

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, section 28-3814 of the District of Columbia Official Code to include all consumer debt under the District’s collection law, to prohibit deceptive behavior from debt collectors, including threatening to accuse people of fraud, threatening to sell or assign consumer debt such that the consumer would lose defense to a claim, or disclosing or threatening to disclose consumer debt information without acknowledging such debt is in dispute or in a way that would harm the consumer’s reputation for creditworthiness, to prohibit debt collectors from making more than 3 phone calls to a consumer in 7 days, to prohibit the communication of consumer indebtedness to employers, except when such indebtedness is guaranteed by the employer, the employer requests the loan, or the information is an attachment to an execution or judgment allowed by law, to prohibit debt collectors from communicating an individual’s indebtedness to family, friends, or neighbors, except through proper legal processes, to require debt collectors to have complete documentation related to the consumer debt being collected, to require debt collectors who enter into a payment schedule or settlement to provide a written copy of the schedule or agreement, to implement specific requirements for a debt collector when initiating a cause of action against a consumer for consumer debt, to allow for the awarding of damages and other fees to a consumer when a debt buyer or debt collector violates this section, to establish specific requirements for the awarding of attorneys’ fees when the plaintiff is the prevailing party, to establish specific requirements for courts to issue bench warrants for civil arrest for failure to appear in debt-collection cases, to prohibit the imprisonment or jailing of any consumer for failure to pay consumer debt, and to establish debt-collection protections during a public health emergency declared by the Mayor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Protecting Consumers from Unjust Debt Collection Practices Emergency Amendment Act of 2021”.

Sec. 2. Section 28-3814 of the District of Columbia Official Code is amended as follows:

(a) Subsection (a) is amended to read as follows:

“(a) This section applies to conduct and practices in connection with collection of obligations arising from any consumer debt (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of this title).”.

(b) Subsection (b) is amended to read as follows:

“(b) As used in this section, the term:

“(1) “Claim” means any obligation or alleged obligation, arising from a consumer debt.

“(2) “Consumer debt” means money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes.

“(3) “Creditor” means a claimant or other person holding or alleging to hold a claim.

“(4) “Debt buyer” means a person or entity that is engaged in the business of purchasing charged-off consumer debt or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection, including an attorney, in order to collect such debt. A debt buyer is considered a debt collector for all purposes.

“(5) “Debt collection” means any action, conduct or practice in connection with the collection of consumer debt.

“(6) “Debt collector” means a person engaging directly or indirectly in debt collection. The term includes any person who sells or offers to sell forms represented to be a collection system, device, scheme, or method intended or calculated to be used to collect claims.

“(7) “Person” means an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

“(8) “Public health emergency” means a period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, or a state of emergency pursuant to § 28-4102.”.

(c) Subsection (c) is amended as follows:

(1) The lead-in language is amended by striking the phrase “of the following ways:” and inserting the phrase “way, including:” in its place.

(2) Paragraph (2) is amended to read as follows:

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“(2) the accusation or threat to falsely accuse any person of fraud or any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject the person to ridicule, contempt, disgrace, or shame;”

(3) Paragraph (4) is amended to read as follows:

“(4) the threat to sell or assign to another the consumer debt with a representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to collection attempts in violation of this section;”

(4) Paragraph (5) is amended by striking the period and inserting a semicolon in its place.

(5) New paragraphs (6), (7), and (8) are added to read as follows:

“(6) the threat of any action which the creditor or debt collector cannot legally take or any action which the creditor or debt collector in the usual course of business does not in fact take;

“(7) disclosing or threatening to disclose information concerning the existence of a debt known to be disputed by the consumer without disclosing the fact that the debt is disputed by the consumer; and

“(8) disclosing or threatening to disclose information affecting the consumer’s reputation for creditworthiness with knowledge or reason to know that the information is false.”.

(d) Subsection (d) is amended as follows:

(1) The lead-in language is amended by striking the phrase “of the following ways:” and inserting the phrase “way, including:” in its place.

(2) Paragraph (2) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(3) Paragraph (3) is amended to read as follows:

“(3) causing expense to any person incurred by a medium of communication or by concealment of the true purpose of the notice, letter, message, or communication; and”.

(4) A new paragraph (4) is added to read as follows:

“(4) communicating with the consumer or any member of the consumer's family or household in such a manner that can reasonably be expected to abuse or harass the consumer, including communications at an unreasonable hour or with unreasonable frequency, or by making in excess of 3 phone calls, inclusive of all phone numbers and accounts the creditor or debt collector has for the consumer, in any 7-day period. The limit of 3 calls in any 7-day period shall not apply to calls made to a debt collector by a consumer or to a single completed call made by a debt collector in response to the consumer’s request for a returned phone call.”.

