

D R A F T
FOR DISCUSSION ONLY

Consumer Debt Default Judgments Act

Uniform Law Commission

June 5, 2023 Informal Session Draft



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National Conference of Commissioners on Uniform State Laws

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May 26, 2023

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Table of Contents

Prefatory Note.....	1
Section 1. Title.....	4
Section 2. Definitions.....	4
Section 3. Scope.....	6
Section 4. [Complaint] Requirements.....	8
Section 5. Notice of Intent to Seek Default Judgment.....	14
Section 6. Waiver.....	17
Section 7. Relation to Other Law.....	18
Section 8. Uniformity of Application and Construction.....	18
Section 9. Relation to Electronic Signatures in Global and National Commerce Act.....	18
Section 10. Transitional Provision.....	19
[Section 11. Severability].....	19
Section 12. Effective Date	19

Consumer Debt Default Judgments Act

Prefatory Note

History and Need

Structure and Operation of the Act

The act is structured to prevent plaintiffs from applying for, and courts from granting, default judgments in consumer debt collection actions without first providing both the court and consumer with certain basic information. The act requires plaintiffs to give consumers information needed to understand the claim being asserted against them and identify possible defenses. Under the act plaintiffs are also required to provide the consumer with a notice that advises them of the adverse effects of failing to raise defenses or seek the voluntary settlement of claims before they are able to obtain a default judgment.

The act seeks to provide a uniform framework in which courts can fairly, efficiently, and promptly evaluate the merits of requests for default judgments while balancing the interests of all parties and the courts. Additionally, it provides plaintiffs with consistent, uniform rules for how to obtain a default judgment in consumer debt collection actions.

History of the Problem the Act Seeks to Address

The Federal Reserve Bank of New York's Household Debt and Credit Report tells us that in the last quarter of 2021 consumers owed nearly 15.24 trillion dollars in consumer debt. Additionally, roughly 7% of all consumers have at least one account that has gone into collection with a third party and 8% of all consumers have a credit card that is at least 90 days late. As a result, a substantial number of Americans are dealing with debt collection activity.

The collection of judgments in judicial proceedings against consumers 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 (CFPB) reported that 60 to 90 percent of judicial debt collection actions result in a default judgment. The Pew Trust reported in 2020 that 70% of all debt collection judgments were default judgments and default judgments were more common when the debtor resides in a largely minority neighborhood.

More than ten years ago, the Federal Trade Commission ("FTC") issued a report, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* setting out the concerns and making recommendations for change. Some of the findings and recommendations are found below:

"States should consider adopting measures to make it more likely that consumers will defend in litigation...

States should require collectors to include more information about the debt in their complaints...

1 States should take steps to make it less likely that collectors will sue on time-barred debt
2 and that consumers will unknowingly waive statute of limitation defenses available to
3 them.”

4 FTC and CFPB enforcement actions have led to the development of standards by banking
5 regulators for the sale of debts and the development of standards and credentialing within the
6 debt collection industry. Yet, problems still exist. In August of 2019, the Conference of Chief
7 Justices passed a resolution *In Support of Rules Regarding Default Judgments in Debt Collection*
8 *Cases*. The resolution cites a number of reasons why reform is still needed, including, among
9 other things, the following facts:

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

21
22 The Conference of Chief Justice’s resolution calls for the enactment of legal requirements
23 “requiring plaintiffs in debt collection cases to file documentation demonstrating their legal
24 entitlements to the amounts they seek to collect before entry of any default judgment.”

25
26 The National Center for State Courts and the Institute for the Advancement of the
27 American Legal System issued a report in 2020 entitled *Preventing Whack-a-Mole Management*
28 *of Consumer Debt Cases: A Proposal for a Coherent and Comprehensive Approach for State*
29 *Court*. The report notes that “nearly one in four civil cases filed in state courts involve consumer
30 debt collection.” It explains that these cases are often filed in courts with “high-volume dockets,
31 for which judges and court staff often lack the resources and expertise to scrutinize claims.” As
32 the report points out, courts have an obligation to monitor “compliance with procedural due
33 process” for “both contested and uncontested cases” because so many consumer debt collection
34 cases are resolved by default judgment. Ad hoc measures have been implemented across the
35 country, resulting in uneven justice and complicated procedures that differ not just from state to
36 state, but from court to court within states. Uniform reforms are needed. The report specifically
37 calls for reforms relating to due process, “including notices, standing, timeliness,” and
38 “documentation of the amount of the debt.”

39 In November of 2022, the Michigan Justice for All Commission released a report and
40 study, *Advancing Justice for All in Debt Collection Lawsuits*. Like all previous studies, it found
41 that debt collection was dominating the Michigan District Courts. Most cases are resolved by
42 default, usually resulting in a wage garnishment. The Commission’s recommendations mirror
43 those of the earlier studies. They include “[i]ncreasing the amount of information to be included

1 in the complaint to help ensure the plaintiff has provided sufficient evidence to support a default
2 judgment.” This act seeks to do just that.

