as rules of the Federal Trade Commission (FTC) so provide.⁴² Some states make the commission of an unfair practice grounds for a private civil action for damages and injunctive relief.⁴³ Some provide for recovery of a minimum penalty fee.⁴⁴

A statute that does allow recovery of a minimum penalty fee gives the harassed debtor something unavailable under tort law, licensing statutes and the criminal statutes regulating debt collection. Taking a cue from section 4 of the Clayton Act,⁴⁵ such a statute confers upon the debtor the status of a private attorney general and provides him the incentive to bring suit in the form of a recoverable amount without requiring proof of actual damages. The coverage of the unfair or deceptive trade practice acts is broader than the licensing statutes since the former cover "any person,"⁴⁶ which is broadly defined to include natural persons, corporations, and any legal entities, not just collection agencies.⁴⁷ Thus it would seem that all debt collectors are included. However these statutes do have faults. Not all create a right to recover in a civil action. Moreover, they all lack a list of prohibited practices that an overzealous debt collector in particular is likely to pursue since the acts specifically prohibited are sales and advertising practices, and not collection practices.

Thus it is evident that, by the late 1960's, regulation of debt col-

³⁹ E.g., Conn. Gen. Stat. Ann. §§ 42-115c to -115t (Supp. 1973); Mass. Gen. Laws Ann. ch. 93A (1972 and Supp. 1972). On the applicability of these statutes to debt collection practices, see Shick, *A Primer on the General Law Applicable to Abusive, Unfair, and Harassing Collection Practices*, 6 *Clearinghouse Rev.* 145, 147 (1972).

⁴⁰ E.g., Idaho Code § 48-603(12) (Supp. 1972).

⁴¹ 15 U.S.C. §§ 41-58 (1970).

⁴² Cases in the courts and before the Federal Trade Commission are collected in Durso, *Legal Representations of Massachusetts Consumers in Credit Transactions or: An Attorney's Guide*, 4 *Portia L.J.* (New Eng. L. Rev.) 137, 154 (1969). FTC regulations on debt collection appear at 16 C.F.R. §§ 237.0-.6 (1973). One state, Massachusetts, has specifically provided that the term "unfair or deceptive practice or act" is to be given the same interpretation given it by the rules and decisions of the FTC and the federal courts. Mass. Gen. Laws Ann. ch. 93A, § 2(c) (1972).

⁴³ E.g., Mass. Gen. Laws Ann. ch. 93A, § 9 (1972).

⁴⁴ E.g., *id.* Other states, e.g., Maine, provide only for injunctive relief. Me. Rev. Stat. Ann. tit. 10, § 1213 (Supp. 1972).

⁴⁵ 15 U.S.C. § 15 (1970). See generally L. Schwartz, *Free Enterprise and Economic Organizations* 17-20 (4th ed. 1972).

⁴⁶ E.g., Mass. Gen. Laws Ann. ch. 93A, § 9 (1972).

⁴⁷ E.g., Mass. Gen. Laws Ann. ch. 93A, § 1(a) (1972).

lection consisted of a number of unrelated legal restraints, each of which possessed virtues as well as drawbacks, and all of which taken together fell short of a truly complete and effective system of regulation. Tort law provides the harassed debtor with recovery, but its skepticism towards claims for emotional and mental injury keeps the standards of proof high. Such requirements as outrageous conduct, severe injury and proof of actual damages tend to discourage suits based on common collection harassment tactics, and to raise the cost of the suits that are brought. Nor is there any comprehensive code of actionable *collection* misbehavior. State licensing statutes present the converse situation. They typically list a series of prohibited collection harassment techniques in some detail. But they make no provision for private recovery. Further, the administrative or criminal penalties for violation depend on the existence of public funds and the exercise of discretion by a public official or board. Even a board concerned with vigorous enforcement may be impeded by lack of information about violations because the harassed or threatened debtor has little to gain by reporting a violation, since under these statutes no civil recovery is available. Further, these statutes usually purport to regulate only collection agencies, defined so as not to include original grantors of credit. The isolated criminal proscriptions, aimed in a seemingly random fashion at particular tactics of debt collection, are similarly as weak as the weakest discretionary or informational link in their chains of enforcement. Some of the recently enacted deceptive trade practice statutes do provide for civil recovery, but like the law of torts these statutes were not aimed primarily at abuses in the field of debt collection, and hence do not proscribe particular abuses as do the licensing statutes.