(e) Subsection (e) is amended as follows:

(1) The lead-in language is amended by striking the phrase “any of the following ways:” and inserting the phrase “such a manner as to harass or embarrass the alleged debtor in any way, including:” in its place.

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(2) Paragraph (1) is amended to read as follows:

“(1) the communication of any information relating to a consumer’s indebtedness to any employer or employer’s agent, except when the indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness and except when such communication is in connection with an attachment or execution after judgments as authorized by law;”

(3) Paragraph (2) is amended to read as follows:

“(2) the disclosure, publication, or communication of information relating to a consumer’s indebtedness to any relative, family member, friend or neighbor of the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;”

(f) Subsection (f) is amended as follows:

(1) The lead-in language is amended to read as follows:

“(f) No creditor or debt collector shall use any unfair, fraudulent, deceptive, or misleading representation, device, or practice to collect a consumer debt or to obtain information in conjunction with the collection of claims in any way, including:”

(2) Paragraph (4) is amended by striking the phrase “name and full business address” and inserting the phrase “name, phone number, email address, and full business address” in its place.

(3) Paragraph (8) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(4) Paragraph (9) is amended by striking the period and inserting a semicolon in its place.

(5) New paragraphs (10) and (11) are added to read as follows:

“(10) initiating a cause of action to collect a consumer debt when the debt collector knows or reasonably should know that the applicable statute of limitations period has expired; and

“(11) seeking to collect funds from a consumer that the debt collector knows or has reason to know are exempt from attachment or garnishment under federal or District law.”.

(g) Subsection (g) is amended as follows:

(1) The lead-in language is amended by striking the phrase “of the following ways:” and inserting the phrase “way, including:” in its place.

(2) Paragraph (4) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(3) Paragraph (5) is amended by striking the period and inserting the phrase “; and” in its place.

(4) A new paragraph (6) is added to read as follows:

“(6) attempting to collect debts owed by a deceased consumer from a person with no legal obligation to pay the amounts alleged to be owed.”.

(h) Subsection (j) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “has willfully violated any provision of the foregoing subsections of this section” and inserting the phrase “has violated any provision of this section” in its place.

(2) Paragraph (2) is amended to read as follows:

“(2) Punitive damages may be awarded to any person affected by a willful violation of any provision of this section when and in such amount as is deemed appropriate by the court or trier of fact.”.

(i) Subsection (k) is amended by striking the phrase “before 8 a.m. and after 9 p.m.” and inserting the phrase “before 8 a.m. or after 9 p.m.” in its place.

(j) New subsections (l) through (cc) are added to read follows:

“(l) Notwithstanding any other provision of law, when the applicable statute of limitations period has expired, any subsequent payment toward or written or oral affirmation of such a consumer debt shall not extend the limitations period.

“(m)(1) No debt collector shall collect or attempt to collect a consumer debt, unless the debt collector has complete and authenticated documentation that the person attempting collection is the owner of the consumer debt, and the debt collector is in possession of the following information or documents:

“(A) Documentation of the name of the original creditor as well as the name of the current creditor or owner of the consumer debt;

“(B) The debtor’s last account number with the original creditor;

“(C) A copy of the signed contract, signed application, or other documents that provide evidence of the consumer’s liability and the terms thereof;

“(D) The date that the consumer debt was incurred; provided, that in the case of a revolving credit account the date that the consumer debt was incurred shall be the last extension of credit made for the purchase of goods or services, for the lease of goods, or as a loan of money;

“(E) The date and amount of the last payment by the consumer, if applicable; and

“(F) An itemized accounting of the amount claimed to be owed, including the amount of the principal; the amount of any interest, fees or charges; and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt. If the debt arises from a credit card, the itemized accounting shall be measured from the charge-off balance and shall include copies of the charge-off statement and the most recent monthly statement recording a purchase transaction, last payment, or balance transfer.

“(2) In the first written communication with the consumer, a debt collector shall provide written notice to the consumer that the consumer may request that the debt collector provide the information or documents identified in paragraph (1) of this subsection to the

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consumer. The notice shall state, in boldface type which is a minimum of 12-point type, the following statement:

“You have the right to request all of the following concerning your debt:

(1) Documentation of the name of the original creditor as well as the name of the current creditor or owner of your debt;

(2) Your last account number with the original creditor;

(3) A copy of the signed contract, signed application, or other documents providing evidence of your liability and its terms;

(4) The date that your debt was incurred;

(5) The date of your last payment, if applicable; and

(6) An itemized accounting of the amount claimed to be owed, including the amount of the principal, the amount of any interest, fees, or charges, and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt.

