



## **Memorandum in Opposition**

**October 27, 2015**

### **Senate Bill 146**

On behalf of Encore Capital Group, Inc., and its wholly-owned subsidiaries (collectively, “Encore”), I submit this memo in opposition to Senate Bill 146. While well-intended, this legislation would create many harmful unintended consequences for the very consumers it is meant to protect.

By way of background, Encore is a publicly traded company that, together with its debt purchaser and debt collector subsidiaries, has provided over 60 years of service to consumers. Purchasing primarily charged-off credit card receivables, we currently own an account for over 433,000 Massachusetts consumers, and partner with them by offering discounted payment plans, flexible repayment terms, and charging no interest or fees on new accounts. In 2014, we forgave over \$11.2 million in debt to Massachusetts residents. Unfortunately, this bill would significantly reduce the discounts Encore could provide to Massachusetts consumers, as it would hamper our ability to collect on valid debt obligations. This legislation would also likely create a sharp rise in debt collection litigation against consumers, by creating incentives for debt purchasers to file suit against consumers as the only means to protect their legal rights to collect on delinquent debt.

### **Encore Supports Positive Change in the Industry**

Encore supports efforts to improve our industry and the quality of interactions with consumers. In 2011, we proudly published an industry-leading Consumer Bill of Rights (a copy of which is enclosed), codifying our commitment to conduct business ethically, engage in respectful and constructive dialogue with consumers, and play a positive role in consumers’ financial recovery.

The Federal Consumer Financial Protection Bureau (CFPB) has noted the importance of the debt collection industry in ensuring that credit remains accessible to consumers, a critical factor in improving the economy:

Consumer debt collection plays an important role in the functioning of the consumer credit market. By collecting delinquent debt, collectors reduce creditors’ losses from non-repayment and thereby may help to keep consumer credit available and more affordable to consumers. In some instances, by purchasing debt at discounted rates, debt buyers may be able to offer consumers settlements and payment plans that original creditors would be unlikely to offer, making it easier for consumers to pay off their debts. Available and affordable credit is vital to millions of consumers because it makes it possible for them to purchase goods and services that



they could not afford if they had to pay the entire cost at the time of purchase.<sup>1</sup>

Further acknowledging the need to balance consumer protection with the important role this industry plays, the Federal Trade Commission (FTC) has repeatedly stated that positive change should not “unduly burden. . . legitimate debt collection.”<sup>2</sup> Unfortunately, as currently drafted, Senate Bill 146 would impose undue restrictions on the legitimate collection of valid debt and would unintentionally create significant harm to consumers.

### **A Shortened Statute of Limitations to Collect Would Result in A Spike in Lawsuits Filed Against Consumers**

While well-intended, this legislation would result in significant harm to consumers who would face litigation on their delinquent debt much sooner than is currently the case. By shortening the statute of limitations from 6 to 3 years, that will give us – and our consumers – 3 fewer years to try to resolve the account outside of the litigation process. As such, reducing the limitations period actually will increase litigation against consumers, rather than increase the chances that consumers and collectors work together to negotiate a resolution to paying back delinquent debt. Ultimately, this proposed change will serve to harm many consumers who, under the current law, would not end up facing litigation.

At Encore, filing collections litigation is truly a last resort. Only after we have attempted to communicate with our consumer multiple times do we resort to filing a lawsuit, which is both a poor outcome for our consumers and very costly to us.

### **The Legislation Would Expand the Statute of Limitations Beyond What It Was Intended To Do**

SB 146 would expand the statute of limitations beyond what it was intended to do – ensure that lawsuits are not filed on time-barred debt. In 47 states, the statute of limitations relates to when a legal action may be brought, but this legislation would expand the statute of limitations beyond what Massachusetts and 46 other states do. By applying the statute of limitations to collection activity unrelated to litigation, the legislation would have the exact opposite effect of what is intended: it would incentivize debt purchasers to sue more so as to avoid losing the ability to collect once the statute of limitations runs. The current Massachusetts statute provides that debt

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<sup>1</sup> *Fair Debt Collection Practices Act CFPB Annual Report*. Consumer Financial Protection Bureau, March 20, 2013, page 9. Available at [http://files.consumerfinance.gov/f/201303\\_cfpb\\_March\\_FDCPA\\_Report1.pdf](http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf).

