In the seventeenth and eighteenth centuries, one of the factors that propelled emigration from England to the American colonies was the harsh enforcement of early English bankruptcy laws. Fear of debtors’ prison—where debtors were kept without bedding, blankets, coal, or access to medical care until their debts could be paid—drove “shiploads” of Englishmen to relocate to the colonies. At the time, English bankruptcy laws gave the right of action to the creditor, not the debtor, and granted discharge only to merchants and traders. By contrast, the early bankruptcy laws of the American colonies allowed for voluntary bankruptcy, taking the position that “it was the debtor, rather than the creditor who needed assistance.”

At the time the U.S. Constitution was drafted, discontent with Britain’s practices surrounding debt was at its peak. While the Constitution did not do away with debtors’ prisons, it did grant the federal government the authority to issue bankruptcy laws. The first bankruptcy statute, passed by near unanimous consent of Congress and signed into law by John Adams in 1800, allowed debtors to discharge their debts and provided for their release from prison upon surrender of nonexempt assets. It also granted people the right to sue for damages if they had been erroneously accused of owing debt.

Through most of the nineteenth century, the bulk of America’s economy was subsistence agriculture. However, there was not much credit available for farmers other than that offered by local merchants, who would sometimes barter goods for produce, or extend credit based on the promising crops of the farmer. If the farmers suffered a crop failure, they would lose the ability to barter or obtain credit for merchandise, and would frequently move their family westward seeking more favorable land and pastures.

Debt collection and its regulation would come to play a significant role in the westward settlement of the United States. For example, the Panic of 1819 touched off a depression that drove settlers to migrate to Texas, where they found refuge from debtors’ prisons. Texans recognized that “desperate fortunes had driven many of their countrymen to enwrap themselves in the protective folds of the Lone Star Flag,” and established strong legal protections for borrowers. Many of these legal protections survive to this day. For example, the Texas Constitution bans wage garnishment for most debts and regulates home equity loans.

In urban areas, the second half of the nineteenth century saw the rise of loan sharks who made high-interest, short-term loans. Also known as “salary lenders,” these individuals made loans to employees on a Monday that needed to be repaid that Friday. Annualized interest rates of more than 1000% were common and were frequently even higher for African-American borrowers. A commonplace collection tactic was for creditors to “employ a ‘bawler-out’—usually a woman with a stentorian voice and rich vocabulary” who would station herself outside the borrower’s workplace and loudly take the borrower to task for failing to repay the loan. Debt collectors not only used humiliation as a cudgel to induce borrowers to settle, but they also confronted relatives and friends.

In the wake of the Panic of 1893 and the resulting economic depression, Congress enacted a new bankruptcy law. The Bankruptcy Act of 1898 eased restrictions on discharge policies for borrowers, allowed for consumers to file for voluntary bankruptcy, and also provided protections against involuntary bankruptcy. These reforms made it more difficult for creditors to use bankruptcy to collect debts.

By the early 1900s, one in five American workers owed money to salary lenders. In an attempt to curb salary lending and promote licensed lending, two-thirds of the states adopted versions of the Uniform Small Loan Law published in 1916. Small loan businesses sprang up under the new laws. Simultaneously, during the 1920s, corporations such as Sears, General Motors, and Steinway & Sons began making installment loans to purchase high-priced consumer goods like cars, washing machines, pianos, and sewing machines. One survey in 1928 found that forty-one percent of respondents purchased an item on installments. Household debt rose steadily through the 1920s.

In the 1930s, the consequences of defaulting on an installment contract were generally harsh. Goods were repossessed if payments were 30 days late. Items were resold but no surplus was returned to the consumer, resulting in a loss of wealth where large deposits and short repayment terms usually meant significant financial investment over a short period of time.

