

D R A F T
FOR DISCUSSION ONLY

Debt Collection Default Judgments Act

Uniform Law Commission

May 3, 2022 Drafting Committee Meeting



Copyright © 2022
National Conference of Commissioners on Uniform State Laws

This draft, including the proposed statutory language and any comments or reporter's notes, has not been reviewed or approved by the Uniform Law Commission or the drafting committee. It does not necessarily reflect the views of the Uniform Law Commission, its commissioners, the drafting committee, or the committee's members or reporter.

April 28, 2022

Drafting Committee on Debt Collection Default Judgments Act

The Committee appointed by and representing the Uniform Law Commission in preparing this act consists of the following individuals:

Raymond P. Pepe	Pennsylvania, <i>Chair</i>
Gail Hagerty	North Dakota, <i>Vice Chair</i>
Thomas J. Buiteweg	Michigan
David Certo	Indiana
Jack Davies	Minnesota
Jeffrey T. Ferriell	Ohio
Michael A. Ferry	Missouri
Lorie D. Fowlke	Utah
Eric A. Koch	Indiana
James G. Mann	Pennsylvania
Nora Winkelman	Pennsylvania, <i>Division Chair</i>
Dan Robbins	California, <i>President</i>

Other Participants

Judith Fox	Indiana, <i>Reporter</i>
Steven M. Richman	New Jersey, <i>American Bar Association Advisor</i>
Louise M. Nadeau	Connecticut, <i>Style Liaison</i>
Tim Schnabel	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
(312) 450-6600
www.uniformlaws.org

Debt Collection Default Judgments Act

Table of Contents

Prefatory Note.....	1
Section 1. Title.....	3
Section 2. Definitions.....	3
Section 3. Scope.....	5
Section 4. Requirements for Filing Complaint	7
Section 5. Notice of Intent to File Default Motion	12
Section 6. Requirement for Obtaining a Default Judgment.....	13
Section 7. Sanctions	15
Section 8. Uniform Application and Construction	16
Section 9. Relation to Electronic Signatures in Global and National Commerce Act.....	16
Section 10. Transitional Provision.....	17
[Section 11. Severability].....	17
Section 12. Effective Date	17

Debt Collection Default Judgments Act

Prefatory Note

History and Need

The collection of judgments in judicial proceedings has raised concerns across the country. Numerous studies report that default judgments are entered in more than half of all debt collection actions. A 2016 study of debt collection practices by the Consumer Financial Protection Bureau reported that 60 to 90 percent of judicial debt collection result in a default judgment.¹ The Pew Trust reports that 70 % of all debt collection judgments were default judgments.² Default judgments are even more common when the debtor resides in a largely minority neighborhood.³

In August of 2019, the Conference of Chief Justices passed a resolution *In Support of Rules Regarding Default Judgments in Debt Collection Cases*.⁴ The resolution cites a number of reasons why such reform is needed, including, among other things, the following facts:

- more than one in three adults in the United States have a debt in collection;
- the vast majority of debt collection cases result in default judgments;
- defendants in debt collection cases often lack the resources to hire counsel;
- plaintiffs who obtain default judgments in debt collection cases often invoke powerful post-judgment collection remedies;
- debt collection complaints are sometimes initiated after the statute of limitations has expired;
- debt collection cases are increasingly filed by third-party debt buyers;
- debt collection complaints are often served at addresses where the debtor no longer lives; and
- plaintiffs frequently do not provide defendants with the information necessary to assess the validity of their claims⁵

The resolution calls for the enactment of legal requirements “requiring plaintiffs in debt collection cases to file documentation demonstrating their legal entitlements to the amounts they seek to collect before entry of any default judgment.”⁶

¹ *Study of Third-Party Debt Collection*, Consumer Financial Protection Bureau, 2016 at 18, https://files.consumerfinance.gov/f/documents/20160727_cfpb_Third_Party_Debt_Collection_Operations_Study.pdf.

² *How Debt Collectors Are Transforming The Business Of State Courts*, Pew Charitable Trusts, May 6, 2020 at 45-80, <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>.

³ Lisa Stifler and Leslie Parrish, *Debt Collection and Debt Buying: The State of Lending in America & its Impact on U.S. Households*, Ctr. For Responsible Lending (2014), <https://www.responsiblelending.org/the-state-of-lending>.

