

DRAFT
FOR DISCUSSION ONLY

DEBT COLLECTION DEFAULT JUDGMENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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December 7, 2020

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1 **DEBT COLLECTION DEFAULT JUDGMENTS ACT**

2 **PREFATORY NOTE**

3 **History of the Act**

4 The Conference of Chief Justices and the Conference of State Court Administrators adopted a
5 resolution in August 0f 2018 in support of additional rules for default judgments in debt
6 collection cases. The resolution specifically called for more documentation to demonstrate a
7 debt collectors legal entitlement to the debt and amount claimed. The Committee on Scope and
8 Program concluded in a June 20, 2019 report that “changes in debt collection have created a need
9 for regulations that protect both courts and consumers.”

10
11 The Uniform Law Commission created a study committee to investigate the need for such an act.
12 The study committee met on December 12, 2019 and again on March 19, 2010. In June 2020,
13 the study committee recommended the constitution of a drafting committee. The scope of the
14 charge to the drafting committee was to create an act regarding default judgments filed in debt
15 collection actions filed by debt collectors and debt buyers.

16 **Background and Summary of the Act**

17
18
19 *Drafter’s Note: this will be filled in as we proceed.*

1 **DEBT COLLECTION DEFAULT JUDGMENTS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the [Uniform/Model] Debt
3 Collection Default Judgment Act

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Creditor” means any person who offers or extends credit creating a debt or to whom
6 the debt is owed. The term creditor does not include any person to the extent that such person
7 received an assignment or transfer of a debt in default solely to facilitate collection of the debt
8 for another.

9 (2) “Charge off” means the act of a creditor that treats an account receivable or other debt
10 as a loss because payment is unlikely.

11 (3) “Charge off balance” means the amount of the debt at the time the debt was charged
12 off by the original credit.

13 (4) “Consumer” means any natural person obligated or allegedly obligated to pay any
14 debt.

15 (5) “Consumer debts” means a debt that is incurred by an individual primarily for
16 personal, family or household purposes.

17 (6) “Debt” means any obligation or alleged obligation to pay money arising out of a
18 transaction in which money, property, insurance or services are the subject of the transaction.

19 (7) “Debt Collector” means the same as “debt collector” as defined by the Fair Debt
20 Collection Practices Act, 15 U.S.C. §§1692-1692p [or applicable state law].

21 (8) “Debt Conciliation meeting” means the process of the debt collector or debt buyer and
22 the consumer meeting [with a third party neutral] to attempt to resolve the debt.

23 (9) “Debt Buyer” means a person or entity that regularly engages in the business of

1 purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself,
2 hires a third party for collection, or hires an attorney at law for collection litigation.

3 (10) “Debtor” means a person who owes an obligation to pay money arising out of a
4 transaction in which money, property, insurance or services are the subject of the transaction.

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

7 (12) “License” means any permit, license or other requirement imposed by the
8 jurisdiction before a debt collector or debt buyer can engage in debt collection activity.

9 (13) “Original consumer debt” means the amount of the consumer debt the debtor owed,
10 or alleged to owed, to the original creditor, consisting of principal, interest, fees and other
11 charges.

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

15 (15) “Principal” means the unpaid balance of funds borrowed, the credit utilized, the
16 sales price of goods or services obtained, or the capital sum of any other debt or obligation
17 arising from a consumer transaction by the original creditor

18 (16) “Record” means information that is inscribed on a tangible medium or that is stored
19 in an electronic or other medium and is retrievable in perceivable form.

20 (17) “Secured debt” means any debt that is secured by tangible or intangible personal
21 property.

22 (18) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
23 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of

1 the United States.

2 (19) “Unsecured debt” means any debt that is not collateralized by the debtor’s personal
3 or real property. An unsecured debt includes a debt that represents the deficiency remaining in a
4 previously secured debt.

5 **Comment**

6
7 1. The definition of “debt collector” includes attorney who regularly collect consumer debts
8 specified by the U.S. Supreme Court in
9

10 2. The definition of “conciliation meeting” requires at least one “in-person” meeting or other
11 communication between the parties [and a third-party neutral individual]. The alternative
12 requirements of either an “in-person” meeting. This requirement contemplates that the meeting
13 may be by telephone, video conference or other electronic means so long as all parties [and the
14 neutral individual] are able to simultaneously hear or communicate with one another.
15

16 3. To avoid any conflicts between state and federal law, the definitions of “consumer,”
17 “creditor,” “debt,” and “debt collector” are all derived from the Fair Debt Collection Practices
18 Act. 15 U.S.C. §§1692-1692p.
19

20 **SECTION 3. SCOPE.** This Act governs legal actions filed by debt buyers or debt
21 collectors to collect an unsecured consumer debt filed after the effective date of this act.