You may request the above information by contacting us by phone, mail, or email, at the following:”

The notice shall list the debt collector’s phone number, mailing address, and email address for receipt of such requests for information immediately following the above statement, in the same typeface as the statement. The debt collector shall cease all collection of the consumer debt until the above notice is provided to the consumer in writing. Upon receipt of a request by a consumer for any of the information identified in paragraph (1) of this subsection, the debt collector shall provide all of the information listed in paragraph (1) of this subsection to the consumer in writing within 15 days of receipt of the request. If the debt collector cannot provide the information listed in paragraph (1) within 15 days, the debt collector shall cease all collection of the consumer debt until such information is provided.”.

“(n)(1) A debt collector who enters into a payment schedule or settlement agreement regarding a consumer debt shall provide a written copy of the payment schedule or settlement agreement to the consumer within 7 days.

“(2) A consumer shall not be required to make a payment on a payment schedule or settlement agreement until the written agreement required by paragraph (1) of this subsection has been provided by the debt collector.”

“(o) Any action for the collection of a consumer debt shall only be commenced within 3 years of accrual. This period shall apply whether the legal basis of the claim sounds in contract, account stated, open account, or other cause and notwithstanding the provisions of any other statute of limitations unless that statute provides for a shorter limitations period. This time period also applies to contracts under seal. This subsection shall apply to all claims brought on or after the effective date of the Protecting Consumers from Unjust Debt Collection Practices Emergency Amendment Act of 2021, passed on emergency basis on August 3, 2021 (Re-enrolled version of Bill 24-347).

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“(p) Immediately prior to commencing a legal action to collect a consumer debt, the plaintiff shall undertake a reasonable investigation to verify the defendant’s current address for service of process.

“(q) In a cause of action initiated by a debt collector to collect a consumer debt, the debt collector shall attach to the complaint or statement of claim a copy of the signed contract, signed application, or other documents that provide evidence of the consumer’s liability, and shall allege the following information in the complaint or statement of claim:

“(1) A short and plain statement of the type of consumer debt;

“(2) The information enumerated in subsection (m)(1) of this section, except that the debt collector shall only include the last 4 digits of the debtor’s last account number with the original creditor;

“(3) The basis for any interest and fees charged;

“(4) The basis for the request of attorney's fees, if applicable;

“(5) That the debt collector is the current owner of the consumer debt and a chronological listing of the names of all prior owners of the consumer debt and the date of each transfer of ownership, beginning with the original creditor; and

“(6) That the suit is filed within the applicable statute of limitations period.

“(r) In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall file evidence with the court to establish the amount and nature of the debt. The only evidence sufficient to establish the amount and nature of the debt shall be authenticated business records that shall include the information enumerated in subsection (m)(1) of this section, except that the debt collector shall only include the last 4 digits of the debtor’s last account number with the original creditor.

“(s) In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall file a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. The plaintiff shall state:

(1) The date on which the debt was sold or assigned to the plaintiff;

(2) The name of each previous owner of the account from the original creditor to the plaintiff and the date on which the debt was assigned to that owner by the original creditor or subsequent owner; and

(3) The amount due at the time of the sale or assignment of the debt by the original creditor.

“(t) In a cause of action initiated by a debt buyer or debt collector to collect a consumer debt, if a debt buyer or debt collector seeks a judgment or order against the defendant and has not complied with the requirements of this section, the court shall dismiss the action with prejudice.

“(u) A debt buyer or debt collector that violates any provision of this section with respect to a consumer may be liable to the consumer for the following:

“(1) Actual damages;

“(2) Costs and reasonable attorney's fees;

“(3) Punitive damages;

“(4)(A) If the consumer is an individual, the court may award an additional penalty in an amount not less than \$500 ~~per violation~~ and not to exceed \$4,000 ~~per violation~~; or

“(B) In the case of a class action, the amount for each named plaintiff as could be recovered under subparagraph (A) of this paragraph and an amount as the court may determine for each class member, not exceeding the amount per person that could be recovered under subparagraph (A) of this paragraph times the number of class members; and

“(5) Any other relief which the court determines proper.