3 **Other State Laws**

4
5 Close to one third of the states have enacted statutes or court rules to deal with this
6 perceived problem. The committee looked at all those laws and chose those provisions that are
7 most consistent across those acts: a requirements to provide information about the debt in the
8 complaint, information regarding standing to bring the case, and documentation that establishes
9 the existence and ownership of the debt. At the request of observers, we looked more closely at
10 rules of procedure in Texas and Indiana, recently passed laws in New York and California, and
11 standards set by Receivables Management Association International, a debt collections trade
12 organization. New York ‘s Consumer Credit Fairness Act and California’s Fair Debt Buying
13 Practices Act were passed with collaboration from financial institutions, debt buyers and debt
14 collectors, and consumers. While both the California and New York laws deal with a broader
15 array of consumer debt collection procedures than this act, we adopted the core principals of
16 those acts to give consumers the information needed to understand claims being asserted against
17 them and to provide courts the information needed to evaluate the circumstances in which default
18 judgments are entered.

19
20 This is not a state Fair Debt Collection Practices Act. The FDCPA deals with a broad
21 range of debt collection activities. This act deals only with the filing of a collection lawsuit. As
22 a result, it will not impose any additional requirements for communications between the creditor
23 and the consumer in the early stages of default are unwarranted. Likewise, this act does not
24 create or enhance any liability for attorneys involved in debt collection.

Consumer Debt Default Judgments Act

Section 1. Title

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

Section 2. Definitions

In this [act]:

(1) “Charge off” means a creditor’s removal of a consumer debt as an asset from the creditor’s financial records.

(2) “Consumer” means an individual named as a defendant in an action for collection of a consumer debt.

(3) “Consumer debt” means an obligation or alleged obligation of an individual to pay money that arises out of a transaction in which the money, property, insurance, or service that is the subject of the transaction is primarily for a personal, family, or household purpose.

(4) “Creditor” means a person to which a consumer debt is owed at the time of charge off or, if the debt was not charged off, at the time of default.

(5) “Default”, except in the term default judgment, means a failure to satisfy a consumer debt that gives rise to an action to which this [act] applies.

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

(7) “Finance charge” has the meaning in Section 106(a) of the Truth in Lending Act, 15 U.S.C. Section 1605(a)[, as amended].

(8) “Outstanding balance” means the amount owed on a consumer debt:

(A) at the time of charge off or, if the debt was not charged off, at the time of default; or

1 (B) after disposition of property that secured the debt.

2 (9) “Person” means an individual, estate, business or nonprofit entity, a

3 government or governmental subdivision, agency, or instrumentality, or other legal entity.

4 (10) “Record” means information:

5 (A) inscribed on a tangible medium; or

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

8 (11) “Secured consumer debt” means a consumer debt secured by real or personal

9 property.

10 (12) “Sign” means, with present intent to authenticate or adopt a record:

11 (A) execute or adopt a tangible symbol; or

12 (B) attach to or logically associate with the record an electronic symbol,
13 sound, or process.

14 (13) “Unsecured consumer debt” means a consumer debt not secured by real or

15 personal property.

16 **Legislative Note:** *It is the intent of this act to incorporate future amendments to the federal law*
17 *cited in paragraph (7) and Section 9. A state in which the constitution or other law does not*
18 *permit incorporation of future amendments when a federal statute is incorporated into state law*
19 *should omit the phrase “as amended.” A state in which, in the absence of a legislative*
20 *declaration, future amendments are incorporated into state law also should omit the phrase.*

21 **Comment**

22 The definition of “charge off” is meant to mirror the accounting term of the same name.
23 It is understood that not all creditors “charge off” their debts. However, “charge off” is the point
24 at which most consumer debts go into collection. A consumer debt does not need to be formally
25 “charged off” for this act to apply.

26 The definition of “consumer” is meant to be broad enough to include the individual
27 obligated to repay the consumer debt as well as a guarantor of the debt or the individual’s
28 personal representative, guardian or the like who might be the person named as defendant in the
29 collection action.

1 The definition of “consumer debt” is widely used in the industry and is derived from the
2 definition found in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a (5). The act is
3 meant to incorporate the meaning and interpretation of the federal act as developed in the
4 extensive case law relating to the federal law.