III. THE RECENT LEGISLATIVE RESPONSE

Recently enacted statutes that go substantially beyond the comprehensiveness and stringency of prior law have been enacted in five states.⁴⁸ These enactments were foreshadowed by two model acts, the Uniform Consumer Credit Code (U.C.C.C.)⁴⁹ and the National Consumer Act (N.C.A.).⁵⁰ Debtor harassment received treatment in the U.C.C.C. in the form of a prohibition against "fraudulent or unconscionable conduct in the collection of debts arising from" consumer credit transactions.⁵¹ The only remedy for violation of this section is a civil action to restrain such conduct, brought by the administrator against a creditor or anyone acting in his behalf.⁵²

⁴⁸ See note 64 *infra*.

⁴⁹ Published at 5B F. Hart & W. Willier, *Forms and Procedures under the Uniform Commercial Code* 9-21D at 581 (1973) (Bender binder) [hereinafter cited as U.C.C.C.].

⁵⁰ National Consumer Act (First Final Draft, 1970) (published by the National Consumer Law Center, Boston, Mass.) [hereinafter cited as N.C.A.].

⁵¹ U.C.C.C. § 6.111(1).

⁵² The U.C.C.C. provides:

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Responding to a perceived inadequacy⁵³ in the U.C.C.C.'s treatment of the debt collection practices, the draftsmen of the N.C.A. devoted an entire article to the subject.⁵⁴ The N.C.A. draws upon several features of existing forms of regulation, combining them to achieve a system decidedly more favorable to the debtor and with decidedly more teeth in its provisions for remedy and enforcement than existing regulation and than the U.C.C.C. The N.C.A. borrows the list of prohibited practices from the state licensing statutes, expanding it to set a higher standard of conduct.⁵⁵ But the N.C.A. departs from the typical collection agency licensing statute in its definition of "persons" and in its remedial and enforcement provisions. The Act reaches all persons engaging in debt collection,⁵⁶ whether for others or for themselves as original creditors; hence the N.C.A. is wider in

The Administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of . . .

(c) fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases, or consumer loans.

U.C.C.C. § 6.111(1). The U.C.C.C. goes beyond the typical collection agency licensing statute in that it prohibits actions of creditors as well as persons acting in their behalf, thus achieving regulation of debt collection practices, regardless of who may be using them. Yet it suffers the weakness of failing to specify what particular debt collection conduct is in fact unconscionable or fraudulent. Proving that a specific act is in fact unconscionable or fraudulent may be costly and difficult. In addition, it may take particularly egregious conduct to excite the discretion of the administrator.

A revised version of the U.C.C.C. is before the state legislatures in 1973. Its present form, Working Redraft No. 3, fails to make any change in the treatment of debt collection. This failure has been criticized as a serious deficiency. Shick & Gordin, *Storm Warning: A "Revised" UCCC*, 6 *Clearinghouse Rev.* 463 (1972).

⁵³ N.C.A., Prefatory Note, at iv.

⁵⁴ N.C.A. art. 7.

⁵⁵ The N.C.A. list of prohibited practices is both detailed and stringent. It prohibits conduct in eight categories, such as threats or coercion (N.C.A. § 7.202) and unreasonable publication (N.C.A. § 7.204), and it lists under each category several non-exclusive examples of specific prohibited conduct. For instance, "communication of any information relating to a consumer's indebtedness to any employer or his agent" is prohibited as one example of unreasonable publication. N.C.A. § 7.204(1). This blanket prohibition against all communication with the debtor's employer goes beyond the typical state licensing statute which often fails to mention employer contact, e.g., Cal. Bus. & Prof. Code § 6947 (West 1972 and Supp. 1973), or only limits its extent, e.g., Me. Rev. Stat. Ann. tit. 32, § 576 (Supp. 1972) (prohibiting only repeated and harassing communications with the debtor's employer). The N.C.A. also provides that "[t]he Administrator may establish rules and regulations providing further definitions and prescribing other conduct deemed in violation of this Part." N.C.A. § 7.209. If truly stringent standards are intended, the method adopted by the N.C.A. seems to attain that objective. By proscribing general types of conduct, specifying examples and further empowering an administrator to promulgate regulations, the N.C.A. reaches conduct that the enacting body may wish to proscribe as well as conduct that may later be deemed undesirable.