“(v) If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff shall be entitled to collect attorneys’ fees only if the contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorneys’ fees, and subject to the following provisions:

“(1) If the contract or other document evidencing indebtedness provides for attorneys’ fees in some specific percentage, such provision and obligation shall be valid and enforceable up to, but not in excess of, 15% of the amount of the debt excluding attorneys’ fees and collection costs.

“(2) If a contract or other document evidencing indebtedness provides for the payment of reasonable attorneys’ fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean the lesser of 15% of the amount of the debt, excluding attorneys’ fees and collection costs, or the amount of attorneys’ fees calculated by multiplying a reasonable rate for such cases by the amount of time reasonably expended to obtain the judgment.

“(3) The documentation setting forth a party's obligation to pay attorneys’ fees shall be provided to the court before a court may enforce those provisions. The documentation must include all of the materials specified in subsection (m)(1) of this section.

“(w) Before a court may issue a bench warrant for civil arrest for failing to appear in a debt collection case under this section, the following conditions must be met:

“(1) The plaintiff must have personally served its motion for contempt, or other related motion or filing, on the defendant; and

“(2) The defendant must have failed to appear at 2 contempt hearings.

“(x) Notwithstanding any other law or court rule, a consumer who is compelled to attend pursuant to a civil arrest warrant shall be brought before the court the same day.

“(y) Notwithstanding any other law or court rule, no person shall be imprisoned or jailed for failure to pay a consumer debt or imprisoned or jailed for contempt of court or otherwise for failure to comply with a court order to pay a consumer debt in part or in full.

“(z) A violation of the Fair Debt Collection Practices Act, approved September 20, 1977 (91 Stat. 874; 15 U.S.C. § 1692 *et seq.*), as amended, shall constitute a violation of this section.

“(aa)(1) Notwithstanding subsection (a) of this section, this subsection and subsection (bb) of this section shall apply to any debt, including loans directly secured on motor vehicles or direct motor vehicle installment loans covered by Chapter 36 of this title.

“(2) During a public health emergency and for 60 days after its conclusion, no creditor or debt collector shall, with respect to any debt:

“(A) Initiate, file, or threaten to file any new collection lawsuit;

“(B) Initiate, threaten to initiate, or act upon any statutory remedy for the garnishment, seizure, attachment, or withholding of wages, earnings, property, or funds for the payment of a debt to a creditor;

“(C) Initiate, threaten to initiate, or act upon any statutory remedy for the repossession of any vehicle; except, that creditors or debt collectors may accept collateral that is voluntarily surrendered;

“(D) Visit or threaten to visit the household of a debtor at any time for the purpose of collecting a debt;

“(E) Visit or threaten to visit the place of employment of a debtor at any time; or

“(F) Confront or communicate in person with a debtor regarding the collection of a debt in any public place at any time, unless initiated by the debtor.

“(3) This subsection shall not apply to:

“(A) Collecting or attempting to collect a debt that is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12; or

“(B) Collecting or attempting to collect delinquent debt pursuant to subchapter XVII of Chapter 3 of Title 1.

“(4) Any statute of limitations on any collection lawsuit is tolled during the duration of the public health emergency and for 60 days thereafter.

“(bb)(1) During a public health emergency and for 60 days after its conclusion, no debt collector shall initiate any communication with a debtor via any written or electronic communication, including email, text message, or telephone. A debt collector shall not be deemed to have initiated a communication with a debtor if the communication by the debt collector is in response to a request made by the debtor for the communication or is the mailing of monthly statements related to an existing payment plan or payment receipts related to an existing payment plan.

“(2) This subsection shall not apply to:

“(A) Communications initiated solely for the purpose of informing a debtor of a rescheduled court appearance date or discussing a mutually convenient date for a rescheduled court appearance;

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“(B) Original creditors collecting or attempting to collect their own debt;
“(C) Collecting or attempting to collect a debt which is, or is alleged to be, owed on a loan secured by a mortgage on real property or owed for common expenses pursuant to § 42-1903.12;

“(D) Receiving and depositing payments the debtor chooses to make during a public health emergency; or

“(E) Collecting or attempting to collect delinquent debt pursuant to subchapter XVII of Chapter 3 of Title 1.

“(cc) Subsections (aa) and (bb) of this section shall not be construed to:

“(1) Exempt any person from complying with existing laws or rules of professional conduct with respect to debt collection practices;

“(2) Supersede or in any way limit the rights and protections available to consumers under applicable local, state, or federal foreclosure laws; or

“(3) Supersede any obligation under the District of Columbia Rules of Professional Conduct, to the extent of any inconsistency.”.

Sec. 3. Applicability.

The provisions of this act shall apply as of September 23, 2021.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia