

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, DC Code Section 28-3814 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 consumers reputation for credit worthiness; to prohibit debt collectors from making more than three phone calls to a consumer in seven days; to prohibit the communication of consumer indebtedness to employer's, 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 said 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 where a debt buyer or debt collector violates this section; to establish specific requirements for the awarding of attorney's fees where the plaintiff is the prevailing party; to establish specific requirements for courts to issue a bench warrant for civil arrest for failure to appear in a debt collection case; to prohibit the imprisonment or jailing or 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 Title 28).”.

(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;

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

68 “(6) “debt collector” means a person engaging directly or indirectly in
69 debt collection, and includes any person who sells or offers to sell forms represented to be a
70 collection system, device, or a scheme or method intended or calculated to be used to collect
71 claims;

72 “(7) “person” means an individual, corporation, business trust, estate, trust
73 partnership, limited liability company, association, joint venture, government, governmental
74 subdivision, agency, or instrumentality, public corporation, or any other legal or commercial
75 entity; and

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

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

80 (1) Subsection (c) is amended by striking the term “of the following ways:” and
81 inserting “way, including:” in its place.

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

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

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

87 “(4) the threat to sell or assign to another the consumer debt with a
88 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 at the end of the sentence and inserting a semi-colon 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 credit worthiness with knowledge or reason to know that the information is false.”.

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

(1) Subsection (d) is amended by striking the term “of the following ways:” and inserting “way, including:” in its place.

(2) Paragraph 2 is amended by striking the term “and.”

(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:

112 “(4) communicating with the consumer or any member of the consumer's
113 family or household in such a manner that can reasonably be expected to abuse or harass the
114 consumer, including, but not limited to communications at an unreasonable hour or with
115 unreasonable frequency, or by making in excess of three phone calls, inclusive of all phone
116 numbers and accounts the creditor or debt collector has for the consumer, in any 7-day period.”.

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

118 (1) Subsection (e) is amended by striking the term “any of the following ways:”
119 and inserting the phrase “such a manner as to harass or embarrass the alleged debtor in any way,
120 including:” in its place.

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

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

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

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

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

133 (1) Subsection (f) 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 their collection of claims in any way, including:”

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

(3) 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; or

“(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 state law.”.

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

(1) Subsection (g) is amended by striking the term “of the following ways:” and inserting “way, including:” in its place.

(2) Paragraph 4 is amended by striking the term “; and” and inserting a semi-colon in its place.

(3) Paragraph 5 is amended by striking the period and inserting “; 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 terms “willfully” and “of the foregoing subsections.”

(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)-(cc) are added to read follows:

“(1) 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 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;

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

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

185 “(F) An itemized accounting of the amount claimed to be owed,
186 including the amount of the principal; the amount of any interest, fees or charges; and whether
187 the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the
188 debt. If the debt arises from a credit card, the account shall include copies of the last twenty-four
189 (24) periodic statements required by the Truth in Lending Act, 15 U.S.C. § 1637(b), that
190 evidence the transactions, purchases, fees and charges that comprise the debt.

191 “(2) A debt collector shall provide the information or documents identified
192 in paragraph (1) of this subsection to the consumer in writing within 5 days after the initial
193 communication with the consumer and shall cease all collection of the consumer debt until such
194 information is provided.

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

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

201 “(o) Any action for the collection of a consumer debt shall only be commenced
202 within 3 years of accrual. This period shall apply whether the legal basis of the claim sounds in
203 contract, account stated, open account or other cause, and notwithstanding the provisions of any
204 other statute of limitations unless that statute provides for a shorter limitations period. This time
205 period also applies to contracts under seal. This paragraph shall apply to all claims brought after
206 the date of enactment of this Act.

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

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

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

215 “(2) The information enumerated in § 28-3814(m)(1), except that the debt
216 collector shall only include the last four digits of the debtor’s last account number with the
217 original creditor;

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

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

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

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

225 “(r) In a cause of action initiated by a debt collector to collect a consumer debt,
226 prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall
227 file evidence with the court to establish the amount and nature of the debt. The only evidence
228 sufficient to establish the amount and nature of the debt shall be authenticated business records
229 that shall include the information enumerated in § 28-3814(m)(1), except that the debt collector
230 shall only include the last four digits of the debtor’s last account number with the original
231 creditor.