⁴ Conference of Chief Justices, Conference of State Court Administrators, Resolution 4, Rules Regarding Default Judgments in Debt Collection Cases, August 22, 2018, https://www.ncsc.org/_data/assets/pdf_file/0017/23453/08222018-debt-collection-default-judgments.pdf.

⁵ *Id.*

⁶ *Id.*

1 The National Center for State Courts issued a report in 2020 entitled *Preventing Whack-*
2 *a-Mole Management of Consumer Debt Cases: A Proposal for a Coherent and Comprehensive*
3 *Approach for State Court.*⁷ The report notes that “nearly one in four civil cases filed in state
4 courts involve consumer debt collection.”⁸ The report also points out that these cases are often
5 filed in courts with “high-volume dockets, for which judges and court staff often lack the
6 resources and expertise to scrutinize claims.”⁹ Courts, the report points out, have an obligation to
7 monitor “compliance with procedural due process” for “both contested and uncontested cases.”¹⁰
8 Consumer debt collection cases are often resolved by default judgment.¹¹ Ad hoc measures have
9 been implemented across the country, resulting in uneven justice. As a result, the report calls for
10 more uniform reforms specifically those relating to due process, “including notices, standing,
11 timeliness” and “documentation of the amount of the debt.”¹²

⁷ Paula Hannaford-Agor & Brittany Kauffman, *Preventing Whack-a-Mole Management of Consumer Debt Cases: A Proposal for a Coherent and Comprehensive Approach for State Court*, 2020, https://iaals.du.edu/sites/default/files/documents/publications/management_of_consumer_debt_cases.pdf

⁸ *Id.* at 1

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 6.

¹² *Id.* at 25.

Debt Collection Default Judgments Act

Section 1. Title

This [act] may be cited as the Debt Collection Default Judgments Act.

Section 2. Definitions

In this [act]:

(1) “Assign” means to transfer a consumer debt, or any of a creditor’s associated rights and obligations, from a creditor to another person.

(2) “Charge off ” means the act by a creditor of removing a consumer debt from its books as an asset and treating it as a loss or expense. “Charged off” has a corresponding meaning.

(3) “Charged-off balance” means the amount of a consumer debt at the time the debt was charged off by a creditor.

(4) “Consumer debt” means an obligation or alleged obligation incurred by an individual to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes.

(5) “Creditor” means the person to whom a consumer debt is owed.

(6) “Default” means the failure to satisfy an obligation that gives rise to a cause of action subject to this [act].

(7) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) “Finance charge” has the same meaning as provided in section 1605 of the Truth in Lending Act, 15 U.S.C. section 1601 et. seq. [, as amended].

(9) “Original creditor” means the person to whom a consumer debt was owed at the time of the charge off or default that gives rise to a cause of action. subject to this [act].

(10) “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision, agency, or instrumentality.

(11) “Principal” means the amount of a consumer debt at the time the debt was incurred.

(12) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(13) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(14) “Unsecured consumer debt” means a consumer debt that is not secured by an interest in property. The term includes debt that represents the deficiency remaining upon the disposition of property that secured a consumer debt.

Legislative Note: *It is the intent of this act to incorporate future amendments to the federal law cited in paragraph (8). A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “as amended.” A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Reporter’s Note

Regarding the definition of “finance charge,” the Drafting Committee understands that the Uniform Law Commission’s Style Manual discourages definitions that relate to other statutes. However, because the definition used 15 U.S.C. § 1605 is well known and has been fleshed out in extensive litigation, the Drafting Committee believes that defining the term

1 differently, even using the same language, could introduce conflicting interpretations and cause
2 less, not more, uniformity across the states.

4 **Comment**

5
6 The definition of consumer debt is widely used in the industry and is derived from the
7 definition found in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a (5). The nature of
8 the debt attaches when the debt is incurred. So, for example, if you take out a loan to purchase a
9 car for personal use it is a consumer debt regardless of whether you, two years later, decide to
10 use that vehicle for deliveries in your floral business. Likewise, if the car had been purchased and
11 used for the floral business it is a business debt even if, two years later, you decide to give the car
12 to your son for his own personal use.

13
14 The definition of “charge off” is meant to mirror the accounting term of the same name.
15 It is understood that not all creditors “charge off” their debts. However, it is the point at which
16 the majority of consumer debts go into collection. A consumer debt does not need to be formally
17 “charged-off” for this act to apply.

