



# **Model Statute of Limitations Reform Act**

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National Consumer Law Center®**

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## INTRODUCTION

Statutes of limitations are laws that limit the length of time available for bringing a lawsuit in court. They are designed to protect “defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.”<sup>1</sup>

Too often, however, these laws fail to help consumers because they are not easily understood by non-lawyers. Statutes of limitations generally only protect consumers if consumers know about the availability of this defense and assert it affirmatively. The determination of which limitations period applies to a particular action is often complicated, even for lawyers and judges. The common rule that a partial payment, or even simply an admission, can extend the limitations period is seldom known by consumers. As the Federal Trade Commission (FTC) noted, “most consumers do not know or understand their legal rights with respect to the collection of time-barred debts.”<sup>2</sup>

This model legislation<sup>3</sup> provides sample language to reform statutes of limitations in order to more effectively protect consumers. Specifically, this Act:

- Creates a single 3 year statute of limitations<sup>4</sup> for all consumer debts being collected in the state and decreases the length of statute of limitations in many states (Section 3(a));
- Establishes the rule that the debt is extinguished, prohibiting further collection activities after the 3 year statute of limitations has run, and provides a private right of action for violations (Section 3(b));
- Prohibits renewal or extension of the statute of limitations period because of partial payments or acknowledgments of the debt (Section 3(c)); and

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<sup>1</sup> United States v. Kubrick, 444 U.S. 111, 117 (1979) (citation omitted).

<sup>2</sup> Fed. Trade Comm’n, Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration, at 26 (July 2010).

<sup>3</sup> This act contains portions of NCLC’s Model Family Financial Protection Act (MFFPA), available at: [http://www.nclc.org/images/pdf/debt\\_collection/model\\_family\\_financial\\_protection\\_act.pdf](http://www.nclc.org/images/pdf/debt_collection/model_family_financial_protection_act.pdf), and can be adopted either as a stand-alone act or together with other parts of the MFFPA.

<sup>4</sup> Sixteen states already provide a three-year statute of limitations for either written contracts, oral contracts, or both, so this model law’s choice of a three-year period is not an unusual departure from existing practice. National Consumer Law Center, Collection Actions, § 3.6.4.2 (3d ed. 2014).

- Limits the period of time during which the creditor can collect on a court judgment to 5 years<sup>5</sup> for all consumer debts (Section 4).

## BACKGROUND

### A. Debt Buyers: The New Debt Collection Paradigm

An entire industry has emerged that feeds on defaulted consumer debts. “Debt buyers” purchase consumer debts that have been written off by the original lender.<sup>6</sup> Despite paying a deeply discounted rate for these debts – just four cents on the dollar on average<sup>7</sup> – debt buyers aggressively seek to collect the full amount of the debt, as well as adding interest, penalty fees, and attorney’s fees.

The debt buying industry has enjoyed remarkable growth. In 1993, the face value of defaulted consumer debt purchased by debt buyers was less than \$10 billion.<sup>8</sup> By 2005, that number had increased to nearly \$130 billion.<sup>9</sup> Although sales of consumer debt decreased during the Great Recession, the amount of debt sold increased again in 2011.<sup>10</sup>

Debt buyers purchase accounts in bulk, typically obtaining only an electronic spreadsheet with minimal information about the debts.<sup>11</sup> Most of the time, they do not receive the credit application, the account agreement, monthly statements, payment records, or any customer service records that would reflect customer disputes.<sup>12</sup> In addition to providing little information about the debt, many debt sellers will not even guarantee that they own the accounts they are selling or that the amounts listed as owed by account holders are correct.<sup>13</sup>

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<sup>5</sup> Some states permit collection on judgments for 20 years or more. National Consumer Law Center, Collection Actions, § 12.15 (3d ed. 2014).

<sup>6</sup> Fed. Trade Comm’n, The Structure and Practices of the Debt Buying Industry (Jan. 2013), available at: <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>.

<sup>7</sup> Fed. Trade Comm’n, The Structure and Practices of the Debt Buying Industry, at ii (Jan. 2013).

<sup>8</sup> Robert M. Hunt, Fed. Reserve Bank of Philadelphia, Understanding the Model: The Life Cycle of a Debt, at 19 (June 6, 2013), available at: [https://www.ftc.gov/sites/default/files/documents/public\\_events/life-debt-data-integrity-debt-collection/understandingthemodel.pdf](https://www.ftc.gov/sites/default/files/documents/public_events/life-debt-data-integrity-debt-collection/understandingthemodel.pdf).

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Fed. Trade Comm’n, The Structure and Practices of the Debt Buying Industry, at 20, 29 (Jan. 2013).

<sup>12</sup> Id. at T-9.

<sup>13</sup> Dalié Jiménez, Dirty Debts Sold Dirt Cheap, 52 Harv. J. on Legis. 41, 7 (2015).

Debts are often resold again and again between debt buyers, with each owner potentially attempting to collect on the accounts.<sup>14</sup> Over the course of multiple sales and collection attempts, the debts continue to age while the documentation related to the debts is lost, corrupted, or becomes more difficult to access. Moreover, original creditors typically do not have an obligation to produce documentation of the debt to secondary buyers, who must instead make requests for documentation to the first debt buyer and rely on the previous debt buyer to relay these requests to the original creditor.<sup>15</sup>

As a result of this lack of documentation, debt buyers frequently pursue flawed claims. The FTC has concluded that “the information received by debt collectors is often inadequate and results in attempts to collect from the wrong consumer or to collect the wrong amount.”<sup>16</sup> Some claims that have been settled or paid in full are reentered into collection. Other claims target the wrong person or victims of identity theft.<sup>17</sup> Still others are beyond the statute of limitations, were discharged by the consumer in bankruptcy, or were disputed with the original creditor years before due to fraud, nonperformance, or another problem. A report by several New York City nonprofit and legal services organizations found that 35% of debt buyer lawsuits were clearly meritless.<sup>18</sup>

Consumers are particularly vulnerable to these flawed claims because they are almost never represented by an attorney. A Maryland study found that consumers were represented by an attorney in only 2% of collection lawsuits.<sup>19</sup> Another study found that attorneys represented consumers in only 2% of the 195,000 collection cases filed in New York in 2011.<sup>20</sup> Before a number of pro bono programs were instituted, an earlier study had found the percentage was well under 1%.<sup>21</sup>

It is thus not surprising that this system works for debt buyers. Estimates are as high as

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<sup>14</sup> Jake Halpern, *Bad Paper: Chasing Debt from Wall Street to the Underworld* (2014).

<sup>15</sup> Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at iii-iv (Jan. 2013).

<sup>16</sup> Fed. Trade Comm’n, *Collecting Consumer Debts: The Challenges of Change, A Workshop Report*, at 24 (Feb. 2009).

<sup>17</sup> Kathy M. Kristof, “When debt collectors go after the wrong person,” *Los Angeles Times* (Dec. 19, 2010), available at <http://articles.latimes.com/2010/dec/19/business/la-fi-perfin-20101219>.

<sup>18</sup> New Economy Project, *Debt Deception* at 2.

<sup>19</sup> Peter Holland, *Junk Justice: A Statistical Analysis of 4400 Lawsuits Filed by Debt Buyers*, 26 *Loy. Consumer L. Rev.* 179 (2014).

<sup>20</sup> New Economy Project, *The Debt Collection Racket in New York* (June 2013).

<sup>21</sup> Urban Justice, *Debt Weight, the Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (Oct. 2007).

90% of collection lawsuits result in default judgments,<sup>22</sup> and very few of these are ever set aside. One study found only about 2% of the default judgments in New York City were later set aside.<sup>23</sup> And of course many of the cases not resulting in default judgments resulted in settlements very favorable to the collector. As a result, collectors in New York City in one year obtained an estimated \$800 million in judgments based on almost \$1 billion in claims.<sup>24</sup>

The fact that cases are almost never contested also means the debt buyers do not have to worry about adequate legal pleadings. A New York City study also found that in 99% of the cases in which default judgments were entered, the materials underlying those applications constituted inadmissible hearsay and did not meet New York's standards for the entry of a default judgment.<sup>25</sup> In 85% of the cases, the supporting evidence was an affidavit from the debt buyer's own employee, and in another 12% it was from an employee of an unidentified entity.<sup>26</sup> Another study concluded that, among the sample of cases reviewed, no application by a debt buyer for a default judgment complied with New York law.<sup>27</sup>

## B. Reforming Statutes of Limitation

Statutes of limitations provide important protections enabling consumers to defend against old legal claims brought years after their debts were charged-off and records were lost. However, the complexity of statutes of limitations makes it difficult for consumers to use or understand them. Moreover, the fact that, in most states, debt collection can continue after the statute of limitations expires and the statute of limitations can be restarted due to partial payment means that statutes of limitations do not provide finality from claims on old debts.

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<sup>22</sup> *McCullough v. Johnson, Rodenburg & Lauinger, L.L.C.*, 637 F.3d 939 (9th Cir. 2011) (Montana collection attorney estimated that 90% of collection lawsuits result in a default); Fed. Trade Comm'n, *Repairing a Broken System* 7 (July 2010) (most panelists from around the country at FTC hearings indicated that the 90% figure was about right; also citing a number of studies); The Legal Aid Soc'y, *Debt Deception* 6 (May 2010) (study of New York City collection lawsuits found that 94.3% of cases in sample resulted in a default judgment or a settlement); *Dignity Faces a Steamroller: Small-Claims Proceedings Ignore Rights, Tilt to Collectors*, Boston Globe, July 31, 2006 (study of collection actions in Massachusetts found an 80% default rate).

<sup>23</sup> Urban Justice, *Debt Weight, the Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (Oct. 2007).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> New Economy Project, *The Debt Collection Racket in New York* (June 2013).

Debts subject to long statutes of limitations are more attractive to debt buyers. A debt with a 10 or 15 year statute of limitations has a much longer period in which to file collection lawsuits than a debt with a 3 year statute of limitations. Changing state laws to decrease the statute of limitations on consumer debts would make these debts less attractive to debt buyers, especially secondary or tertiary debt buyers purchasing debts years after they were charged off by the original creditor. Decreasing exposure to debt buyers in turn makes consumers less vulnerable to the flawed claims and lack of documentation that are routinely the hallmark of collection by debt buyers and their agents. Prohibiting the collection of debts that are past the statute of limitations will also reduce the burden on the courts from these poorly documented collection suits.

### *1. States Have Multiple Causes of Action with Different Statutes of Limitation*

One reason that statutes of limitations are complex is because there can be many different legal claims arising out of the same debt – each of which may have a different limitations period. For example, the same debt may support a cause of action for breach of written contract, breach of oral contract, or “account stated.” These different legal theories generally have different statutes of limitations. There will often also be different periods of limitations for contracts under seal, sales of goods, leases, dishonored checks, and promissory notes.

This patchwork of state laws creates loopholes that can be exploited by creditors and debt collectors. For example, creditors may include terms like “seal” in the fine print of consumer contracts<sup>28</sup> and then claim that the agreement was a contract under seal<sup>29</sup> subject to a much longer statute of limitations – up to 20 years in some states.<sup>30</sup>

Adopting a single, uniform statute of limitations that is applicable to all consumer debts regardless of the legal claim would promote clarity for all, avoid loopholes, and empower consumers to more easily identify and defend themselves from lawsuits that are filed after the statute of limitations has expired.

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<sup>28</sup> See, e.g., *Pac. Mortgage & Inv. Grp., Ltd. v. Horn*, 100 Md. App. 311, 322 (1994) (word “seal” on a pre-printed form is sufficient to make an instrument one under seal); *Beneficial Consumer Disc. v. Dailey*, 434 Pa. Super. 636, 638, 644 A.2d 789, 790 (1994) (“when a party signs a contract which contains a pre-printed word “SEAL,” that party has presumptively signed a contract under seal”).

<sup>29</sup> Historically a seal consisted of wax with an imprint from a signet ring. Restatement (Second) of Contracts § 96 (1981).

<sup>30</sup> Ga. Code § 9-3-23; Mass. Gen. Laws ch. 260, § 1; 42 Pa.C.S. §5529(b); R.I. Gen. Laws § 9-1-17; S.D. Codified Laws § 15-2-6.



## 2. *In Most States, Collections Can Legally Continue Beyond the Statute of Limitations*

Statutes of limitations are also difficult for consumers to understand because, in most states, they only provide a complete legal defense to the debt collection *litigation* when a consumer is sued in court. Statutes of limitations do not prevent further collection of that debt. In 48 states, non-judicial debt collection efforts that continue after the statute of limitations has expired are perfectly legal. In fact, debt collectors can continue to seek payment for an unpaid debt for the rest of the consumer's life.

In Wisconsin<sup>31</sup> and Mississippi,<sup>32</sup> however, the expiration of the relevant statute of limitations also extinguishes the right to collect the debt as well as the right to file a lawsuit. In these states, the statute of limitations provides a much more valuable protection for consumers by providing a fixed end date after which debt collectors can no longer pursue them to collect on an old debt.

Other states can provide this clarity and protection to consumers by ending the right to collect and the remedy of filing a lawsuit on the same date by adopting this model law.

## 3. *Consumers May Inadvertently Restart the Statute of Limitations*

Statutes of limitations are also confusing for consumers because making a payment or acknowledging a debt can restart the limitations period in most states.<sup>33</sup> For example, a \$20 payment or your statement that you owe a debt may be enough to restart the statute of limitations all over again. Payments or acknowledgments can restart the limitation period both before and after the statute of limitations expires.

**Example:** Marisol defaulted on a debt in 2010. The statute of limitations for that debt is six years and would have expired in 2016. She made a partial payment on the debt in 2015 that restarted the statute of limitations. The statute of limitations is now scheduled to expire in 2021.

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<sup>31</sup> Wis. Stat. § 893.05 (“When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.”).

<sup>32</sup> Miss. Code § 15-1-3 (“The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy.”).

<sup>33</sup> National Consumer Law Center, *Collection Actions*, § 3.6.8.3 (8th ed. 2014).

Debt collectors exploit these loopholes in the statutes of limitations by pushing consumers to make tiny “good faith” payments on debts without informing them that this will restart the statute of limitations.<sup>34</sup>

In Maine, the state recently prohibited partial payments or acknowledgements of the debt from restarting the statute of limitations period after the initial statute of limitation period expired.<sup>35</sup> Other states can expand upon this provision by prohibiting the statute of limitations from restarting after the debt is: 1) charged-off, 2) placed for collection with a debt collector, or 3) where there has not been a payment on the debt for over 180 days. Such provisions prevent consumers from being penalized for making good faith payments on an expired debt and ensure that debts cannot be brought “back to life” simply because the consumer makes a statement taking responsibility for the debt.

### C. Reforming Statutes of Limitations on Judgments

Collection attorneys file millions of debt collection lawsuits in the United States each year.<sup>36</sup> After obtaining a judgment against the consumer, the entity that brought the lawsuit becomes the judgment creditor and has access to specific collection remedies if the consumer does not pay the judgment. For example, the judgment creditor can subpoena the consumer to appear before the court again so that the court can examine the consumer about ability to pay and issue a payment plan.<sup>37</sup> A judgment creditor can also file a lien against a home, garnish the consumer’s wages or bank account, or even seize personal property that will then be sold to pay off a portion of the debt.<sup>38</sup>

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<sup>34</sup> See, e.g., *Calvary Portfolio Serv. v. Stout* (Minn. Dist. Ct. Wash. Cnty. Feb. 11, 2011), available at [www.nclc.org/unreported](http://www.nclc.org/unreported); *Asset Acceptance, L.L.C. v. Hanson*, 2009 WL 840047 (Cal. Ct. App. Apr. 1, 2009) (unpublished).

<sup>35</sup> ME ST T. 32 § 11013(8).

<sup>36</sup> Maria Aspan, “Courthouse ‘Rocket Dockets’ Give Debt Collectors Edge Over Debtors,” *American Banker* (Feb. 11, 2014), available at [http://www.americanbanker.com/issues/179\\_29/courthouse-rocket-dockets-give-debt-collectors-edge-over-debtors-1065545-1.html](http://www.americanbanker.com/issues/179_29/courthouse-rocket-dockets-give-debt-collectors-edge-over-debtors-1065545-1.html). See also, Jessica Mendoza, et al. “Collection claims abuses move up to higher courts,” *Boston Globe* (Mar. 28, 2015), available at <https://www.bostonglobe.com/metro/2015/03/28/new-restrictions-debt-collectors-district-court/sIMWIBGAjooNXc1QomaNpM/story.html> (from 2004 to 2013 at least 1.2 million cases were filed in Massachusetts small claims and district court sessions by professional debt collectors); Susan Shin and Claudia Wilner, New Economy Project, *The Debt Collection Racket in New York* (June 2013) (Debt collectors filed 195,105 lawsuits against New Yorkers in 2011), available at <http://www.neweconomynyc.org/wp-content/uploads/2014/08/DebtCollectionRacketUpdated.pdf>.

<sup>37</sup> See, e.g., NJ R LAW DIV CIV PT R. 6:7-2; Mass. Gen. Laws ch. 224, § 14.

<sup>38</sup> See, e.g., Ky. Rev. Stat. § 426.720 (authorizing judgment creditor to place lien against judgment debtor’s home); Cal. Civ. Proc. Code § 706.010 (authorizing garnishment of wages).

In all 50 states, the ability to collect on a judgment has an expiration date – ranging from 4 to 20 years.<sup>39</sup> However, many states permit renewal of judgments one or more times, making the limitations on such judgments largely theoretical. At least one state specifically permits unlimited renewals,<sup>40</sup> meaning that consumers can be pursued by entities attempting to collect on judgments for the rest of their lives.

These judgments become more burdensome over time. In most states, judgments will grow through the application of either state-specific post-judgment interest rates of up to 12 percent,<sup>41</sup> or sometimes, the original contract rate of interest.<sup>42</sup>

Permitting judgment creditors to pursue consumers years or even decades after the judgment was awarded is harmful to consumers' financial recovery. Judgment creditors are likely to start wage garnishment as soon as they learn that an unemployed worker has finally found a new job. The wage garnishment can keep the worker's family from getting back on its feet. Collection on judgments years after the fact can prolong families' financial instability. In addition, collection on old judgments may depress the local economy, especially when numerous judgments are concentrated in a single community.<sup>43</sup>

Permitting drawn-out enforcement of old judgments also encourages the growth of a nascent and troubling industry: judgment buying. Several websites charging a fee to facilitate the purchase and sale of legal judgments have sprung up in the last few years – a kind of online marketplace for legal judgments.<sup>44</sup> These markets are dangerous to consumers in several ways. Consumers have typically never heard of the new judgment creditor, and the judgment buyer is unlikely to have much information about the underlying debt. Additionally, because assigning a judgment is a complex process in many states, judgment buying introduces another opportunity for errors and confusion in the documentation of consumer debt.<sup>45</sup>

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<sup>39</sup> National Consumer Law Center, *Collection Actions*, at § 12.15 (3d ed. 2014).

<sup>40</sup> La. Civ. Code § 3501 (“An interested party may have a money judgment rendered by a court of this state revived as often as he may desire.”).

<sup>41</sup> See, e.g., Ky. Rev. Stat. § 360.040; Mass. Gen. Laws ch. 231, § 6C; Vt. Stat. tit. 9, § 41a(a).

<sup>42</sup> See, e.g., Ariz. Rev. Stat. § 44-1201(A); Fla. Stat. § 55.03(1); Mass. Gen. Laws ch. 231, § 6C.

<sup>43</sup> See Paul Kiel and Annie Waldman, “The Color of Debt: How Collection Suits Squeeze Black Neighborhoods” (Oct. 8, 2015), available at [www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods](http://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods).