232 “(s) In a cause of action initiated by a debt collector to collect a consumer debt,
233 prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall
234 file a copy of the assignment or other writing establishing that the plaintiff is the owner of the
235 debt. If the debt has been assigned more than once, then each assignment or other writing
236 evidencing transfer of ownership must be attached to establish an unbroken chain of ownership.
237 Each assignment or other writing evidencing transfer of ownership must contain the last four
238 digits of the original account number of the debt purchased and must clearly show the debtor's
239 name associated with that account number.

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

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

246 “(1) Actual damages;

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

248 “(3) Punitive damages;

249 “(4)(A) If the consumer is an individual, the court may award an

250 additional

251 penalty in an amount not less than \$500 per violation and not to exceed \$4,000 per violation; or

252 “(B) In the case of a class action, the amount for each named plaintiff as

253 could be recovered under paragraph (4) of this subsection and an amount as the court may

254 determine for each class member, not exceeding the amount per person that could be recovered

255 under paragraph (4) of this subsection times the number of class members; and

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

257 “(v) If the plaintiff is the prevailing party in any action to collect a consumer debt,

258 the plaintiff shall be entitled to collect attorney’s fees only if the contract or other document

259 evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney’s fees,

260 and subject to the following provisions:

261 “(1) If the contract or other document evidencing indebtedness provides

262 for attorney’s fees in some specific percentage, such provision and obligation shall be valid and

263 enforceable up to but not in excess of fifteen percent (15%) of the amount of the debt excluding

264 attorney’s fees and collection costs.

265 “(2) If a contract or other document evidencing indebtedness provides for

266 the payment of reasonable attorney’s fees by the debtor, without specifying any specific

267 percentage, such provision shall be construed to mean the lesser of 15% of the amount of the

268 debt, excluding attorney’s fees and collection costs, or the amount of attorney’s fees calculated

by a reasonable rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.

“(3) The documentation setting forth a party's obligation to pay attorney’s fees shall be provided to the court before a court may enforce those provisions. Such documentation must include all of the materials specified in subsection (o) 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 two 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, nor shall any person be 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, subsections (aa) and (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.

291 “(2) During a public health emergency and for 60 days after its
292 conclusion, no creditor or debt collector shall, with respect to any debt:
293 “(A) Initiate, file, or threaten to file any new collection lawsuit;
294 “(B) Initiate, threaten to initiate, or act upon any statutory remedy
295 for the garnishment, seizure, attachment, or withholding of wages, earnings, property, or funds
296 for the payment of a debt to a creditor;
297 “(C) Initiate, threaten to initiate, or act upon any statutory remedy
298 for the repossession of any vehicle; except, that creditors or debt collectors may accept collateral
299 that is voluntarily surrendered;
300 “(D) Visit or threaten to visit the household of a debtor at any time
301 for the purpose of collecting a debt;
302 “(E) Visit or threaten to visit the place of employment of a debtor
303 at any time; or
304 “(F) Confront or communicate in person with a debtor regarding
305 the collection of a debt in any public place at any time, unless initiated by the debtor.
306 “(3) This subsection shall not apply to:
307 “(A) Collecting or attempting to collect a debt that is, or is alleged
308 to be, owed on a loan secured by a mortgage on real property or owed for common expenses
309 pursuant to § 42-1903.12; or
310 “(B) Collecting or attempting to collect delinquent debt pursuant to
311 [subchapter XVII of Chapter 3 of Title 1].
312 “(4) Any statute of limitations on any collection lawsuit is tolled during
313 the duration of the public health emergency and for 60 days thereafter.

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

321 “(2) This subsection shall not apply to:

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

325 “(B) Original creditors collecting or attempting to collect their own
326 debt;

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

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

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

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

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

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

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

341 Sec. 3. Fiscal impact statement.

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

345 Sec. 4. Effective date.

346 This act shall take effect following approval by the Mayor (or in the event of veto by the
347 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
348 90 days, as provided for emergency acts of the Council of the District of Columbia in section
349 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
350 D.C. Official Code § 1-204.12(a)).