18
19 An original “creditor” is the person to whom a consumer debt was owed at the time of a
20 default that gives rise to a cause of action subject to this act. The “creditor,” on the other hand, is
21 the person to whom the consumer debt is owed when a proceeding for collection of the debt is
22 initiated. Suppose, for example, that Bank A originated a loan, and was then acquired by Bank B,
23 who was then acquired by Bank C. The consumer defaults on the loan and Bank C charges off
24 the loan, sending the loan to its own collection department. The “original creditor” for purposes
25 of this act would be Bank C. Bank C would also be the “creditor.” However, if Bank C were to
26 sell the loan to a third-party debt collector who then files suit, the “original creditor” remains
27 Bank C, but the creditor is now the third-party debt collector. Bank C remains the creditor no
28 matter how many times the loan is sold or transferred.

29
30 The term “default judgment” is not defined, but instead is determined based on a state’s
31 laws or procedural rules.

32
33 The definition of “principal” is meant to include only the amount of the consumer debt
34 incurred with the originator of the debt. Any interest or fees incurred post charge-off or post
35 default that gave rise to the complaint are not considered principal.

36
37 An “unsecured secured consumer debt” means a consumer debt that is not secured by real
38 property, tangible or intangible personal property, including judicial liens, mechanics liens or
39 other such liens that are granted by operation of other state or federal law.

40 **Section 3. Scope**

41 **Option 1**

42
43 This [act] applies to a proceeding for the collection of an unsecured consumer debt in

1 which a default judgment is sought.

2 **Option 2**

3 This [act] applies to a proceeding for a collection of an unsecured consumer debt in
4 which a default judgment is sought by a person other than the original creditor.

5 **End of Options**

6 **Reporter's Note**

7 Option 1 applies a uniform rule for all proceedings for the collection of a consumer debt
8 in which a request is made for a default judgment. By doing so, it simplifies judicial
9 administration and avoids disputes regarding whether a plaintiff is a debt collector or satisfies
10 other criteria and responds to concerns that the original scope of the act limited to third party
11 debt collection was too narrow. Consumer groups, representatives of debt buyers and court
12 personnel all recommended that the act apply to all types of creditors. Debt buying industry
13 representatives suggested that with recent internal industry reforms, problems with erroneous
14 complaints or complaints that fall outside applicable statutes of limitations are no more frequent
15 with proceedings initiated by debt buyers than proceedings initiated by other classes of plaintiffs,
16 including original creditors. Representatives of the judiciary were concerned that additional
17 burdens would be placed on court personnel if they had to determine whether or not the act
18 applied to the plaintiff in any given action. The Drafting Committee has not decided whether to
19 recommend expansion of the scope of the act. For purposes of facilitating a decision about
20 whether to expand the scope of the act, this draft presents both options.

21
22 Option 2 excludes proceedings initiated by original creditors under the theory that its
23 protections may not be needed in circumstances in which an on-going relationship exists
24 between a plaintiff and a consumer. This would limit the scope of the act in a manner reasonably
25 comparable with the Federal Fair Debt Collection Practices Act.

26
27 These options will be presented for consideration at the 2022 Annual Meeting of the
28 Uniform Law Commission for the purpose of obtaining guidance regarding which option should
29 be selected, or whether both options should be identified as alternatives to be selected on a state-
30 by-state basis.

31 **Comment**

32
33
34 This act applies to the collection of unsecured or previously secured consumer debts. The
35 act does not apply to the collection of a secured consumer debt, even if that cause of action also
36 requests a money judgment. So, for example, if a creditor sues on a car loan both to repossess the
37 vehicle and obtain a money judgment, the act would not apply. Likewise, it does not apply to a
38 mortgage foreclosure action, even if a deficiency judgment is likely. The act would apply,
39 however, to a subsequent action to collect only the deficiency once the collateral has been
40 reclaimed or sold by the creditor. It likewise applies to a complaint to collect only a money

1 judgment on a secured consumer debt.

2
3 The act does not apply to secured consumer debts because secured debts are governed by
4 other laws such as the Uniform Commercial Code and other laws governing debts secured by
5 interests in property.

6
7 **Section 4. Requirements for Filing Complaint**

8 (a) A complaint filed in a proceeding subject to this [act] must include an [affidavit]
9 [unsworn declaration] signed by an individual with knowledge setting forth the following:

10 (1) the nature of the plaintiff's relation to the consumer debt including,

11 (A) whether the plaintiff is the sole owner of the debt; and

12 (B) if the plaintiff is not the sole owner of the debt, the authority under
13 which the plaintiff is asserting the rights of all owners of the debt;

14 (2) a short, plain statement of the nature of the underlying consumer debt and the
15 transaction or transactions from which the debt arose;

16 (3) facts sufficient to establish that the complaint is being filed in the proper
17 venue;

18 (4) facts sufficient to demonstrate the complaint is being filed within the
19 limitation period relevant to the consumer debt;

20 (5) the name and address of the creditor at the time of the charge-off or default
21 which gives rise to a cause of action subject to this [act], including the name by which the
22 consumer would recognize the creditor;

23 (6) the amount of the consumer debt plaintiff is claiming, including:

24 (A) the amount of the debt at the time of charge off or default that gave
25 rise to the cause of action;

26 (B) an explanation of the amount, nature, and reason for all interest, costs,

1 and fees, including attorney fees, for which a judgment is sought; and

2 (C) the amount of interest, costs and fees, including attorney fees, that
3 arose after the charge off or default that gave rise to the cause of action;

4 (7) the name and address of each person that purchased the consumer debt, or to
5 whom the debt was transferred or assigned for collection, after the charge off or default that gave
6 rise to the cause of action in a manner reasonably sufficient to identify each person, including the
7 plaintiff;

8 (8) at least the last four digits of the account number used when the consumer
9 made the last payment on the consumer debt prior to the charge off or default that gave rise to
10 the cause of action; [and]

11 (9) the name and last known address of the consumer as they appeared in the
12 records of the original creditor [.] [and]

13 [(10) information sufficient to demonstrate that the plaintiff possesses a valid and
14 currently in effect [license, registration, certification, or bond]

15 (b) The complaint and any other pleadings that contain personally identifiable personal
16 information regarding the consumer shall be filed in accordance with [cite to state law regarding
17 the protection of confidential information in court filings].

18 **Legislative Note:** *If the state has adopted the Uniform Unsworn Declarations Act, use the*
19 *reference to an unsworn declaration in subsection (a) and elsewhere where it appears in this act.*
20 *If not, use the reference to an affidavit.*

21 *If the state licenses, registers, bonds or certifies debt collectors, include paragraph (10) in*
22 *subsection (a) and include the appropriate word in the internal brackets. Otherwise, delete*
23 *paragraph (10)*

24 Reporter's Note

26 Per the discussion at the last meeting, the requirements for the complaint were amended
27 to reflect some of the trends in state legislatures to require more specific information in these
28 cases. There are some additional items included on our list in order to comply with the

1 requirements contained in recent Consumer Financial Protection Bureau consent orders.

2 3 **Comment**

4 The requirements of this section are in addition to, not a replacement for, any other
5 requirements of the law of the state or rules of civil procedure.

6
7 Subsection (a)(1) is a requirement to identify the plaintiff's relationship to the consumer
8 debt in question. It is not necessary to recount the entire history of the consumer debt in this
9 provision. It requires a simple statement such as "the plaintiff is the originator of the debt" Or
10 "the plaintiff is the person to which the defendant made its last payment" or the plaintiff is "a
11 purchaser of the debt" or "a person to whom the right to collect debt was assigned."

12
13 Subsections (a)(1)(A) and (a)(1)(B) set out a requirement to identify whether the plaintiff
14 owns the consumer debt in question. If the plaintiff is a debt buyer, for instance, it requires a
15 simple statement that plaintiff purchased the debt. If the plaintiff is not the owner of the debt but
16 has the authority to collect based on some other authority such as an assignment or joint
17 ownership agreement, it must be disclosed here. If there is joint ownership, the statement must
18 include whether the plaintiff has the authority to collect the entire consumer debt or a portion of
19 the debt. A statement that the plaintiff has the authority to collect the entire debt would preclude
20 the collection of any portion of the debt by a co-owner. This provision does not require the
21 submission of any particular record to the court.

22
23 The requirements of subsection (a)(2) are intended to provide the consumer with a simple
24 statement of the nature of the consumer debt. Some examples of this statement include "this is
25 a credit card debt" or "this is the deficiency due after the repossession of an automobile." It is
26 not a requirement to provide an extensive or detailed explanation of the debt.

27
28 The requirement of subsection (a)(3) is intended to establish venue. This provision is not
29 meant to supplant any state law or rule of civil procedure. It is a requirement that the plaintiff
30 state the facts to support the choice of venue. A proper answer could include such things as the
31 address of the consumer or the place where the contract was signed.

32
33 The requirements of subsection (a)(4) are intended to establish that the cause of action is
34 being filed within the statute of limitations. Determining the statute of limitations can be a
35 complicated matter. This provision does not require the plaintiff to state a specific statute of
36 limitations. Instead, it is meant to provide the factual basis for the court and consumer to
37 determine whether or not this action has been filed within the relevant limitation period. The
38 plaintiff should list any of the factors that are relevant to the claim. Examples of such factors
39 include the date of the default that gave rise to the complaint, the date and amount of the last
40 payment made toward repayment of the debt, the date the goods or services that are the subject
41 of the debt were provided, or the date a request for payment was made. So, for example, a debt
42 buyer suing on a credit card would specify the last payment or last transaction made on the card.
43 A small business owner such as a contractor might state the date the work was completed and a
44 request for payment was made.

1 Subsection (a)(6) is intended to provide information about the amount of the consumer
2 debt. A specific itemization of the debt from its origin is not required. So, for instance, in the
3 case of a credit card debt, the creditor is not required to specify the amount of interest charged
4 from the beginning of the relationship with the consumer. Instead, this provision requires a
5 disclosure of the amount of the debt at the time of the default or charge off and any charges the
6 plaintiff is requesting that were incurred after that date.

7
8 Subsection (a)(8) requires the identification of the account number as it would be
9 recognized by the consumer. Sometimes account numbers are changed as the consumer debt is
10 sold or assigned to different entities. This provision requires the plaintiff to identify the account
11 number that the consumer would know to be correct, such as the number on the last statement
12 paid by the consumer. If there is no account number, an invoice number or other information
13 that could identify the debt may be used.

14
15 The following form is provided as an example of how to comply with this section:

16
17 Affiant states, under penalty of perjury, that:

18 I _____ am ☐ Plaintiff

19 (Name of Affiant) OR

20 ☐ a designated full-time employee of _____
21 (Plaintiff). (Name of Plaintiff)

22
23
24 I am of adult age and am fully authorized by Plaintiff to make the following representations. I am
25 familiar with the record keeping practices of Plaintiff. The following representations are true
26 according to documents kept in the normal course of Plaintiff's business and/or my personal
27 knowledge:

28
29
30 1. Plaintiff:

31 ☐ is the original owner of this consumer debt, and evidence of the debt,

32 OR

33 ☐ has obtained this consumer debt from _____
34 and the original owner of this consumer debt was _____

35
36 OR

37 ☐ is the assignee of this consumer debt from _____
38 and is authorized to collect this consumer debt because _____

39
40
41 2. The type of account is:

42 ☐ Credit card account (i.e. Visa, Mastercard, Department Store, etc.)

43 List the name of the Company/Store issuing credit card: _____

44 ☐ Account for utilities (i.e. telephone, electric, sewer, etc.)

45 ☐ Medical bill account (i.e. doctor, dentist, hospital, etc.)

46 ☐ Account for services (i.e. attorney fees, mechanic fees, etc.)

47 ☐ Other: (Please explain) _____

3. (Complete only those that apply):

- ☐ The defendant resides at _____
- ☐ The contract was signed at _____
- ☐ The following service _____ was provided at _____
- ☐ Other (Please explain) _____

4. (Complete only those that apply):

- ☐ the last payment on the account was made on _____
- ☐ the defendant defaulted on _____
- ☐ the following service, (fill in service) _____
was provided on _____ and payment was demanded on _____

5. (If applicable)

The name and address of the creditor that charged off or transferred the consumer debt after default, is _____

6. The defendant would recognize the plaintiff by the name: _____

7. (If the plaintiff acquired this consumer debt after default)

This consumer debt originated with _____ and was subsequently (sold or assigned to) (list the name and address of each person, sufficient to reasonably identify the person, that acquired the debt after charge off or the default that gave rise to this cause of action, including the plaintiff).

8. (Provide all that is relevant)

- ☐ The last four digits of the account number before plaintiff acquired the consumer debt were _____

- ☐ The defendant's address when the plaintiff acquired the consumer debt was _____

9. Defendant has an unpaid balance of \$ _____ on account _____

This account balance includes:

- ☐ Late fees in the amount of \$ _____ as of _____
(Month, Day, Year)

- ☐ Interest at a rate of _____ % beginning on _____
(Month, Day, Year)

- ☐ Other (Please explain) _____

- ☐ Attorney's fees and additional evidence will be presented to the court prior to _____

entry of judgment on attorney's fees.