5 A “creditor” is the person to which a consumer debt was owed at the time of charge off or
6 default that gives rise to a cause of action subject to this act. The plaintiff, on the other hand, is
7 the person to which the consumer debt is owed when a proceeding for collection of the debt is
8 initiated. Suppose, for example, that Bank A originated a loan, and was then acquired by Bank B,
9 which was then acquired by Bank C. The consumer defaults on the loan and Bank C charges off
10 the loan, sending the loan to its own collection department. The “creditor” for purposes of this
11 act would be Bank C. Bank C would also be the plaintiff in the action. However, if Bank C
12 were to sell the loan to a third-party debt collector who then files suit, the “creditor” remains
13 Bank C, but the plaintiff is now the third-party debt collector. Bank C remains the creditor no
14 matter how many times the loan is sold or transferred.

15 The definition of “default” does not apply when the word “default” is used as part of the
16 phrase “default judgment,” such as in Section 3(a), Section 4(a) and Section 5(a). “Default
17 judgment” is not defined. It is determined by the laws of the state.

18 The definition of “outstanding balance” is the total amount due to the creditor at the time
19 of the charge off or default. This is normally the amount of the consumer debt incurred with the
20 originator of the debt minus any payments made. In most cases, when a payment is made on a
21 debt, it is first applied to interest and then principal, decreasing the total amount of the debt over
22 time. In some cases, however, a payment may not be large enough to pay all the finance charges,
23 costs, or fees that have accrued since the previous payment and these are then added to the
24 remaining balance due, causing it to increase. This is most common in open-end credit where a
25 minimum payment may not be large enough to reduce the total amount of the debt. In this case,
26 the definition of “outstanding balance” would include any such finance charges, costs, or fees
27 that have been added to the original amount of the consumer debt prior to charge off or the
28 default that led to the filing of the action. It is not necessary to itemize these items when stating
29 the amount of the outstanding balance, unless required by other law of the state.

30 If the debt was a secured consumer debt the “outstanding balance” means the amount of
31 the debt that remains unpaid after the real or personal property that secured the debt has been
32 disposed of. This amount includes charges and fees incurred by the creditor when disposing of
33 the collateral. As with unsecured debt, it is not necessary to itemize these amounts when stating
34 the outstanding balance, unless required by other law of the state. A “secured consumer debt” is
35 a debt secured by real or personal property. In this act, it also refers to a deficiency amount that
36 still remains on the debt that was secured, and the security has now been lost, sold or is otherwise
37 not large enough to secure the remaining amount of the debt.

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

41 **Section 3. Scope**

(a) Except as provided in subsection (b), this [act] applies to the award of a default judgment in an action for collection of:

- (1) an unsecured consumer debt;
- (2) a secured consumer debt if the action is brought solely to obtain a money judgment; or
- (3) a deficiency that remains after disposition of property that secured a consumer debt.

(b) This [act] does not apply to:

- (1) an action to take possession of or dispose of real or personal property, even if the action includes a request for a money judgment; or
- (2) an action to collect a debt owed to a government, governmental subdivision, or agency in which the government, governmental subdivision, or agency is the plaintiff.

Comment

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

This act applies a uniform rule for all proceedings for the collection of unsecured consumer debt and a small subset of previously secured consumer debt in which the award of a default judgment is being considered, either because the consumer failed to respond to a complaint or failed to appear at a hearing.

The act does not apply to actions to take possession or dispose of real or personal property, including actions to take possession of or dispose of collateral that secures a debt, or proceedings for eviction of a tenant, because secured debts and landlord tenant disputes are governed by other law, such as the Uniform Commercial Code, motor vehicle finance laws, laws creating statutory liens, and landlord tenant laws. The act would apply to a secured consumer debt only if the action is solely to request a money judgment or is to collect a deficiency remaining after the disposition of property that previously secured a consumer debt. Actions to gain possession of real or personal property are never subject to this act, even if they include a request for a money judgment.

A plaintiff seeking a default judgment must comply with all provisions of the act. If an action is filed that is not in compliance with Section 4 of the act and the plaintiff later decides to pursue a default judgment, the complaint must be amended in accordance with the law of the state

1 or a new complaint must be filed. Therefore, plaintiffs are encouraged to comply with the act in
2 all cases to avoid the need to amend.

3 The act does not apply to the collection of unsecured consumer debts owed to a
4 governmental entity when the plaintiff is that governmental entity. The collection of such debts
5 is often covered by other state law. However, the act does apply to an unsecured consumer debt
6 owed to a government, governmental subdivision, or agency if that debt has been sold to a third
7 party that is not a government entity and that third party is the plaintiff in the action.

8 **Section 4. [Complaint] Requirements**

9 (a) A default judgment in an action for collection of a consumer debt to which this [act]
10 applies may be entered only if the [complaint] or amended [complaint] complies with this
11 section.

