

[Second Reprint]

ASSEMBLY, No. 2493

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MARCH 10, 2008

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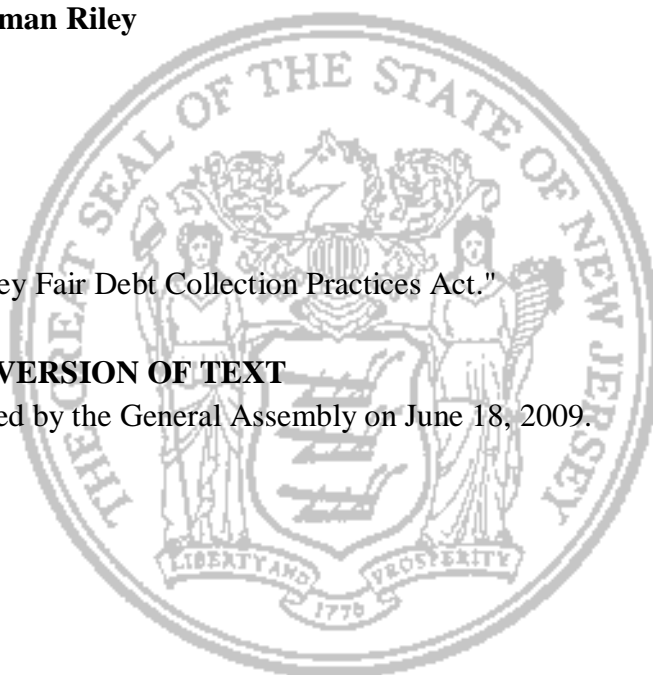
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SYNOPSIS

"New Jersey Fair Debt Collection Practices Act."

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 18, 2009.



(Sponsorship Updated As Of: 6/26/2009)

1 AN ACT concerning debt collection practices and supplementing
2 P.L.1960, c.39 (C.56:8-1 et seq.).
3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*
6

7 1. This act shall be known and may be cited as the "New Jersey
8 Fair Debt Collection Practices Act."
9

10 2. The Legislature hereby finds and declares that:

11 a. The ability of consumers to obtain credit depends upon the
12 ability of creditors to collect just and owing debts.

13 b. There is substantial evidence of the use of abusive,
14 deceptive, and unfair debt collection practices by many debt
15 collectors.

16 c. Abusive, deceptive and unfair collection practices may
17 constitute invasions of personal privacy, and may result in adverse
18 social consequences such as family instability, the loss of jobs or
19 employment opportunity and damage of reputation in the
20 community; additionally, such conduct may undermine the public
21 confidence which is essential to the continued functioning of the
22 banking and credit system and sound extensions of credit to
23 consumers.

24 d. Consumers will benefit through new a State law to
25 complement the federal statutes governing abusive, deceptive and
26 unfair collection practices, which will provide greater incentive for
27 debt collectors to act honestly and fairly with due regard to the
28 rights of debtors, and greater accountability when they fail to do so.

29 e. It is the purpose of this act to prohibit debt collectors from
30 engaging in abusive, deceptive and unfair collection practices in the
31 collection of debts arising from consumer transactions, and the
32 provisions hereof should be liberally construed.
33

34 3. As used in this act:

35 "Consumer" means a natural person.

36 "Consumer reporting agency" means any person which, for
37 monetary fees, dues, or on a cooperative nonprofit basis, regularly
38 engages, in whole or in part, in the practice of assembling or
39 evaluating consumer credit information or other information on
40 consumers for the purpose of furnishing consumer reports to third
41 parties, and which uses any means or facility for the purpose of
42 preparing or furnishing consumer reports.

43 "Consumer transaction" means a transaction pursuant to which a
44 consumer becomes obligated to pay for goods, services or anything

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACO committee amendments adopted June 4, 2009.

²Assembly floor amendments adopted June 18, 2009.

1 of value, including money, used primarily for personal, family or
2 household purposes. A consumer transaction shall not include
3 leases of real property ²or the membership in, or acquisition of
4 interests in, common interest communities as defined in section 1 of
5 P.L.1989, c.9 (C.2A:62A-12)².