10. ☐ Plaintiff has the required [license, registration, bond or certification]) under [relative state law]

11. ☐ Defendant is not on active military service. Plaintiff's statement that defendant is not on active military service is based upon the following facts:

OR

☐ Plaintiff is unable to determine whether or not defendant is on active military service military service.

("Active military service" includes fulltime duty in the military (including the National Guard and reserves) and, for members of the National Guard, service under a call to active service authorized by the President or Secretary of Defense. For further information, see the definition of "military service" in the Servicemembers Civil Relief Act, as amended, 50 U.S.C.A. Appx. § 521.)

I swear or affirm under the penalties of perjury that the foregoing representations are true.

Dated: _____ Signature of Affiant: _____

Section 5. Notice of Intent to File Default Motion

(a) If the plaintiff is required by rules of procedure or other law of this state to file a motion for a default judgement in a record, the plaintiff must send the consumer a notice of intent to file a default motion at least [14] days prior to filing the motion.

(b) The notice of intent to file a motion for default judgment must include a statement that:

(1) if a written response to the motion for a default judgment is not received by the date required under applicable rules of procedure] a default judgment may be entered against the consumer;

(2) if a judgment is entered against the consumer, it will remain in effect until at

1 least [specify the limitation period for enforcement of a judgment under state law] in the amount
2 of the alleged consumer debt plus judgment interest of [specify amount of interest on judgment
3 provided by state law];

4 (3) following entry of a judgment, the plaintiff in a manner provided by rules of
5 procedure or other law of this state may [take action][initiate proceeding] to [sell real estate and
6 personal property owned by the consumer] [attach the consumer's bank accounts] [garnish the
7 consumer's wages];

8 (4) if the consumer cannot afford an attorney to assist the consumer in responding
9 to the motion, the consumer may seek legal representation from a local legal services agency and
10 provide the address and phone number of the agency; and

11 (5) the consumer or the consumer's legal representative may contact counsel for
12 the plaintiff to discuss settlement options that may be more favorable to the consumer than the
13 consequences of entry of a default judgment.

14 (c) A notice of intent to file a motion for default judgment satisfies the requirements of
15 this section if given substantially in a form of a standard notice promulgated by the court.

16 **Comment**

17
18 If state law or the rules of civil procedure require the filing of a motion before a default
19 judgment can be entered, this section requires a pre-filing notice. Some small claims courts do
20 not require the filing of a separate motion for default judgments. Instead, the consumer is given
21 notice to appear in court on a specific date. If the consumer fails to appear and the plaintiff has
22 otherwise complied with this act, a default judgment would enter. If the cause of action is filed
23 in a court or jurisdiction where the filing of a separate motion requesting a default judgment is
24 not required, this section will not apply.

25 26 **Section 6. Requirement for Obtaining a Default Judgment**

27 (a) Unless submitted with the complaint, a motion for default judgment for the collection
28 of an unsecured consumer debt shall include business records, authenticated as required by other

law of this state, including:

(1) documentation that includes:

(A) the name of the original creditor, including the name under which the creditor did business with the consumer; and

(B) any of the following:

(i) a record signed by the consumer evidencing the opening of the account out of which the consumer debt arose; or

(ii) documentation reflecting a purchase, payment, or actual use of the account;

(C) the last four digits of the account number at the time the default that gave rise to the cause of action occurred or the charge off was made;

(D) the current amount due, including any interest or fees and how the amount was calculated; and

(E) the date and amount of the last payment, if any, made toward the repayment of the consumer debt.

(b) If the plaintiff is not a creditor, the documentation under subsection (a) must also include:

(1) the date the plaintiff acquired the consumer debt and a chronological list, including dates of acquisition, of all prior owners, transferees or assignees of the debt; and

(2) a bill of sale or other business record authenticated as required by other law of this state including a specific reference to the consumer debt being collected, evidencing the transfer of ownership of the consumer debt at the time of transfer and the transfer to each successive owner from the creditor to the plaintiff.

1 (c) If the consumer debt is for the provision of medical services, the documentation must
2 also include:

- 3 (1) the consumer's name and account number;
- 4 (2) the date of service;
- 5 (3) a statement as to what portion of the consumer debt has been submitted to a
6 third-party payor for payment and whether payment was received;
- 7 (4) the amount paid by the consumer or third-party payor, or other contractual
8 adjustments made to the account; and
- 9 (5) if the consumer debt was guaranteed, the name of the guarantor, and a copy of
10 the documentation evidencing the guaranty.

11 **Comment**

12 The requirements listed in section 6 are substantially the same as those listed in the
13 consent judgment between the Consumer Financial Protection Bureau v Encore Capital Group,
14 Midland Funding LLC, Midland Credit Management, Inc., and Asset Acceptance Capital Corp,
15 Case No. 20CV1750-GPC-KSC, US. Dist. Court, Oct. 15. 2020. In addition, items were taken
16 from the documents Receivable Management Association International, an organization
17 of 400 debt buyers and debt collectors, require their members to file when seeking judgment.
18

19 **Section 7. Sanctions**

20 (a) A court shall not enter a default judgment in an action subject to this [act] unless the
21 plaintiff has complied with Sections 4, 5, and 6.

22 (b) {A judgment entered in violation of this section is void.}

23 **Reporter's Note**

24

25 Subsection (b) is contained in braces to indicate that it is a recommendation of the
26 reporter to respond to concerns expressed in prior Drafting Committee meetings that expanded
27 remedies for violation of the act should be provided. It has not yet been discussed in any detail
28 by the committee and as such at this time does not reflect the consensus of the members of the
29 committee. It is included now for purposes of facilitating a decision on whether to include it in
30 the final act.
31

1 We have discussed whether or not a judgment should be void if not entered in
2 compliance with this act. Concerns were raised that such a requirement would be in conflict
3 with the rules of procedure for setting aside the judgment. This provision would not create such
4 a conflict. It would instead present the grounds to petition a court to set aside the judgment. The
5 defendant would still need to request a hearing to prove that the statute had been violated.
6 Without this provision, parties would really have no means by which to enforce the statute.

7
8 A statute with no enforcement mechanism is not effective. Maryland, for example, does
9 not provide a remedy for its statute, which has caused additional litigation in an effort to enforce
10 the rights provided. States that have enacted similar provisions have chosen various methods of
11 enforcement. A common method is to allow enforcement through another statute such as the Fair
12 Debt Collection Practices Act or a Deceptive Practices Act. The states with this mechanism
13 allow for statutory damages, actual damages and attorney's fees.

14 15 **Section 8. Uniform Application and Construction**

16 In applying and construing this uniform act, a court shall consider the promotion of
17 uniformity of the law among jurisdictions that enact it.

18 **Section 9. Relation to Electronic Signatures in Global and National Commerce Act**

19 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
20 Commerce Act, 15 U.S.C. Section 7001 et seq. [, as amended], but does not modify, limit, or
21 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
22 described in 15 U.S.C. Section 7003(b).

23 ***Legislative Note:*** *It is the intent of this act to incorporate future amendments to the cited federal*
24 *law. A state in which the constitution or other law does not permit incorporation of future*
25 *amendments when a federal statute is incorporated into state law should omit the phrase “, as*
26 *amended”. A state in which, in the absence of a legislative declaration, future amendments are*
27 *incorporated into state law also should omit the phrase.*

28 29 **Comment**

30
31 In 2000, Congress enacted the “Electronic Signatures in Global and National Commerce
32 Act”, 106 PUB.L.NO. 229, 114 Stat. 464, 15 U.S.C. § 7001 et seq. (popularly known as “E-
33 Sign”). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102 of
34 E-Sign, entitled “Exemption to preemption,” provides in pertinent part that: (a) A State statute,
35 regulation, or other rule of law may modify, limit, or supersede the provisions of section 101
36 with respect to State law only if such statute, regulation, or rule of law-- (1) constitutes an
37 enactment or adoption of the Uniform Electronic Transactions Act as approved and
38 recommended for enactment in all the States by the National Conference of Commissioners on

Uniform State Laws in 1999” [with certain exceptions] or (2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if [they meet certain criteria] and (B) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act. 15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement that the act “make [] specific reference to this Act” pursuant to 15 U.S.C. § 7002(a)(2)(B) if the uniform or model act contains a provision authorizing electronic records or signatures in place of writings or written signatures.

Section 10. Transitional Provision

This [act] applies to consumer debt collection actions filed after [the effective date of this [act]].

[Section 11. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: Include this section only if the state lacks a general severability statute or a decision by the highest court of the state stating a general rule of severability.

Section 12. Effective Date

This [act] takes effect