12 (b) The [complaint] or amended [complaint] must state:

13 (1) each name and address of the consumer in the records of the creditor at the
14 time of charge off or, if the debt was not charged off, at the time of default;

15 (2) the name of the creditor, including any merchant brand, affinity brand, or
16 facility name associated with the debt;

17 (3) at least the last four digits of the account number or other account identifier
18 used in communicating with the consumer before charge off or, if the debt was not charged off,
19 before default;

20 (4) the date and amount of the last payment;

21 (5) the date of charge off or, if the debt was not charged off, the date of default;

22 (6) the amount of the outstanding balance;

23 (7) the amount of the judgment the plaintiff seeks, itemizing the outstanding
24 balance and the following amounts not included in the outstanding balance:

25 (A) total finance charges;

26 (B) total fees or costs;

1 (C) total attorney's fees; and
2 (D) total credits and payments;
3 (8) a statement whether the amount of the judgment may increase due to accrued
4 interest, fees, or other charges;
5 (9) the authority of the plaintiff to bring the action;
6 (10) facts sufficient to demonstrate that the action is being commenced in a proper
7 venue;
8 (11) facts sufficient to demonstrate that the action is being commenced within the
9 statute of limitation period applicable to the debt; [and]
10 (12) unless the plaintiff is the creditor:
11 (A) the name of each person that acquired ownership of the debt after
12 charge off or, if the debt was not charged off, after default; and
13 (B) the date of each acquisition[; and
14 (13) information sufficient to demonstrate that the plaintiff possesses a valid
15 [license, registration, certification, or bond] if required under [cite to state statute that requires a
16 license, registration, certification, or bond for the purpose of debt collection]].
17 (c) Subject to authentication required by other law of this state and rules of procedure, the
18 plaintiff must attach to the [complaint] or amended [complaint]:
19 (1) at least one of the following that is sufficient to demonstrate the existence of
20 the consumer debt:
21 (A) an agreement signed by the consumer;
22 (B) a record of a purchase, payment, or use of an account; or
23 (C) a record otherwise demonstrating the debt was incurred; and

(2) if the plaintiff is not the creditor, documentation sufficient to demonstrate the plaintiff's authority to collect the debt.

Legislative Note: *A state that uses a term other than "complaint" for the document that commences an action for collection of a consumer debt should insert that term in this section and throughout the act.*

A state that requires a license, registration, certification, or bond for debt collection should include subsection (b)(13) and insert the appropriate term and statute citation.

Comment

As provided by section 7, the requirements of this section are in addition to, not a replacement for, any other requirements of the law of the state or rules of civil procedure.

The requirements of this section apply whether the request for default is made by a record or orally at a hearing or whether a default judgment is entered pursuant to rule of procedure that provides for a default judgment for failure of the consumer to respond to a complaint or appear at a hearing.

A court may not enter a default judgment in a consumer debt collection action unless the plaintiff has complied with the provisions set out in subsections (b) and (c).

Subsection (b) is intended to give the consumer enough information to identify the debt and determine whether it is owed as alleged.

Subsection (b)(1) requires the creditor to identify the consumer's name and address as it appears in their records at the time of charge off or, if the debt was not charged off, at the time of the default that led to the filing of the action. This is meant to assist the consumer in identifying whether they are the proper defendant in the action. So, for example, the creditor's record may indicate that this debt was originally owed by Jane Doe who lived in City A. Jane married and changed her name to Jane Smith and moved to City B. In a complaint seeking a judgment against Jane, subsection (b)(1) requires the plaintiff to indicate the defendant is an individual named Jane Doe, who lived in City A, but subsequently changed her name to Jane Smith and currently lives in City B. If instead, the complaint is filed against a Jane Smith who lives in City B, but was never named Jane Doe, or lived in City A, this subsection alerts the consumer that the debt is not her debt.

Subsection (b)(1) only requires the plaintiff to list names and addresses that it reasonably believes are related to this consumer debt. For example, suppose a creditor did a skip trace analysis to locate the debtor and identified 52 Jane Does. The creditor was then able, with reasonable certainty, to eliminate 50 of those possible Jane Does because, for example, they were the wrong age or race. Subsection (b)(1) would not require the plaintiff to include those 50 extraneous names and addresses, even if they had been retained in its records. The requirement is for the plaintiff to include only those names and addresses it reasonably believes are connected to the debt in question.

1 Subsection (b)(2) requires the plaintiff to identify the creditor, including any merchant
2 brand, affinity brand, or facility name associated with the debt. This is intended to identify the
3 creditor in a way in which the consumer would recognize the debt. So, for example, if the
4 consumer has a credit card from the ABC Supply store, but that credit card is issued by 1st State
5 Bank, the plaintiff should identify the creditor by both names. The consumer may not know or
6 understand that their debt is owed to 1st State Bank and not to ABC Supply, the entity printed on
7 the front of the card. Likewise, if a consumer did business with Lawn Specialty Inc, doing
8 business as Joe's landscaping service, the consumer may not recognize a complaint coming
9 from Law Specialty Inc because the consumer never interacted with the creditor using that
10 name. The creditor's name should not be limited to the name under which a business is
11 organized, but should also include any fictitious name, DBA, or other identifier used in
12 communications with the consumer.