22 **SECTION 4. REQUIREMENTS FOR COMPLAINT.**

23 (a) In any action filed by a debt buyer or debt collection to collect an unsecured consumer
24 debt, the plaintiff shall include an affidavit, signed by a person with personal knowledge setting
25 forth the following:

26 (1) that the plaintiff is a debt buyer or debt collector;

27 (2) the nature of the debt;

28 (3) that the debt is within the applicable statute of limitations. If the law of this
29 state does not govern the statute of limitations, the affidavit should set forth the state whose
30 statute of limitations does apply and set out the facts relied upon to make that determination;

31 (4) the name and address of the charge-off creditor, including the name by which

1 the consumer would recognize the creditor;

2 (5) the amount of the debt at charge off;

3 (6) the amount and rate of interest, any fees and charges that the original creditor
4 imposed, if the debt buyer or collector knows the amount, rate, fee or charge;

5 (7) the amount and rate of interest, any fees and any charges that the debt buyer or
6 any previous owner of the debt imposed, if the debt buyer or debt collector knows the amount,
7 rate, fee or charge;

8 (8) the attorney fees the debt buyer or debt collector seeks, if the debt buyer or
9 debt collector expects to recover attorney fees;

10 (9) any other fee, cost, or charge the debt buyer seeks to recover;

11 (10) the current amount of the debt including principal, interest and any fees;

12 (11) the date and amount of the last payment made on the debt;

13 (12) the last four digits of the original account number.

14 **SECTION 5. SERVICE OF PROCESS.**

15 (a) Before alternative methods of service may be used for the summons and complaint,
16 the debt buyer or debt collector must certify that it made two prior, unsuccessful attempts at
17 personal service.

18 **SECTION 6. REQUIREMENT OF NOTICE TO CONSUMER.**

19 (a) No later than 14 days after the commencement of the action, the court shall send a
20 Notice of Rights to the consumer.

21 (b) The debt buyer or debt collector shall provide the court with an envelope addressed to
22 the consumer at the service address with proper postage affixed and a copy of the notice.

23 (c) The notice shall inform the consumer:

- 1 (1) that the consumer is being sued on a debt;
- 2 (2) how to respond to the lawsuit;
- 3 (3) the name, address, and telephone number of each lawyer-referral service, and
- 4 legal-aid agency serving the consumer's geographic;
- 5 (4) that the consumer cannot be jailed for failing to pay a debt;
- 6 (5) the right to participate in a debt conciliation meeting.

7 **SECTION 7. FORM OF THE NOTICE.** A notice in substantially the same form as this
8 optional notice satisfies section 6(c) of this Act:

9 NOTICE OF FILING OF DEBT COLLECTION ACTION.

10 [name and address of court]

11 [name and address of consumer]

12 A lawsuit has been filed against you by [name and address of plaintiff] claiming you owe
13 money for an unpaid consumer debt.

14 You should respond to the lawsuit by filing an "answer" no later than [____] days after
15 you receive this notice [or by appearing on the [_____] day of [_____] at
16 [_____] am/pm].

17 If you do not respond to the lawsuit, the court may enter a money judgment against you.
18 Once entered, a judgment is good and can be used against you for [fill in proper number] years,
19 and your personal property and money, [including a portion of your paycheck or bank accounts]
20 may be taken from you.

21 You may wish to contact an attorney. If you cannot afford a lawyer, you may seek
22 assistance from [list of free legal services available in the geographic area]

23 You cannot be arrested or sent to jail for owing a debt.

1 **Drafting Note:** *As suggested in a prior meeting, the debt conciliation process has been taken*
2 *largely from the foreclosure facilitation processes of the Uniform Home Foreclosure Procedures*
3 *Act. That act anticipates the use of a third-party neutral. I have included that use of a third party*
4 *neutral in brackets to allow states to determine whether or not to require a neutral. We could*
5 *include language requiring a neutral, suggest courts use programs currently in place or create a*
6 *new program, possibly using not-for-profit credit counseling agencies.*

7
8 **SECTION 10. DEBT CONCILIATION PROCEDURE.**

9 (a) A debt buyer or debt collector shall provide the consumer with the following
10 information at least 7 days prior to the debt conciliation conference:

11 (1) documentation of its right to collect the debt as set out in section 12; and

12 (2) the loss-mitigation options available to the consumer.