In 1939, at the end of the Great Depression, the American Collector’s Association (now ACA International) was founded “to bring together third-party collection professionals to advance the credit and collection industry.” Debt collectors began to use the telephone to collect debts as early as the 1940s, and by the 1960s some collection agencies began to use automated systems to interact with debtors. In the 1950s and 60s, groups of creditors in a region began pooling information about consumers
with delinquent accounts, forming early credit reporting companies.\textsuperscript{38}

In 1968, the National Conference of Commissioners on Uniform State Laws developed the Uniform Consumer Credit Code to remedy “impediments to the free flow of credit.”\textsuperscript{39} Concerned about the impact on consumers, fifty-five consumer experts gathered in June 1969 at a meeting co-sponsored by the newly formed National Consumer Law Center (NCLC).\textsuperscript{40} As a result of that meeting, NCLC undertook the drafting of a National Consumer Act that was released in 1970.\textsuperscript{41} The National Consumer Act served as a model for state reforms, including the Wisconsin Consumer Act in 1973.\textsuperscript{42} State reform efforts and proposed revisions to the Uniform Consumer Credit Code informed NCLC’s drafting of the Model Consumer Credit Act, which contained a section specifically addressing consumer protections in debt collection.\textsuperscript{43}

While some states had amended their laws by the mid-1970s to protect consumers from abusive debt collection practices, “13 states, with 40 million citizens, ha[d] no debt collection laws” and “another 11 states . . . provide[d] little or no effective protection.”\textsuperscript{44} This left nearly forty percent of the American population without “meaningful protection from debt collection abuse.”\textsuperscript{45}

In 1975, Congressman Frank Annunzio of Chicago introduced a bill to protect consumers from abusive debt collection that bore a striking resemblance to NCLC’s Model Consumer Credit Act. In 1977, the bill passed the House by one vote and the Senate by voice vote with bipartisan support in both houses. The Fair Debt Collection Practices Act (FDCPA) was signed by President Carter on September 20, 1977, and became law in 1978.\textsuperscript{46}

Since the FDCPA’s passage, many states have passed or amended state debt collection statutes. These state statutes are discussed in more detail in § 10.2 [1] and Appx. D [2], infra.

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the Consumer Financial Protection Bureau (CFPB) and gave it enforcement and rule-making authority over debt collectors.\textsuperscript{47} The Bureau has announced that it is considering new debt collection rules.\textsuperscript{48}

Footnotes


6 \textit{Id.} at 216.

7 \textit{Id.} at 215.

8 U.S. Const. art. I, § 8, cl. 4 (“To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States”).
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10 Id. at 183 n.16.


13 Id.


16 Id. at 453.

17 Id. at 454.


19 Tex. Const. art. XVI, § 50(a)(6).


21 Id. (“In a typical transaction, a debtor would borrow five dollars on Monday, and repay six on Friday. This 20% per week loan translates into a 1040% per annum rate. African-Americans borrowing in the South were often charged rates twice as high in the same type of transaction, where a loan of five dollars was repaid with seven at the end of the week.”).

22 Id. at 854.

23 Id. at 857.


25 Christopher l. Peterson, Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in
1.2 A Brief History of Debt Collection and Its Regulation in the United States


26 Id.

27 Id. at 852.


30 Id. at 864.


32 Int’l Monetary Fund, World Economic Outlook: Growth Resuming, Dangers Remain, Figure 3.9, Foreclosures and Household Debt during the Great Depression in the United States (2012) [4], available at https://www.imf.org.


34 Id. at 320.

35 Id. at 320, 327.


37 Deville, Joe. Lived Economies of Default: Consumer Credit, Debt Collection and the Capture of Affect 88 (Routledge 2015) (describing how, during the 1960s, the Credit Bureau of Greater Syracuse (CGBS) began to use IBM punch card machines to prepare collection notices and forwarding notices to out of state collection agencies that could assist with retrieving debts from those who moved out of their direct area of operations).


41 Id.
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45 Id.

46 For a more detailed history of the enactment of the FDCPA, see § 3.4.2.1 [9], infra.

47 15 U.S.C. § 1692l(d). See § 3.4.2.5 [10], infra.


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