13 Subsection (b)(3) requires the plaintiff to identify at least the last four digits of the
14 account number or account identifier representing the debt that the plaintiff is attempting to
15 collect used before charge-off or default. An account identifier is a group of letters, numbers or
16 other symbols used, other than the consumer's name and address, to identify a debt. If there is no
17 such account number or identifier used in repeated communications with the consumer, the
18 invoice number or identifier most recently used before charge off or default may be used. In the
19 absence of any account or invoice number or identifier, no information must be provided to
20 comply with this paragraph. In such circumstances, however, it would be useful for both the
21 consumer and the court to state that an account number or identifier was not used.

22 Sometimes account numbers are changed as the consumer debt is sold or assigned to
23 different entities. The consumer may not recognize the new account number. This provision
24 requires the plaintiff to identify the account number or identifier that the consumer would have
25 reason to believe is correct, such as the number on the last statement paid by the consumer.

26 Subsection (b)(4) requires the plaintiff to provide information as to the date and amount
27 of the last payment. This is required whether or not that payment was made to the plaintiff, the
28 creditor, or a former owner of the debt. A plaintiff is required to include whatever information
29 it has about the last payment made, including the date and the amount. If no payments were
30 made on the debt, no information must be provided to comply with this section. However, it
31 would be useful for both the consumer and the court, to state that no payment was ever received
32 on this debt.

33 Subsection (b)(5) requires the plaintiff to provide the date of the charge off or default that
34 led to the filing of the action. A consumer may default and cure the default on the debt more
35 than once in the life of the debt. It is not necessary for the plaintiff to list every default. It is
36 only necessary to identify the last default that led to the filing of the cause of action. Likewise,
37 if the debt has been charged off, it is not necessary to identify both the default and the charge
38 off. The charge off will always occur after default, so the plaintiff can satisfy this section by
39 stating the date of the charge off.

40 Subsection (b)(6) requires the plaintiff to state the outstanding balance. The outstanding
41 balance is the balance owed at the time of charge off or default. It is the sum of all charges owed
42 at that time, including any interest, fees, or costs, whether added to the balance of a closed-end

1 debt or capitalized to the balance of an open-end obligation. It is not necessary to itemize these
2 amounts. The outstanding balance should be a single, total amount. If the debt was a secured
3 consumer debt and the collateral was sold, the total balance is the amount owed before the sale,
4 including any costs of the sale, minus the proceeds of the sale.

5 Subsection (b)(6) requires a single total amount due. This does not, however, override or
6 otherwise change any requirements that may exist in other state or federal law to provide an
7 itemized accounting to the consumer at the time of charge off or, in the case of a secured debt, at
8 the time the property securing the debt is sold.

9 Subsection (b)(7) requires an itemization of what the plaintiff is asking the court to award
10 as a judgment in the action. This includes any additional charges or credits that have been
11 applied to or credited from the outstanding balance. It does not require itemization of any
12 interest, fees or costs included in the outstanding balance at the time of charge off or default. It
13 only requires itemization of interest, fees and costs arising after charge off or default which the
14 plaintiff is seeking to recover in a judgment.

15 Subsection (b)(8) requires the plaintiff to notify the consumer if the amount stated in
16 subsection (b)(7) is likely to be large by the time judgment is entered. The amount stated in
17 subsection (b)(7) is the amount due at the time the complaint is filed. There may be charges that
18 accrue after that date or that are not due under the contract, but that may only be awarded by a
19 court. Attorney's fees are a good example of the latter. Subsection (b)(8) requires a statement
20 informing the consumer of these facts. So, for example, "the debt continues to accrue interest at
21 a rate of \$0.27 a day" would satisfy this section. The plaintiff may also say that the amount of
22 attorney's fees requested in subsection (b)(8) is only the amount related to the filing of the action
23 and it may be larger than stated in (b)(7) depending on how the action is resolved by the court.
24 Likewise, the plaintiff may wish to simply state that it will be requesting the court to award
25 attorney's fees, the amount of which will be subject to the court's discretion.

