

CONSUMER RIGHTS₁

By Michael J. McNamara

Effective March 1, 2005, Minnesota residents (as well as residents of Illinois, Michigan, Wisconsin, and Nebraska) became entitled under the federal Fair and Accurate Credit Transactions Act to one credit report per year from each of the three major credit reporting companies. Although a consumer could obtain a credit bureau report from each of the three major credit bureau reporting companies at the same time, consumer advocates recommend that the requests be staggered throughout the year with a separate request made of each company. The three major credit reporting companies are:

Equifax
P.O. Box 105873
Atlanta, GA 30348-5873
Telephone: 1-800-997-2493

Experian Information Solutions
P.O. Box 949
Allen, TX 75013-0904
Telephone: 1-888-397-3742

TransUnion
P.O. Box 390
Springfield, PA 19064-0390
Telephone: 1-800-916-8800

In an era of increasing “identity theft” it is increasingly important that consumers regularly check the accuracy of their reported credit histories. Only by doing so can consumers learn of inaccuracies and attempt to correct them. Unfortunately, consumer harm caused even by the credit reporting agency itself may go uncompensated. For example, the United States Supreme Court ruled in 2001 that harm caused to a consumer by a credit reporting bureau releasing the consumer’s credit history to an imposter could not be the basis for a claim by the consumer because a statutory two year period barred the suit. The Court so ruled even though the consumer did not learn of the fraud within two years and *even though the statute itself provided for a two year period to commence suit after first learning of the fraud.*²

Although it may be hard to enforce a consumer’s rights against the “Visas” and “Mastercards” of the world, consumers should have an easier time enforcing their rights against collection agencies when the consumer’s use of credit or checks has gone awry. When that occurs and a collection agency becomes involved, the federal Fair Debt Collection Practices Act provides the following protections to consumers: Contact by the collection agent may occur only between 8:00 a.m. and 9:00 p.m. *unless the consumer otherwise agrees*. No contact may be made at work if the agent knows an employer forbids that contact. Within five days of the first contact a collector must send a written notice to the consumer identifying the amount owed, the name of the creditor to whom the money is owed, and how to challenge the debt.

A collector may not harass, oppress, or abuse a consumer in attempting to collect a debt, nor may a collector threaten harm, use obscene or profane language, publish the names of consumers who refuse to pay their debts, or make repeated attempts by telephone to annoy a consumer. Collectors may not imply that they are attorneys or government representatives, may not use any false or misleading statements in order to attempt to collect the debt, may not imply or state that you have committed a crime by not paying the debt, may not falsely state that they operate or work for a credit bureau, or falsely indicate that papers being sent to you are not legal forms (the papers a collector sends you *are* legal papers/forms). Collectors may not disclose personal information about you or the debt to third parties without your written consent. If you believe a debt

collector has violated any of the above requirements you can file a complaint with the Federal Trade Commission, the Minnesota Department of Commerce, or the Minnesota Attorney General. The Minnesota Department of Commerce licenses collection agencies operating in Minnesota, whether they are based in Minnesota or elsewhere. That agency recently imposed a \$70,000.00 civil penalty against a Pennsylvania-based collection company for violating Minnesota collection law. As part of the settlement of the claim against the company, it also had to design and implement a compliance plan, approved by the Department of Commerce, that would assure no future violations. Violations by that company (Alliance One Receivables Management, Inc.) included falsely informing debtors that the debt had to be paid by telephone electronic transfer, by falsely informing debtors that a late fee could be added if they did not pay the debt by electronic telephone transfer, and by employing unlicensed collectors. Conclusion: We should all closely monitor and control our spending while making every effort to avoid both “deficit” spending and poor bookkeeping.

We should also obtain our credit reports every four months. If we do find errors in our credit reports we should promptly contact the credit reporting company and see that a correction is made. If we nonetheless find ourselves being contacted on a debt, we should confirm the accuracy of the debt and protect our state and federal rights while paying a valid debt or challenging an invalid one.

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² TRW, Inc. v. Andrews, No. 00-1045, November 13, 2001.