6 "Credit" means the right granted by a person to a consumer to
7 defer payment of a debt, to incur debt and defer its payment, or
8 purchase property or services and defer payment.

9 "Creditor" means a person who extends credit to consumers in
10 connection with consumer transactions.

11 "Debt" means any obligation or alleged obligation to pay money
12 directly or indirectly arising out of a consumer transaction. The
13 term "debt" shall include, but is not limited to a check, as defined in
14 subsection f. of section N.J.S.12A:3-104, given in a consumer
15 transaction.

16 "Debtor" means a person who owes ²or allegedly owes² a debt
17 arising out of a consumer transaction.

18 "Debt collector" means any person who by any direct or indirect
19 action, conduct, or practice, collects or attempts to collect ¹for
20 another,¹ a debt that is owed or due, or alleged to be owed by or due
21 from a debtor in this State as a result of a consumer transaction. The
22 term "debt collector" includes, but is not limited to, an attorney, and
23 any person working under the direction or control of an attorney,
24 who regularly collects or attempts to collect, directly or indirectly, a
25 debt that is owed or due, or alleged to be owed by or due from a
26 debtor in this State as a result of a consumer transaction. ¹The term
27 "debt collector" includes any creditor who, in the process of
28 collecting his own debts, uses any name other than his own which
29 would indicate that a third person is collecting or attempting to
30 collect such debts.¹ ²A creditor that uses a billing service to render
31 bills, invoices, and statements of account on behalf of the creditor
32 shall not be deemed to use any name other than his own solely as a
33 result of such use.² The term "debt collector" does not include: any
34 officer or employee of the United States or any state, or agencies or
35 instrumentalities of any state, to the extent that collecting or
36 attempting to collect a debt is in the performance of any official
37 duties ¹including a private entity contracted to act on behalf of a
38 state agency or instrumentality in the collection of a state debt;
39 ²[any person commencing or engaged in litigation to collect a debt
40 while acting within the scope of that litigation or effecting a judicial
41 remedy ordered pursuant to that litigation¹ ;] any person collecting
42 or attempting to collect any debt that was not in default at the time
43 it was obtained by such person;² or any person while serving or
44 attempting to serve legal process on any other person in connection
45 with the judicial enforcement of any debt. ²A billing service that
46 renders bills, invoices, and statements of account on behalf and in
47 the name of a creditor, and that does not collect, or attempt to

1 collect, for the creditor a debt that is owed or due, or alleged to be
2 owed or due, to the creditor as a result of a consumer transaction,
3 shall not be deemed to be a debt collector.²

4 "Person" means an individual, corporation, trust, partnership,
5 incorporated or unincorporated association or any other legal entity.
6

7 4. a. A debt collector shall not communicate with a debtor in
8 connection with the collection of any debt under any of the
9 following circumstances, unless the debtor has given prior written
10 consent ², which may be in the form of an electronic mail message,²
11 directly to the debt collector for that communication, or a court of
12 competent jurisdiction has given express permission for that
13 communication:

14 (1) At any time or place known or which should be known to be
15 inconvenient to the debtor. In the absence of knowledge of
16 circumstances to the contrary, it shall be presumed that the
17 convenient time for communicating with a debtor is after 8 a.m. and
18 before 9 p.m., local time at the debtor's location;

19 (2) If the debt collector knows that the debtor is represented by
20 an attorney with respect to that debt and has knowledge of, or can
21 readily ascertain, that attorney's name and address, unless the
22 attorney fails to respond within a reasonable period of time to a
23 communication from the debt collector or 'unless' the debtor's
24 attorney 'is informed by the debtor, of the debtor's express
25 consent' consents¹ to the debt collector's direct communication
26 with the debtor; or

27 (3) At the debtor's place of employment, except that:

28 (a) The debt collector may send a single letter to the debtor at the
29 debtor's place of employment if the debt collector has been unable
30 to locate the debtor at the debtor's residence 'and does not know or
31 have reason to know that the debtor's employer prohibits the debtor
32 from receiving such communication¹; and

33 (b) The debt collector may telephone the debtor at the debtor's
34 place of employment if the debt collector has been unable to contact
35 the debtor at his residence, provided that:

36 (i) the debt collector does not know or have reason to know that
37 the debtor's employer prohibits the debtor from receiving a non-
38 emergency, non-employment related communication;

39 (ii) the debtor has not informed the debt collector that he does
40 not wish the debt collector to communicate or attempt to
41 communicate with him at his place of employment; and

42 (iii) the debt collector does not inform the employer of the nature
43 of the call.