26 Subsection (b)(9) requires the plaintiff to identify its authority to collect this debt. It
27 requires a simple statement. Some examples of statements that would satisfy this subsection are:
28 "the plaintiff is the originator of the debt," "the plaintiff is the person to whom the defendant
29 made its last payment," "the plaintiff is a purchaser of the debt," or "the plaintiff is a person to
30 whom the right to collect the debt was assigned." If the plaintiff is not the owner of the debt but
31 has the authority to collect based on some other authority such as an assignment or joint
32 ownership agreement, it must be disclosed here. Subsection (b)(12) requires information about
33 each assignment. The information required by these two sections may be combined, if
34 applicable. It is not required to repeat the information. This provision does not require the
35 submission of any particular record to the court, though Subsection (c)(2) may require
36 documents.

37 In situations where the debt is owed to more than one person, subsection (b)(9) requires
38 the statement to include whether the plaintiff has the authority to collect the entire consumer debt
39 or a portion of the debt. A statement that the plaintiff has the authority to collect the entire debt
40 would preclude the collection of any portion of the debt by a co-owner.

41 Subsection (b)(10) requires a statement of facts to establish venue. It is not meant to

1 supplant any state law or rule of civil procedure. It is a requirement that the plaintiff state the
2 facts to support the choice of venue. A proper answer could include such facts as the address of
3 the consumer or the place where the contract was signed.

4 Subsection (b)(11) requires the plaintiff to provide facts to establish that the cause of
5 action is being filed within the statute of limitations. Determining the statute of limitations can be
6 a complicated matter and is usually a matter of state law. It does not require the plaintiff to state
7 a specific statute of limitations. Instead, it is meant to provide the factual basis for the court and
8 consumer to determine whether the action has been filed within the relevant limitation period.
9 The plaintiff should list any of the factors that are relevant to the claim. Examples of such factors
10 include the date of the default that gave rise to the complaint, the date and amount of the last
11 payment made toward repayment of the debt, the date the goods or services that are the subject
12 of the debt were provided, or the date a request for payment was made. So, for example, a debt
13 buyer suing on a credit card may specify the last payment or last transaction made on the card. A
14 small business owner such as a contractor might state the date the work was completed and a
15 request for payment was made. Nothing in subsection (b)(11) requires the plaintiff to repeat
16 information that was previously stated as required by subsections (b)(1) through (b)(10). Instead,
17 it may be sufficient to plead that the date of the last payment set forth in response to subsection
18 (b)(4) and a date of default set forth in response to subsection (b)(5) establish that the action is
19 being filed within the statute of limitations.

20 Subsection (b)(12) requires the plaintiff to list a chain of title for each person who owned
21 the debt. Each person to which the debt was assigned, but not sold, should also be listed.
22 Subsection (c)(2) requires a record to document each of these transactions.

23 Subsection (b)(13) is optional for states that license creditors and debt buyers. It requires
24 a statement as to whether the plaintiff possesses any relevant state license, registration,
25 certification or bond required by state law to collect debts. This is not a requirement to divulge
26 any other kind of license. For example, the plaintiff is not required to certify that it was licensed
27 to make the loan that is the subject of the cause of action, but only that it is licensed to collect it
28 if state law requires a license.

29 The requirement that documents required to be attached to a complaint as provided by
30 subsection (c) are “subject to authentication as required by other law of this state or rules of
31 procedure” does not impose a specific requirement for the certification of the documents.
32 Instead, it defers the question of whether and when authentication is required and the manner in
33 which authentication, when required, must be conducted to other state law. For example, a court
34 rule could require authentication at the time a motion or other request for a default judgment is
35 filed or not require authentication unless the authenticity of documents is challenged. Likewise,
36 depending on the laws and rules of procedure of a state, authentication could be accomplished by
37 a verification, affidavit, or certification of business records.

38 Subsection (c)(1) requires the complaint to also include a record of any agreement signed
39 by the consumer that gave rise to the debt. Because not all debts are the result of a signed
40 contract, subsection (c)(2) allows a record of a purchase, payment or use of an account to
41 demonstrate the existence of a consumer debt. Subsection (c)(3) also allows other records to
42 demonstrate the existence of a consumer debt, such as writing sufficient to satisfy the statute of

1 frauds acknowledging the existence of the debt. This subsection cannot be satisfied by evidence
2 of an oral agreement, but instead requires some record to demonstrate the existence of debt.

3 If the plaintiff is not the creditor, Subsection (c)(2) requires records that make specific
4 reference to the debt that is the subject of the collection action that demonstrate plaintiff's
5 authority to collection this debt. Examples of a record that would satisfy this requirement
6 include a bill of sale or assignment. The record must have some specific reference to the debt
7 that is the subject of the collection action. While this requirement is distinct and in addition to
8 the requirement of subsections (b)(9) and (b)(12), the information required may be combined in
9 one statement and need not be repeated as separate allegations.