13 (b) A debt buyer or debt collector may not charge a consumer a fee or costs for
14 participating in a debt conciliation conference. [The court agency may charge a fee or assess
15 costs for the use of a third party neutral in the process to either or both parties].

16 (c) A consumer that participates in debt conciliation conference shall provide reasonably
17 available financial and other information to enable the debt buyer or debt collector to evaluate
18 any loss- mitigation option.

19 (d) This [act] does not impose a duty on a debt buyer or debt collector to provide a
20 specific loss-mitigation option.

21 (e) A consumer may be accompanied at a debt conciliation conference by an attorney or
22 bona fide debt counselor, who may participate in the meeting.

23 (f) Personal financial information exchanged during a debt conciliation conference is
24 confidential and not subject to disclosure under [state freedom-of-information act or sunshine
25 law]. [The neutral individual is not required to respond to a discovery request in a court
26 proceeding to the extent the request seeks personal financial information or privileged
27 information exchanged during foreclosure resolution.]

1 **Legislative Note:** *Most states have adopted statutes or court rules addressing freedom of*
2 *information, and open-government or 'sunshine' matters, and discovery during litigation. In*
3 *adopting this act, the states should consider whether the requirements of this section regarding*
4 *those matters are compatible with existing state statutes or rules, and make changes if*
5 *appropriate.*

6
7 **SECTION 11. RESTRICTIONS ON JUDGMENT DURING DEBT**

8 **CONCILIATION.**

9 (a) a debt buyer or debt collector may not file a default or dispositive motion in a legal
10 action to collect a debt, unless:

11 (1) the notice under Section 6 has been sent;

12 (2) the consumer, not later than 30 days after the notice is sent, either

13 (A) failed to request a debt conciliation conference, or

14 (B) requests a debt conciliation conference; and

15 (C) the debt buyer or debt collector [or third party neutral] notifies the
16 creditor that the parties that participated in the conference required by Section 10 and have
17 reached an impasse; or

18 (D) the consumer has failed to participate in the debt conciliation
19 conference, provide required information after a reasonable opportunity to do so, or materially
20 comply with an agency rule or order.

21 **SECTION 12. REQUIRMENT FOR OBTAINING A DEFAULT JUDGMENT.**

22 (a) Any request for default judgment filed by a debt buyer or debt collector for the
23 collection of a consumer debt, shall include:

24 (1) original account level documentation of the original debt including

25 (A) the name of the Creditor at the time of Charge-off, including the name
26 under which the Creditor did business with the Consumer, and

- 1 (B) Any of the following:
- 2 (i) A document signed by the consumer evidencing the opening of
- 3 the account which forms the basis of the debt;
- 4 (ii) Original Account level documentation of the account reflecting
- 5 a purchase, payment, or actual use of the account.
- 6 (iii) If the debt is a medical debt, the date, dates or date range of
- 7 services.
- 8 (C) a copy of the charge-off statement that includes the last four digits of
- 9 account number at the time of charge-off;
- 10 (D) the amount due, including any interest and fees at charge off;
- 11 (E) the current amount due, including any interest or fees and how this
- 12 amount was calculated. If this is a medical debt, this should include any adjustment to the bills
- 13 including any negotiated insurance rates or other discounts;
- 14 (F) the date and amount of the last payment, including, if this is a medical
- 15 debt, any payments made by the insurance company;
- 16 (2) a chronological list of all prior owners of the debt and the date of the transfer
- 17 beginning at the date of charge off;
- 18 (3) A certified or otherwise authenticated bill of sale evidencing the transfer of
- 19 ownership of the debt at the time of transfer and to each successive owner from the original
- 20 creditor to the plaintiff. Each document evidencing the debt must include a specific reference to
- 21 the debt being collected on.

22 ***Drafters Note:*** *The requirements listed in section 402 are those listed in the consent judgment*

23 *between the Consumer Financial Protection Bureau v Encore Capital Group, Midland Funding*

24 *LLC, Midland Credit Management, Inc., and Asset Acceptance Capital Corp, Case No.*

25 *20CV1750-GPC-KSC, US. Dist. Court, Oct. 15. 2020.*