44 b. In no event shall the debt collector make more than one
45 telephone call per month to the debtor at his place of employment
46 'as may be authorized under subparagraph (b) of paragraph (3) of
47 subsection a. of this section¹ unless the debtor affirmatively

1 indicates in writing that the debt collector is to call the debtor at the
2 debtor's place of employment. For the purposes of this subsection,
3 any language in any instrument creating the debt which purports to
4 authorize phone calls at the debtor's place of employment shall not
5 be considered an affirmative indication that the debtor desires the
6 debt collector to call him at his place of employment.

7 c. A debt collector shall not communicate with the debtor by
8 means of a written communication, including on an envelope, which
9 readily displays or conveys to any person, other than the recipient
10 debtor, any information about the debtor's debt or that uses any
11 language or symbol that indicates that the debt collector is in the
12 debt collection business or that the communication relates to the
13 collection of a debt.

14 d. If a debtor notifies a debt collector in writing that the debtor
15 refuses to pay a debt or that the debtor wishes the debt collector to
16 cease further communication with the debtor, the debt collector
17 shall not communicate further with the debtor with respect to that
18 debt, except:

19 (1) To advise the debtor that the debt collector's further efforts
20 are being terminated;

21 (2) To notify the debtor that the debt collector or creditor may
22 invoke specified remedies which are ordinarily invoked by the debt
23 collector or creditor; or

24 (3) Where applicable, to notify the debtor that the debt collector
25 or creditor intends to invoke a specified remedy.

26 ¹If such notice from the debtor is made by mail, notification shall
27 be complete upon receipt.¹
28

29 5. a. A debt collector shall not, unless the debtor has given
30 ²[prior written consent]² directly to the debt collector prior written
31 consent ², which may be in the form of an electronic mail message,²
32 for that communication ², or has given verbal consent directly to the
33 debt collector at the time the communication is to take place², or a
34 court of competent jurisdiction has given express permission for
35 such communication:

36 (1) Communicate information regarding a debt to any member of
37 the debtor's family, other than the debtor's spouse ¹[or],¹ the
38 parents or guardians of the debtor who is either a minor or who
39 resides in the same household with that parent or guardian, ¹or an
40 adult child living in the same household and managing the affairs of
41 a parent who is the debtor,¹ ²[prior to obtaining a judgment against
42 the debtor,]² except where the purpose of the communication is to
43 locate the debtor ²or if the communication is reasonably necessary
44 to effectuate a post-judgment judicial remedy².

45 (2) Communicate to any person any list of debtors that discloses
46 the nature or existence of a debt, commonly known as "deadbeat
47 lists," or in advertising any debt for sale, by naming the debtor.

1 b. A debt collector may communicate with any person other than
2 the debtor for the purpose of acquiring location information about
3 the debtor, provided that the debt collector shall:

4 (1) Identify himself; state that he is acquiring, confirming or
5 correcting location information concerning the debtor; and, only if
6 expressly requested, identify his employer;

7 (2) Not state that the debtor owes any debt;

8 (3) Not communicate with any person more than once, unless
9 requested to do so by that person or unless the debt collector
10 reasonably believes that the earlier response of that person is
11 erroneous or incomplete and that the person now has correct or
12 complete location information;

13 (4) Not communicate by postcard;

14 (5) Not use any language or symbol on any envelope or in the
15 contents of any written communication that displays or conveys that
16 the debt collector is in the debt collection business or that the
17 communication relates to the collection of a debt.

18 c. A debt collector may, without the prior written consent ²,
19 which may be in the form of an electronic mail message,² of the
20 debtor or the debtor's attorney:

21 (1) Communicate in writing with the debtor's employer for the
22 limited purpose of locating the debtor; or

23 (2) Communicate orally or in writing with the debtor's employer
24 for the limited purpose of verifying the debtor's employment.

25 If the debt collector receives no response from the employer
26 within 15 days, the debt collector may make additional attempts to
27 contact the employer, but not more than once in a seven-day period.