10 **Section 5. Notice of Intent to Seek Default Judgment**

11 (a) A default judgment may be entered in an action to which this [act] applies only if the
12 [complaint] or amended [complaint] served on the consumer includes a notice of intent to seek
13 the default judgment. The notice must be in a separate record and served with the [complaint] or
14 amended [complaint] in a manner provided by other law of this state for service of process in a
15 civil action.

16 (b) The notice must include a statement in plain language that:

17 (1) if the consumer does not file an answer to the [complaint] or amended
18 [complaint] within the time and in the manner indicated in the [summons] or appear for the
19 hearing referred to in the [summons], a default judgment may be entered against the consumer;

20 (2) if a judgment is entered against the consumer, the amount of the judgment,
21 plus interest on the judgment as provided by other law of this state, remains in effect until at
22 least [insert limitation period for enforcement of the judgment], even if the judgment no longer
23 remains on the consumer's credit report;

24 (3) after entry of a judgment, the plaintiff may [take steps] [initiate an action] to
25 [sell real estate owned by the consumer][,] [sell personal property owned by the consumer][,]
26 [attach the consumer's bank accounts][,] [or] [and] [garnish the consumer's wages];

27 (4) entry of a judgment may impair access to employment, insurance, credit, or

housing; [and]

(5) a lawyer may provide assistance in understanding the [complaint] or amended [complaint] and advice about what action to take in response to the [complaint] or amended [complaint]; and

(6) if the consumer cannot afford an attorney, the consumer may be able to obtain free or reduced cost legal services

(7) provides the name and contact information for a legal aid or lawyer referral service that may be able to help the consumer find an attorney].

(c) A notice meets the requirements of this section if it is substantially in the following form:

NOTICE OF INTENT TO SEEK DEFAULT JUDGMENT
IF YOU DO NOT ACT, A COURT WILL ENTER A JUDGMENT AGAINST YOU

1. Why Am I Getting This Notice?

You are getting this notice because (name of plaintiff) says you owe money.

(Name or shortened name of plaintiff) has filed a lawsuit against you to collect the money you owe.

2. What Will Happen If I Do Nothing?

If you do not [file a response to the lawsuit][or][appear at a hearing on (enter date) at (time)], the court will enter a judgement against you.

3. What Happens If a Judgment Is Entered Against Me?

[A lien can be put on your house or other real estate and the house or real estate can be sold]
[Your personal property can be taken and sold]
[Money can be taken directly from your bank account] [Money can be taken directly from your wages].

1 If the judgment is not paid in full, the amount due
2 will grow because of interest charges.

3
4 You will owe the amount of the judgment for
5 [insert limitation period for enforcement of the
6 judgment], even if it no longer appears on your
7 credit report.

8
9 The judgment may make it harder for you to get a
10 job or insurance and more expensive for you to get
11 a loan or credit card, rent an apartment, or buy a
12 house.
13

14 **4. Is Help Available?**

Talk with a lawyer. A lawyer can explain the
15 situation and help you decide what to do. [If you
16 cannot afford a lawyer, you may be able to obtain
17 one for free or reduced cost. The following office
18 may be able to help you find a lawyer: (insert name
19 and contact information for legal aid or lawyer
20 referral service that may be able to help defendant
21 find a lawyer).]
22

23 ***Legislative Note:*** Subsections (b)(6) and (7) are optional. A state can include both subsections,
24 include subsection (b)(6) but not subsection (b)(7), or exclude both subsections.

25 *Paragraph 4 of the form in subsection (c) should mirror the decision regarding the inclusions of*
26 *subsections (b)(6) and (7).*

27 *In subsection (b)(1) and paragraph 2 of the form, the state should indicate what action is*
28 *required by state law to avoid a default judgment. A state may need different forms. For*
29 *example, state law may require a formal answer in some courts, but only an appearance at a*
30 *hearing in other courts.*

31 *In subsection (b)(2) and paragraph 3 of the form, the state should insert the applicable statute of*
32 *limitations for judgments.*

33 *The state should include in subsection (b)(3) and paragraph 3 of the form only the bracketed*
34 *actions that state law allows against a consumer for the satisfaction of a default judgment. The*
35 *state should also select either (1) “or,” if the creditor must choose only one collection method,*
36 *or (2) “and,” if the creditor may use multiple collection methods.*

37 **Comment**

38 This section requires a notice before a default judgment may be entered against a
39 consumer. Some courts do not require the filing of a separate motion when requesting a default
40 judgments. In some courts, for example, the consumer is given notice of a hearing and, if the

1 consumer fails to appear, a default judgment is entered. Rules of procedure also often allow a
2 default judgment to be entered with no action by the plaintiff if a defendant fails to respond to a
3 complaint. This section requires a notice of intent to seek a default regardless of the procedures
4 for requesting and obtaining a default judgment before the court may award a default judgment.