⁵⁶ N.C.A. §§ 7.102-103. The N.C.A. defines "Debt Collection" as "any action, conduct or practice in connection with the solicitation of claims for collection or in connection with the collection of claims, that are owed or due, or are alleged to be owed or due, a merchant by a consumer." N.C.A. § 7.103(2). A "Debt Collector" is defined as "any person engaging directly or indirectly in debt collection . . ." N.C.A. § 7.103(3).

scope than the typical licensing statute which covers only agencies.⁵⁷ But the N.C.A.'s most significant departure from existing regulation is its provisions for remedy and enforcement.⁵⁸ Two consequences flow from any violation: (1) the debtor's obligation on the debt ceases because under the N.C.A. he acquires a complete defense to any claim based on the debt;⁵⁹ and (2) the debtor acquires a cause of action for compensatory damages,⁶⁰ and in some cases for punitive damages,⁶¹ against the violator. Thus the N.C.A. does not adopt the apparatus of discretionary administrative and prosecutorial enforcement. Instead it borrows from tort law the idea that the injured should be compensated, but streamlines the requirements for recovery to a bare minimum. In addition, by virtue of declaring the debt nonrecoverable for any proven violation, the N.C.A. provides for a form of recovery by the debtor in every case. Thus many of the costs and risks that might have deterred a harassed debtor from bringing suit under traditional tort theory are minimized if not eliminated. Examples are the costs of proving that conduct was "outrageous,"⁶² and the cost of proving a certain amount of damage which, in cases of persistent phone calls or abusive language, might be evanescent and inestimable. These are costs that a consumer-debtor in particular will be unlikely to be able to afford. If the abused debtor proves merely that a specifically prohibited practice was used against him, then his liability on the debt ceases. In addition, the cause of action acquired by the debtor for compensatory damages as a result of a violation does not require accompanying physical injury, which many states still require in an action for intentional infliction of emotional distress.⁶³

Five states have recently taken steps in the direction marked out by the N.C.A. by enacting similar provisions,⁶⁴ some providing penalties more extensive than those provided for in the N.C.A.⁶⁵ All five of the new statutes list prohibited practices,⁶⁶ and provide for some

⁵⁷ An agency is usually defined as any person engaged in the business of collecting for others. See, e.g., Me. Rev. Stat. Ann. tit. 32, § 571(1) (Supp. 1972).

⁵⁸ N.C.A. §§ 7.301-303.

⁵⁹ N.C.A. § 7.301.

⁶⁰ N.C.A. § 7.302.

⁶¹ N.C.A. § 7.303.

⁶² *George v. Jordon Marsh Co.*, 1971 Mass. Adv. Sh. 563, 268 N.E.2d 915 (1971).

⁶³ *W. Prosser, Law of Torts* § 12, at 59 (4th ed. 1971). See, e.g., *Duty v. General Fin. Co.*, 154 Tex. 16, 273 S.W.2d 64 (1954).

⁶⁴ Fla. Stat. Ann. §§ 559.55-78 (Supp. 1972); Md. Ann. Code art. 83, § 167 (Supp. 1972); Mass. Gen. Laws Ann. ch. 93, §§ 24-28, 49, ch. 93A (1972 and Supp. 1972); Wash. Rev. Code Ann. §§ 19.16.100-950, 19.86.090 (Supp. 1972); Wis. Stat. Ann. §§ 427.101-105, 425.304 (Spec. Pamphlet 1973).

⁶⁵ While the N.C.A. provides for a penalty in the form of making the debt non-recoverable, plus granting a cause of action for compensatory and punitive damages, the new statutes in some instances grant a right to recover a penalty fee not based on the debt. In one case the penalty is \$500. See text at notes 71-73 *infra*.

⁶⁶ No two of the statutes proscribe all of the same practices, and they all proscribe practices with varying degrees of specificity. Washington's list is the most highly specific and exhaustive, and it includes a prohibition against communication in a generally

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form of civil recovery by a consumer against whom the practices have been used.⁶⁷ All but one of the new statutes, in conformity with the N.C.A., protect specifically the consumer-debtor;⁶⁸ these same four regulate practices by anyone engaging in the collection of a debt, and not merely collection agencies.⁶⁹ The exception is the Washington statute, which protects all debtors but only proscribes actions undertaken by collection agencies.⁷⁰