28 d. After a debt collector knows the debtor is represented by an
29 attorney with regard to the subject debt and has knowledge of, or
30 can readily ascertain, that attorney's name and address, the debt
31 collector shall not communicate with any person other than that
32 attorney, unless the attorney fails to respond within a reasonable
33 period of time to communication from the debt collector.

34 e. Except as provided in this section, a debt collector shall not
35 communicate, in connection with the collection of any debt, with
36 any person other than the debtor, the debtor's attorney, a consumer
37 reporting agency if otherwise permitted by law, the creditor, the
38 attorney of the creditor or the attorney of the debt collector, unless
39 the debtor has given prior written consent ², which may be in the
40 form of an electronic mail message,² directly to the debt collector
41 for that communication ², or has given verbal consent directly to the
42 debt collector at the time the communication is to take place², or a
43 court of competent jurisdiction has given express permission for
44 that communication, or the communication is reasonably necessary
45 to effectuate a post-judgment judicial remedy.

1 6. a. Within five days after the initial communication with a
2 debtor in connection with the collection of any debt, a debt collector
3 shall, unless the following information is contained in the initial
4 communication or the debtor has paid the debt, send the debtor a
5 written notice containing:

6 (1) The amount of the debt owed to the creditor, separately
7 stating any additional fees and charges ²added by the debt
8 collector²;

9 (2) The name of the creditor to whom the debt is owed;

10 (3) A statement that unless the debtor, within 30 days after
11 receipt of the notice, disputes the validity of the debt or any portion
12 of the debt, the debt will be assumed to be valid by the debt
13 collector;

14 (4) A statement that if the debtor notifies the debt collector in
15 writing within the 30-day period that the debt, or any portion of the
16 debt, is disputed, the debt collector will obtain verification of the
17 debt or a copy of a judgment against the debtor and a copy of the
18 verification or judgment will be mailed to the debtor by the debt
19 collector; and

20 (5) A statement that, upon the debtor's written request within the
21 30-day period, the debt collector will provide the debtor with the
22 name and address of the original creditor, if different from the
23 current creditor.

24 b. If the debtor notifies the debt collector in writing within the
25 30-day period described in subsection a. of this section that the
26 debt, or any portion of the debt, is disputed or that the debtor
27 requests the name and address of the original creditor, the debt
28 collector shall cease collection of the debt or any disputed portion
29 of the debt, until the debt collector obtains the name and address of
30 the original creditor and verification of the debt or a copy of the
31 judgment and mails them to the debtor. If the debt collector cannot
32 produce the required verification or copy of the judgment, it shall
33 cease all collection activities.

34 c. A debt collector ¹and creditor¹ shall cease collection activities
35 until completion of the review required by subsection e. of this
36 section, upon receipt from a debtor of the debtor's written statement
37 that the debtor claims to be the victim of identity theft with respect
38 to the specific debt being collected by the debt collector ¹or the
39 creditor¹, consisting of ¹a copy of a police report, including the case
40 number, that the debtor shall have filed with a federal, state, or local
41 law enforcement agency reporting the claim of identity theft and¹
42 either:

43 (1) The Federal Trade Commission's standardized ID Theft
44 Affidavit as established pursuant to section 609 (e) (2) (B) (ii) (I) of
45 the federal "Fair Credit Reporting Act," Pub.L.91-508 (15 U.S.C.
46 s.1681g (e) (2) (b) (ii) (I), or

1 (2) A written statement that certifies that the representations are
2 true, correct, and contain no material omissions of fact to the best
3 knowledge and belief of the debtor. The statement shall contain, or
4 be accompanied by, the following, to the extent that an item listed
5 below is relevant to the debtor's allegation of identity theft with
6 respect to the debt in question:

7 (a) A statement that the debtor is a victim of identity theft.

8 (b) Specific facts supporting the claim of identity theft, if
9 available.

10 (c) Any explanation showing that the debtor did not incur the
11 debt.

12 (d) Any available correspondence disputing the debt after
13 transaction information has been provided to the debtor.

14 (e) Documentation of the residence of the debtor at the time the
15 alleged debt was incurred.