5 Subsection (a) requires that the notice {of intent to seek default judgment} be served on
6 the consumer along with the complaint. The notice should be a separate record. While it is
7 preferable that the notice be affixed to the front of the complaint, some courts may not allow for
8 that. The intent of this subsection is that the notice be conspicuous and not buried in the middle
9 of the complaint.

10 If the plaintiff later amends the complaint under applicable state law, a new notice is not
11 required unless the information in the notice is different from the information provided in the
12 notice attached to the original complaint. In that case, an amended notice must be served
13 according to the laws and procedures applicable to the serving of an amended complaint.

14 If the plaintiff fails to send the notice required by this section, a default judgment may not
15 be entered. The plaintiff may cure the defect by filing the notice as part of an amended
16 complaint in accordance with state and local court rules.

17 Subsection (b)(1) requires the form to specify what action the consumer needs to take to
18 avoid a default judgment. This may vary by state and even by venue within the state. The notice
19 of intent to seek default judgment should be tailored to the specific action. If an answer is
20 required, it should specify that an answer is required. Likewise, if the consumer must appear at a
21 hearing to avoid default, the date and time of the hearing should be specified. This subsection is
22 not satisfied if the notice simply states a generic requirement such as to “you must either answer
23 or appear at a hearing.” The information must be specific to the action for which the default
24 judgment is sought.

25 Subsection (b)(2) requires a statement informing the consumer that, if a judgment is
26 entered, it may continue to grow due to accrued interest and that it will remain due until paid. It
27 is not necessary to include the specific interest rate to satisfy this requirement. The specific
28 statute of limitations for judgments should be inserted in this section. The intent of this section is
29 to notify the consumer that the judgment, if entered, may continue to grow and will remain in
30 effect for a specific period of time, whether or not it appears on a credit report. Many consumers
31 mistakenly believe that, because a judgment has fallen off their credit report, it is no longer due.

32 Subsection (b)(3) includes a statement of actions what state law authorizes a plaintiff to
33 take. It is important that the notice indicate the action that state law allows and does not state that
34 the plaintiff intends to seek any specific remedy. Likewise, subsection (b)(4) is also a simple
35 statement of the possible ramifications of having a judgment entered against a consumer. These
36 provisions are intended to warn the consumer of the possible results of ignoring the collection
37 action. It is not a statement of what will actually occur in any individual case.

38 Subsection (c) provides a safe harbor form of the notice. Plaintiffs using the form are in
39 compliance with this act.

40 **Section 6. Waiver**

1 A waiver by a consumer of a requirement of this [act] is void.

2 **Comment**

3 Section 6 is intended to prevent any waiver of the procedures of this act. A waiver of the
4 procedures in this act contained in the instrument that created the financial obligation, including
5 confessions of judgment, as well as any instrument that purports to waive the protections of this
6 act, is void. This section does not prevent a voluntary settlement agreement or judgment between
7 the parties that does not result in a default judgment.
8

9 **Section 7. Relation to Other Law**

10 This [act] supplements rights and remedies available under other law of this state.

11 **Section 8. Uniformity of Application and Construction**

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

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

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

19 **Comment**

20 In 2000, Congress enacted the “Electronic Signatures in Global and National Commerce
21 Act”, 106 PUB.L.NO. 229, 114 Stat. 464, 15 U.S.C. § 7001 et seq. (popularly known as “E-
22 SIGN”). E-SIGN largely tracks the Uniform Electronic Transactions Act (UETA). Section 102
23 of E-Sign, entitled “Exemption to preemption,” provides in pertinent part that: (a) A State
24 statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section
25 101 with respect to State law only if such statute, regulation, or rule of law (1) constitutes an
26 enactment or adoption of the Uniform Electronic Transactions Act as approved and
27 recommended for enactment in all the States by the National Conference of Commissioners on
28 Uniform State Laws in 1999 (with certain exceptions) or (2)(A) specifies the alternative
29 procedures or requirements for the use or acceptance (or both) of electronic records or electronic
30 signatures to establish the legal effect, validity, or enforceability of contracts or other records, if
31 they meet certain criteria, and (B) if enacted or adopted after the date of the enactment of E-
32 SIGN, makes specific reference to E-SIGN 15 U.S.C. § 7002(a). The inclusion of this section is
33 necessary to comply with the requirement that the act make “specific reference” to E-SIGN
34 pursuant to 15 U.S.C. § 7002(a)(2)(B) if the uniform or model act contains a provision

1 authorizing electronic records or signatures in place of writings or written signatures.

2 **Section 10. Transitional Provision**

3 This [act] applies to an action commenced on or after [the effective date of this [act]] to
4 collect a consumer debt subject to this [act].

5 **[Section 11. Severability**

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

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

11 **Section 12. Effective Date**

12 This [act] takes effect . . .