However none of the new statutes exactly follows the N.C.A. in its provisions for remedies, nor do any two of the statutes deal with the question of remedies in the same way. All of the statutes except that of Maryland provide a penalty recoverable without any need for a showing of a particular amount of damage.⁷¹ The Florida statute

harassing manner. Wash. Rev. Code Ann. § 19.16.250 (Supp. 1972). Two of the states, Florida and Maryland, list practices but do not have a proscription of harassment in general. Fla. Stat. Ann. § 559.72 (Supp. 1972); Md. Ann. Code art. 83, § 167 (Supp. 1972). This approach can hamper effective regulation since some conduct not specifically prohibited may escape the statute. Massachusetts proscribes unfair, deceptive or unreasonable debt collection, and then lists examples that do not purport to exhaust the kinds of conduct prohibited. Mass. Gen. Laws Ann. ch. 93, § 49 (1972). This latter approach seems to be the most efficient way of dealing with conduct that can take many forms. It is the method suggested by N.C.A. §§ 7.201-206.

An added flexibility in dealing with conduct not anticipated by the legislature is achieved through regulations issued by an administrator. This is done in Mass. Gen. Laws Ann. ch. 93, §§ 24, 28 (1972), and in N.C.A. § 7.209.

⁶⁷ Fla. Stat. Ann. § 559.77 (Supp. 1972); Md. Ann. Code art. 83, § 167(b) (Supp. 1972); Mass. Gen. Laws Ann. ch. 93A, §§ 9, 10 (1972 and Supp. 1972); Wash. Rev. Code Ann. §§ 19.16.440, .450, 19.86.020, .090 (Supp. 1972); Wis. Stat. Ann. §§ 427.105, 425.304 (Spec. Pamphlet 1973).

⁶⁸ Fla. Stat. Ann. § 559.72 (Supp. 1972); Md. Ann. Code art. 83, § 167 (Supp. 1972); Mass. Gen. Laws Ann. ch. 93, § 49 (1972); Wis. Stat. Ann. § 427.102 (Spec. Pamphlet 1973).

⁶⁹ Fla. Stat. Ann. § 559.72 (Supp. 1972); Md. Ann. Code art. 83, § 167 (Supp. 1972); Mass. Gen. Laws Ann. ch. 93, §§ 24-28, 49 (1972); Wis. Stat. Ann. § 427.103(3) (Spec. Pamphlet 1973).

The Wisconsin provision is typical, defining a debt collector as "any person engaging, directly or indirectly, in debt collection." Wis. Stat. Ann. § 427.103(3) (Spec. Pamphlet 1973). The forthcoming Model Consumer Credit Code, prepared by the National Consumer Law Center as a revision of the National Consumer Act, seeks to avoid all possible doubt on the question of whether original creditors are embraced by the regulatory scheme. It defines "debt collector" as "any person engaging or aiding directly or indirectly in enforcing claims, and includes creditors and their agents when they are so acting." Model Consumer Credit Code § 6.102(2). Such specificity, though helpful, seems unnecessary to avoid the confusion over whether a creditor himself is included, at least when the proscriptions are directed at "any persons."

⁷⁰ Wash. Rev. Code Ann. §§ 19.16.100(2), (3) (Supp. 1972).

⁷¹ Fla. Stat. Ann. § 559.77 (Supp. 1972); Mass. Gen. Laws Ann. ch. 93A, § 9 (1972); Wash. Rev. Code Ann. §§ 19.16.440, .450, 19.86.020, .090 (Supp. 1972); Wis. Stat. Ann. §§ 425.304, 427.105 (Spec. Pamphlet 1973).

There is ambiguity under some of the statutes as to whether a debtor who has not suffered any tangible injury may bring an action and recover the minimum amount that the statute provides. For example, the Massachusetts statute provides that "[a]ny person who purchases [consumer goods or services] and thereby suffers any loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive act or practice," including use of proscribed debt

seems the most stringent, providing that a consumer against whom any practice has been used may bring a civil action with recovery equal to actual damages or five-hundred dollars, whichever is greater, plus reasonable attorney's fees and costs.⁷² In addition, punitive damages and equitable relief are discretionary with the court.⁷³ Considering the magnitude of the penalty, it would seem that one successful suit by