16 (f) A telephone number for contacting the debtor concerning any
17 additional information or questions, or direction that further
18 communications to the debtor be in writing only, with the mailing
19 address specified in the statement.

20 (g) To the extent the debtor has information concerning who may
21 have incurred the debt, the identification of any person whom the
22 debtor believes is responsible.

23 (h) An express statement that the debtor did not authorize the use
24 of the debtor's name or personal information for incurring the debt.

25 (i) The certification required pursuant to this paragraph shall be
26 sufficient if it is in substantially the following form:

27 "I certify the representations made are true and correct, and
28 contain no material omissions of fact. I further certify that the
29 copies of all documents attached to this certificate are true, correct
30 and complete copies of the original documents. I am aware that if
31 any of the foregoing statements made by me are willfully false, I am
32 subject to punishment.

33 _____" (Date and Place) (Signature)

34 A debtor submitting the affidavit or certification who declares as
35 true any material matter pursuant to this subsection that he knows to
36 be false is guilty of a disorderly persons offense.

37 d. If a debtor notifies a debt collector 'or a creditor' orally that
38 he is a victim of identity theft, the debt collector 'or the creditor, as
39 the case may be.' shall notify the debtor, in writing, that the
40 debtor's claim must be in writing. If a debtor notifies a debt
41 collector 'or a creditor' in writing that he is a victim of identity
42 theft, but omits information required pursuant to subsection c. of
43 this section, then the debt collector 'or a creditor' must:

44 (1) Cease collection activities; or

45 (2) Provide written notice to the debtor of the additional
46 information that is required or send the debtor a copy of the Federal
47 Trade Commission's ID Theft Affidavit.

1 e. Upon receipt of the complete statement and information
2 required by subsection c. of this section, the debt collector 'or the
3 creditor' shall review and consider all of the information provided
4 by the debtor and other information available to the debt collector
5 '[in his file or from the creditor] or the creditor', and shall
6 determine whether the information establishes that the debtor is not
7 responsible for the specific debt in question. The debt collector 'or
8 the creditor' shall notify the debtor in writing of that determination
9 and the basis for it. If the debt collector 'or the creditor' makes a
10 good faith determination that the information failed to establish that
11 the debtor is not responsible for the specific debt in question, the
12 debt collector 'or the creditor' may recommence debt collection
13 activities. Recommencement of debt collection activities without
14 making a determination that the information does not establish the
15 debtor's responsibility for the specific debt in question, or if that
16 determination was not made in good faith, shall constitute a
17 violation of this act.

18 f. No inference or presumption that the debt is valid or invalid,
19 or that the debtor is liable or not liable for the debt, shall arise from
20 the determination of the debt collector 'or the creditor' after the
21 review described in subsection e. of this section. The exercise or
22 non-exercise of rights under this section shall not be deemed a
23 waiver of any other right or defense of the debtor or debt collector.

24 g. A debt collector 'or creditor' who ceases collection activities
25 under this section ², because the debt is disputed or the debtor
26 claims to be the victim of identity theft, and does not recommence
27 those collection activities within 60 days² shall do all of the
28 following:

29 (1) If the debt collector 'or creditor' has furnished adverse
30 information to a consumer credit reporting agency, notify the
31 agency '[to delete]' that '[information]' ²[debt collection activities
32 have been terminated]' the debt is in dispute²; and

33 (2) '[Notify] In the case of a debt collector, notify' the creditor
34 that ²the² debt ²[collection activities have been terminated] is in
35 dispute².

36 h. A debt collector who has possession of documents that the
37 debtor is entitled to request from a creditor is authorized to provide
38 those documents to the debtor.

39 i. The failure of a debtor to dispute the validity of a debt under
40 this section may not be construed by any court as an admission of
41 liability by the debtor.

42
43 7. a. '[A] No' debt collector 'or creditor' shall '[not]' engage
44 in any conduct, the natural consequence of which is to harass,
45 oppress, intimidate or abuse any person in connection with the
46 collection of a debt.

1 b. **'[A] No'** debt collector **'or creditor'** shall **'[not]'** use any
2 false, deceptive or misleading representation or means in
3 connection with the collection of any debt.