<sup>2</sup> *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*. Federal Trade Commission, July 2010, pages vi and 71. Available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.



purchasers have 6 years to bring an action for collection in Massachusetts. SB 146 would bar any collections attempts on debts older than 3 years. The only way debt purchasers could preserve their legal rights would be to file more actions to collect on valid, delinquent debt before the now shortened limitations period expires. This means more litigation filed and less time for consumers and debt purchasers to work out a negotiated payment solution.

Instead of such a dis-incentive, public policies should seek to promote dialogue and communication between debt purchasers and consumers of delinquent debt, rather than create incentives for more litigation. Additionally, this legislation would prohibit debt purchasers from communicating with consumers regarding a time-barred debt, even if the consumer was seeking to resolve the debt because it appeared on their credit report. Indeed, by banning all collection activity after the statute of limitations, many consumers would be left unaware that they could regain their financial footing by working with a company like Encore, which offers deep discounts, charges no interest or fees, and partners with consumers to reach workable payment solutions. While well-intended, this legislation would close the doors of communication and incentivize more litigation against consumers, as debt purchasers would have 50% less time to negotiate a payment plan with consumers before they would be forced to litigate to preserve their legal rights.

### **The Proposed Wage Garnishment Restrictions Would Result In Fewer Discounts for Consumers With Delinquent Debt and Less Affordable Credit for Everyone Else**

Current Massachusetts law imposes stricter restrictions on wage garnishment than the federal limits. (At a maximum, Massachusetts allows garnishment of 15% of wages vs. the federal level's 25%.) SB 146 would create further significant restrictions, including altogether exempting from wage garnishment consumers who earn less than 80 times the federal or state hourly wage (whichever is greater) and reducing from 15% to 10% the garnishment allowed for other consumers who earn less than \$1,200 per week that is eligible for garnishment.

On its face, further reducing the already very restrictive wage garnishment allowed might protect consumers. However, upon further examination, the reality is that the proposed restrictions would severely constrain the ability of creditors and debt purchasers to collect on valid, court-ordered judgments against consumers who are delinquent on their debt obligations.

The results would be concerning. As an initial matter, this means that collectors who now may offer significant discounts off of the face value of debt would offer fewer or no discounts. At Encore, for example, on the majority of our accounts we offer significant discounts. Without the ability to wage garnish, we would necessarily be forced to reduce the discounts we offer to our consumers.

Of further concern is that, without the ability to collect on delinquent debt through wage garnishment, creditors would necessarily restrict the flow of credit to consumers, and would likely charge higher interest rates. Notable studies have shown that, where legislation restricts



collection remedies, the result to consumers is less access to affordable credit.<sup>3</sup> As a result, Massachusetts consumers – both those who are delinquent on their debt, and those who are not – would be negatively impacted by this significant restriction on creditors’ ability to collect on delinquent debt.

**Significant Reform Impacting the Debt Collection Industry  
Should Wait for the CFPB to Issue its Comprehensive Rulemaking Next Year**

The Federal Consumer Financial Protection Bureau (CFPB) is currently engaged in a broad rulemaking of debt collection that will likely cover almost every aspect of the industry. The CFPB is likely to issue its Notice of Proposed Rules and Final Rules next year. Based on the almost 500 questions (including sub-parts) that the CFPB has asked in the rulemaking thus far, we expect that many of the rules will impact literally every aspect of debt collection addressed in this legislation. As such, we would ask that the Legislature wait to make significant changes to how collectors engage with consumers in Massachusetts until the CFPB has issued its rules. This will ensure that Massachusetts’s debt collection standards do not conflict with the federal rules, and are still needed given the sea change to the industry expected over the coming year.

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Thank you for your attention on this important matter. Please feel free to contact me directly at (770) 310-1864 for any further information.

Sincerely,

Terry Lawler  
Director, Government Affairs  
Encore Capital Group

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<sup>3</sup> See Fedaseyeu, Viktor, *Debt Collection Agencies and the Supply of Consumer Credit (Working Paper No. 13-38)*. Federal Reserve Bank of Philadelphia, May 20, 2013.