collection practices, may bring an action for damages or equitable relief. Mass. Gen. Laws Ann. ch. 93A, § 9(1) (1972). It also provides that "if the court finds for the petitioner, recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater" Mass. Gen. Laws Ann. ch. 93A, § 9(3) (1972). This would seem to mean that a debtor must show some money or property loss before he may recover anything at all, but if he shows loss, then the minimum recovery is twenty-five dollars. The collection practices that are specifically made unfair or deceptive are not, however, the kind of practices that can be readily conceived of as causing loss of money or property. Communicating the debt to other persons, communicating with the debtor after he is represented by counsel, telephoning around the clock, or using forms that simulate legal process are all proscribed by Mass. Gen. Laws Ann. ch. 93, § 49 (1972), and are actionable under ch. 93A, § 9. But it is unclear from the statute whether one who was merely annoyed, inconvenienced or harassed by their use has suffered sufficient injury to bring an action. It is very likely that since the remedy includes a twenty-five dollar minimum recovery, the legislature contemplated that in many cases the actual injury would be evanescent, amounting to a mere botherance, and so should merit some compensation without proof of how much loss was caused. Of course in some cases, as where loss of job or demotion results from employer contact, or where work time is lost because of late night phone calls, there will be no problem of showing that the debtor is an injured party within the meaning of the statute.

Similar ambiguity is encountered in Wis. Stat. Ann. § 427.105 (Spec. Pamphlet 1973), which provides that "[a] person injured by violation of this chapter may recover actual damages and the penalty provided in § 425.304" Wis. Stat. Ann. § 425.304 (Spec. Pamphlet 1973) provides that a person "who commits a violation to which this section applies is liable to the customer" in the amounts provided, including a penalty fee of twice the finance charge. In this statute there is no requirement of property loss, and the legislature seems to have clearly intended that the fee recoverable be a penalty, regardless of the actual amount of damages. Yet since the party recovering must be a "person injured," the ambiguity remains.

The Florida statute is free from such ambiguity, providing that a debtor may bring an action against a person violating the section, and that upon adjudication adverse to the defendant collector there shall be liability for the penalty fee. Fla. Stat. Ann. § 559.77 (Supp. 1972). Similarly the Washington statute provides that if a licensee commits one of the practices that are prohibited then the stipulated penalty ensues. Wash. Rev. Code Ann. § 19.16.450 (Supp. 1972). If the purpose of these statutes is to minimize the commission of certain practices, then these latter provisions are certainly the better examples of draftsmanship. A violation should trigger a recoverable penalty fee independent of any damage because only then will these annoying, but not always severely damaging, tactics fall into disuse.

⁷² Fla. Stat. Ann. § 559.77 (Supp. 1972). There is some evidence that many, if not most, debtors do not pay on time because they are unable to. See note 26 *supra*. If there is any truth to this contention, it is important to the effectiveness of a regulatory scheme based primarily on private suits that the private plaintiff have the wherewithal to set the regulatory force in motion and keep it in motion. A provision granting reasonable attorney's fees provides such wherewithal. It also adds to the force of the penalty that the creditor must pay. For example, the Massachusetts minimum penalty of twenty-five dollars may be small in comparison to the attorney's fees that a guilty creditor must disgorge.

⁷³ Fla. Stat. Ann. § 559.77 (Supp. 1972).

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a debtor under the Florida statute would have a considerable effect on the zeal of an errant collector defendant.

Under the Massachusetts scheme the greater of actual damages or twenty-five dollars is recoverable in addition to reasonable attorney's fees.⁷⁴ The Wisconsin statute allows the harassed debtor recovery of actual damages in addition to twice the finance charge, provided that such amount be not less than one-hundred nor greater than a thousand dollars.⁷⁵ The Washington statute provides that commission of a prohibited practice causes the finance charge to become non-recoverable and creates liability for actual damages and reasonable attorney's fees.⁷⁶ An award of up to treble damages is discretionary with the court.⁷⁷ Of the five states only Maryland provides no minimum amount of recovery. Instead, under that statute, recovery is allowed of actual damages proximately caused by violation. Damages include, but are not limited to, compensation for emotional distress and mental anguish with or without accompanying physical injury.⁷⁸ Generally, then, these statutes are more favorable to the consumer-debtor than even the ambitious National Consumer Act.

The manner of placement of the debtor harassment provisions in the state code may be a source of confusion in two of the states. Although the enactments in three of the states⁷⁹ describe both violations and remedies in a single self-contained location in the code, two of the states weave the debt collection provisions into statutory provisions

⁷⁴ Mass. Gen. Laws Ann. ch. 93A, § 9(3) (1972). The same section provides that in case of willful or knowing violations recovery shall be up to three but not less than two times such amount. Class actions may be brought pursuant to Mass. Gen. Laws Ann. ch. 93A, § 9(2) (1972).