4 c. **'[A] No'** debt collector **'or creditor'** shall **'[not]'** use unfair
5 or unconscionable means to collect or attempt to collect any debt.

6 d. **'[A]** debt collector shall not report solely in his own name any
7 credit or debt information to a consumer reporting agency.

8 e. **A] No'** debt collector **'or creditor'** shall **'[not]'** report to a
9 consumer reporting agency any credit or debt information regarding
10 overdue medical expenses owed by a parent for a minor child if the
11 debt collector is notified orally or in writing of the existence of a
12 court order or administrative order identifying another person as the
13 party responsible for payment of medical expenses for that minor
14 child. In addition, a report may not be made until after the debt
15 collector has notified, or made a good faith effort to notify, the
16 responsible party of that party's obligation to pay the overdue
17 medical expenses. The debt collector may request reasonable
18 verification of the order, including requesting a certified copy of the
19 order.

20 **'[f.] e.'** Notwithstanding the provisions of section 1 of
21 P.L.1993, c.379 (C.2A:32A-1), **'[a] no'** debt collector **'or creditor'**
22 shall **'[not]'** threaten criminal proceedings or other legal action if
23 the debt collector **'or creditor, as the case may be'** does not intend
24 to pursue such action.

25 **'[g.] f.'** **'[A] No'** debt collector **'or creditor'** shall **'[not]'**
26 collect any amount, including interest, fees, charges, or expenses,
27 incidental to the principal obligation, unless that amount is
28 expressly authorized by the agreement creating the debt or
29 permitted by law.

30

31 8. The director shall promulgate rules and regulations pursuant
32 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
33 1 et seq.) necessary to effectuate the purposes of this act.

34

35 9. a. It is an unlawful practice and a violation of P.L.1960, c.39
36 (C.56:8-1 et seq.) to violate any provision of this act.

37 b. A violation of the federal "Fair Debt Collection Practices
38 Act," Pub.L.95-109 (15 U.S.C.s.1692 et seq.) also constitutes a
39 violation of this act.

40 **'c. In lieu of the remedies provided by section 7 of P.L.1971,**
41 **c.247 (C.56:8-19), a debtor aggrieved by a debt collector who**
42 **violates any provision of P.L. , c. (C.) (pending before the**
43 **Legislature as this bill) shall be entitled to payment from the debt**
44 **collector in an amount equal to any actual damages sustained by the**
45 **debtor as a result of the violation or ²[a civil penalty] statutory**
46 **damages² of \$1,000, whichever is greater, together with reasonable**
47 **attorney's fees and court costs and such amount of punitive**

1 damages as the court may allow ²pursuant to section 4 of P.L.1995,
2 c.142 (C.2A:15-5.12) ² . This may be recoverable by the debtor in a
3 civil action in a court of competent jurisdiction or as part of a
4 counterclaim by the debtor against the debt collector who aggrieved
5 the debtor. ¹

6 ²d. A debt collector or a creditor may not be held liable in any
7 action brought under P.L. , c. (C.) (pending before the
8 Legislature as this bill) if the debt collector or creditor shows by a
9 preponderance of evidence that the violation was not intentional and
10 resulted from a bona fide error notwithstanding the maintenance of
11 procedures reasonably adapted to avoid any such error.

12 e. The court shall consider, in determining the amount of
13 damages to be awarded for a violation of P.L. , c. (C.)
14 (pending before the Legislature as this bill), the frequency and
15 persistence of non-compliance by the debt collector or creditor, as
16 the case may be, the nature of such non-compliance, and the extent
17 to which such non-compliance was intentional. ²

18
19 ²10. Notwithstanding the provisions of P.L.1960, c.39 (C.56:8-1
20 et seq.), an action brought by a person pursuant to the provisions of
21 subsection c. of section 9 of P.L. , c. (C.) (pending before the
22 Legislature as this bill) shall be commenced within two years next
23 after the most recent alleged violation of P.L. , c. (C.)
24 (pending before the Legislature as this bill). ²

25
26 ²[10] 11 ² . This act shall take effect ²[immediately] on the first
27 day of the seventh month following enactment, but the Director of
28 the Division of Consumer Affairs may take such anticipatory
29 administrative acts in advance of that date as may be necessary for
30 the timely implementation of this act ² .