⁷⁵ Wis. Stat. Ann. §§ 425.304, 427.105 (Spec. Pamphlet 1973). The sections are ambiguous as to whether "such amount" means the finance charge, twice the finance charge, or the actual damages and twice the finance charge. Since it is reasonable to assume that the legislature intended one-hundred and a thousand dollars as the parameters of total recovery, perhaps it means the latter.

⁷⁶ Wash. Rev. Code Ann. §§ 19.16.440, 450, 19.86.090 (Supp. 1972).

⁷⁷ Wash. Rev. Code Ann. § 19.86.090 (Supp. 1972).

⁷⁸ Md. Ann. Code art. 83, § 167(b) (Supp. 1972). Although the requirement of proof of damages is clear under the Maryland statute, it is unclear whether the damages need be severe, as is the case under tort recovery theories. The legislature clearly eliminated the requirement of accompanying physical injury, but nothing is said regarding the requisite severity of injury compensable under the statute. Arguably the legislature intended to allow recovery for less severe mental or emotional injury since several of the prohibited practices might reasonably be expected to result only in annoyance. For example, communication of unusual frequency or at unusual hours in an abusive or harassing manner is prohibited. Md. Ann. Code art. 83, § 167(a)(6) (Supp. 1972). This prohibition would be somewhat hollow if the debtor could not recover under the statute unless the injury were severe or extreme. Of course it is difficult to speculate on the monetary value of the loss suffered in climbing out of bed to speak to one's creditor several times during the night. That is why the more effectively drafted statutes are those that stipulate a minimum recovery sufficient to make suit worthwhile to the debtor, and liability painful to the creditor.

⁷⁹ Fla. Stat. Ann. § 559.55-.78 (Supp. 1972); Md. Ann. Code art. 83, § 167 (Supp. 1972); Wis. Stat. Ann. §§ 427.101-.105, 425.304 (Spec. Pamphlet 1973).

for unfair and deceptive trade practices.⁸⁰ For example, Washington lists an exhaustive number of practices in its licensing statute, and then declares that the commission of any prohibited act or practice is "an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act."⁸¹ The Consumer Protection Act in turn prescribes penalties for the commission of any such unfair act or practice.⁸² The Massachusetts scheme is similar but more confusing. Unlawful debt collection practices in that state may be defined in any of three places. First, the deceptive trade practice provisions incorporate, as unfair or deceptive practices or acts, conduct so defined by the FTC,⁸³ which has by decision and rule included several debt collection practices in the definition.⁸⁴ Second, all violations of the licensing regulations issued by the Commissioner of Banks to govern collection agencies are declared unfair or deceptive practices or acts.⁸⁵ Third, a separate statutory provision covering any consumer "creditor or assignee" thereof lists prohibited practices and declares them to be unfair or deceptive practices or acts.⁸⁶ All of these practices are then remediable under a single chapter.⁸⁷ Furthermore, there is some doubt whether the separate statutory list of practices that refers to "creditors" and "assignees" refers to collection agencies,⁸⁸

⁸⁰ Mass. Gen. Laws Ann. ch. 93, §§ 24-28, 49, ch. 93A, § 9 (1972); Wash. Rev. Code Ann. §§ 19.16.100-.950, 19.86.090 (Supp. 1972).

⁸¹ Wash. Rev. Code Ann. § 19.16.440 (Supp. 1972).

⁸² Wash. Rev. Code Ann. § 19.86.090 (Supp. 1972).

⁸³ Mass. Gen. Laws Ann. ch. 93A, § 2(c) (1972).

⁸⁴ See Durso, *Legal Representation of Massachusetts Consumers in Credit Transactions or: An Attorney's Guide*, 4 *Portia L.J.* (New Eng. L. Rev.) 137, 154 (1969) (collecting cases). See also 16 C.F.R. §§ 237.0-6 (1973).

⁸⁵ Mass. Gen. Laws Ann. ch. 93, § 28 (1972) (empowering promulgation of regulations governing collection agencies).

⁸⁶ Mass. Gen. Laws Ann. ch. 93, § 49 (1972).

⁸⁷ Mass. Gen. Laws Ann. ch. 93A, § 9 (1972). This triple source of violations—federal law, state regulations and statutorily listed practices—provides for a broad source of standards. Regulations promulgated by an administrator provide for flexibility in dealing with practices that did not occur to the legislative draftsman of the statute or that only became a problem after the passage of the statute. Yet regulations are not always readily available to the practitioner and there is an interest in simplifying the structure of the statutory treatment of this single area of the law. The Massachusetts scheme, by covering collection agencies in one part and remedies in an entirely different part does not serve this interest as well as it could by collecting all prohibitions of debt collection practices in a single place. As noted, this is done in other statutes such as the Florida statute, Fla. Stat. Ann. §§ 559.55-.78 (Supp. 1972).

⁸⁸ The regulations promulgated pursuant to Mass. Gen. Laws Ann. ch. 93, § 24 (1972) set a higher standard for collection agencies, proscribing, for example, the collection of certain fees from the debtor, Mass. Banking Regs., No. 12, and setting the form of communication with the debtor which an agency must use, Mass. Banking Regs. No. 15. Setting a higher standard for collection agencies, as opposed to creditors themselves, may be warranted since agencies will be more aware of a special standard than small creditors. Original creditors who do not do a great volume of credit business might more readily fall into mistaken violations of regulations of which they are unaware. Of course retail establishments that do a large credit business are as likely to be

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but in effect there may be little consequence whatever the answer since the Commissioner of Banks' regulations specifically aimed at collection agencies are similar to the statute governing creditors and assignees⁸⁰ and since violation of either has exactly the same consequences for the violator as an unfair or deceptive practice or act.⁸⁰

While the new statutes represent a definite step toward broader and stronger regulation of debt collection, it is quite possible that they also represent a step in the direction of overregulation. One of the statutes has been criticized as overly harsh to the creditor and his agents.⁸¹ The penalties and proscriptions of some of the recent statutes do seem to be harsh. Since the statutes place initiation of the regulatory action in the hands of private parties, the element of informed discretionary restraint is missing. This has the virtue of ensuring more thorough regulation, yet also has the vice of permitting penalty recoveries in cases where informed administration might justifiably withhold action. In resolving these conflicting considerations in favor of the former alternative, these statutes may well clear the way for harsh penalization of insignificant and good faith violations. For example, in Florida, disclosure of the fact of a disputed debt by a collector who neglected also to disclose that it was disputed might cause liability for five-hundred dollars, costs, and attorney's fees.⁸² Since four of the new statutes extend their prohibitions beyond collection agencies to include all persons,⁸³ they suggest an even more extreme example. The prohibitions would seem to cover acts by small businessmen such as the corner grocer and conceivably even the newspaper delivery boy. Since collection of delinquent accounts may not be a large part of their business, these people are not very likely to be aware of the statutes. Consequently, the danger of subjecting them to penalties for inadvertent violations is present.

It is submitted that some aspects of the new statutes may be unfavorable from the debtor's point of view as well. Under the new statutes the only avenues left open to the collector seem to be polite persuasion, firm demand, and judicial suit. This last avenue, possibly

aware of standards as collection agencies and so perhaps should be subject to the more comprehensive and stringent standards as well. However, the problem of defining an appropriately large volume of credit business to subject a retailer to such standards detracts from the feasibility of such an approach.

⁸⁰ Mass. Gen. Laws Ann. ch. 93, § 49 (1972). Willier & Russell, *Consumer Protection*, 17 Ann. Surv. Mass. Law § 9.9, at 211 (1971), states that the section, in including assignees of creditors, "may well mean that it encompasses any third party collecting a debt for the creditor, including collection agencies." However, there is ambiguity, since some collection agencies are not technically assignees, and clear inclusion of anyone collecting or attempting to collect a debt would have been preferable.

⁸¹ Mass. Gen. Laws Ann. ch. 93A, § 9 (1972).

⁸² Eisenberg & Howard, *Warning from Wisconsin: New Regulatory Laws for Collection of Consumer Debts*, 77 Com. L.J. 246 (1972), criticizes the new Wisconsin statute, Wis. Stat. Ann. §§ 427.101-105 (Spec. Pamphlet 1973), calling the penalties harsh.

⁸³ Fla. Stat. Ann. §§ 559.72(6), .77 (Supp. 1972).

⁸⁴ See note 69 *supra* and accompanying text.

the only realistic one, might be a worse plight for the debtor than subjection to a few of the unpleasant tactics outlawed in the name of his welfare. In an instance of possible overregulation, a Massachusetts rule forbids any communication by a collection agency with the debtor himself, once he is represented by counsel of known whereabouts, unless counsel instructs otherwise.⁹⁴ Although this prohibition avoids questions of obscenity or abusiveness, thereby simplifying administration and enforcement, it may not represent a desirable balance of all the considerations present. Personal communication between the debtor and creditor may have the salutary effect of fostering an exchange of information leading to a mutually satisfactory solution to the debt-problem itself. Perhaps a better compromise between the interests of shielding the debtor from harassing communication and fostering fruitful communication would be achieved by a prohibition of all contact with the debtor *if* the debtor or his attorney so instruct the creditor, instead of the existing prohibition that governs *unless* the attorney instructs otherwise. Under such a rule at least the collector would have notice of the restriction on contact. Communication with the debtor after such an instruction could more readily be seen as harassment than any communication in the absence of instruction, as is the case under the existing rule.

In addition the price that collectors must pay in curtailing their self-help may be fewer debts collected and hence a higher price for credit itself, or for the goods sold on credit. Yet just as the public seems to be willing to pay a price to clean up the environment,⁹⁵ perhaps it is willing to pay a price to eliminate the bill collector's harassing conduct. The advantages of the new statutes hopefully outweigh any price paid in the form of driving collectors to court, unfairly catching some violators who are unaware of the statutory standards or raising the price of credit and credit commodities. Under the new statutes it is more likely than ever before that the business of collection will be subject to strict and effective standard-enforcement. The system of conferring the status of "private attorney general" on the abused debtor seems more likely than any prior system of regulation to result in effective enforcement of the required standards. The extension of regulation beyond collection agencies to include all collectors may tend both to raise the standard of conduct of collection in general, and to drive the collection activity into the hands of people who are aware of the standards and the penalties—people who are therefore more likely to conform.⁹⁶ A retail businessman unfamiliar with the prohibitions might be convinced that it is cheaper to delegate collection work to a professional collector after being penalized for a violation. The long term result of such migration of collection work

⁹⁴ Mass. Banking Regs., No. 9.

⁹⁵ See, e.g., 42 U.S.C. § 1857 (1970), dealing with air pollution control.

⁹⁶ These observations were suggested in an interview with Blair Shick, Assistant Director of the National Consumer Law Center, in Boston, Mass., March 7, 1973.

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into the hands of those who are aware of the regulations may well be the raising of overall standards.

CONCLUSION

One author, Professor Leff,⁹⁷ has compared two situations: one where the debtor and creditor are two merchants, and another where they are consumer and merchant. The former situation, that of the merchant-merchant debt, is typically solved with little friction or unpleasantness, according to Leff. But the unpaid consumer-debt characteristically provokes a rising crescendo of abuse, threat and harassment. Part of the explanation Leff advances for this contrast is the information and knowledge the merchant-creditor possesses about his fellow merchant who owes him money. According to Leff, the community of merchants is usually small and familiar compared to the number of consumers that do business with one merchant. As a result the reason a given merchant cannot pay is quickly evident to his merchant creditor. And, hypothesizes Leff, merchants are therefore more prone to make allowances and achieve mutually satisfactory solutions to their debt problems. Even if merchants were prone to harass or pressure fellow merchants they would not be likely to do so if they knew that the debtor was, at least for the time being, simply unable to pay.

Yet, Leff continues, there are so many consumer-debtors for even one merchant and the transactions that created the debt in the first place are characteristically so faceless that information about the debtor's ability to pay an overdue obligation is lacking. To get such information about each consumer-debtor a merchant would incur considerable trouble and expense. In such a situation, says that author, it might be cheaper indeed for a bill collector to short circuit the informational gap by using stern and sometimes abusive measures. A ream of duplicate threatening letters is cheaper than an individualized careful appointment with each anonymous consumer-debtor.

As a remedy for this lack of mutual information and understanding, Leff suggests a "conversation pit,"⁹⁸ an officially funded gathering place where debtors and creditors or their respective agents might exchange information and seek informed solutions. The present new statutes are not nearly so ambitious, but they may indirectly achieve a similar result. By making harassment more costly, through the use of the prescribed penalties, the new statutes may make the civil and mutually informative approach correspondingly less expensive. In fact, being polite may be the most economical way to collect a debt under the new statutes, cheaper than going to court because of the legal

⁹⁷ Leff, *Injury, Ignorance and Spite—The Dynamics of Coercive Collection*, 80 *Yale L.J.* 1, 20-26 (1970). This analysis does not rest on any observed data, and so may be distorted. However his comparisons do seem logical, and to that extent are useful.

⁹⁸ *Id.* at 43.

costs and the risk of losing, and cheaper than harassment because of the potential penalties. If the new statutes do succeed not only in tempering abuse but in increasing communication between debtors and creditors, they will have accomplished more than their object.

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