<sup>44</sup> See Judgment Marketplace, <http://www.judgmentmarketplace.com/>, JudgmentBuy, <http://www.judgmentbuy.com/>.

<sup>45</sup> See, e.g., *Roberts v. LaConey*, 375 S.C. 97 (2007) (improper assignment of judgment), *Effel v. McGarry*, 339 S.W.3d 789 (Tex. App. 2011) (judgment assignee improperly attempted to raise interest on judgment debt).

## **D. Reforming Statutes of Limitations Will Bring Benefits to Creditors and the Market in General**

Strengthening protections for consumers by reforming state statute of limitations laws will bring benefits to creditors and the market as well as consumers. First, the reforms will add simplicity and predictability. The extreme complexity and multiplicity of state statutes of limitations, with their overlapping provisions and loopholes, surely makes the market less efficient. In any event, this proposed legislation would not prohibit the sale of debts to debt buyers but would simply limit the amount of time during which collection on those debts can occur. As such, it will not interfere with the creditor's ability to recover a small portion of a charged-off debt by selling such debt to debt buyers.

The proposed reforms will also benefit current creditors. The collection of old debts reduces the ability of consumers to pay their ongoing household expenses, jeopardizing not only the financial health of their families but also the payment of new creditors. Limiting the time period for debt collection and enforcement of judgments allows consumers and creditors to move forward with new financial transactions that benefit the economy without the concern that old, stale claims might disrupt that relationship.

# STATUTE OF LIMITATIONS REFORM ACT

## Section 1. Title and Scope

(a) Title. This Act shall be known and cited as the “Statute of Limitations Reform Act.” This Act shall be liberally and remedially construed to effectuate its purpose. The purpose of the Act is to protect consumers, and this Act is to be construed as a consumer protection statute for all purposes.

(b) Scope. This Act applies to all consumer debts. No business (including any officer, agent, employee, or representative) may individually or in conjunction or cooperation with another solicit the execution of, receive, or rely upon a consumer form contract, including reliance upon the contract as a basis for a suit or claim, unless the person has complied with the provisions of this Act and the contract is in compliance with this Act. The provisions of this Act shall apply to, *inter alia*, any person who attempts to evade its applicability by any device, subterfuge, or pretense whatsoever.

(c) Should a court decide that any provision of this Act is unconstitutional, preempted, or otherwise invalid, that provision shall be severed and such decision shall not affect the validity of the Act other than the part severed.

### Commentary

*Paragraph (a) sets the stage for the remainder of the Act by clearly announcing that the legislature intends that the Act must be liberally construed to effectuate its purpose; it enunciates a specific purpose; and it is a consumer protection law. Paragraph (b) defines a broad scope of coverage for the Act, and makes clear that the scope includes, among others, those who attempt to evade the Act by use of a subterfuge or pretense. Paragraph (c) instructs the courts to continue to enforce the remainder of the act even if one portion is found unenforceable. These directives will give guidance to the courts when the Act’s provisions are applied and interpreted.*

## Section 2. Definitions

The following definitions apply in this Title:

(a) “Consumer” means a natural person.

(b) “Consumer debt” means any obligation or alleged obligation of a consumer 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, whether or not such obligation has been reduced to judgment.

(c) “Consumer form contract” means a contract in writing between a business and a consumer involving goods or services, including, but not limited to, credit or financial services, primarily for personal, family, or household purposes, which contract has been drafted by the business for use with more than one consumer, unless a second consumer is the spouse of the first consumer.

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

(e) “Debt collector” means any person who regularly collects or attempts to collect, directly or indirectly, consumer debts originally owed or due or asserted to be owed or due another. The term does not include any officer or employee of a creditor who, in the name of the creditor, collects debts for such creditor, but it does include any creditor who, in the process of collecting its own debts, uses any name other than its own which would indicate that a third person is collecting or attempting to collect such debts.

(f) “Original creditor” means the entity to whom the consumer originally owed money before the debt was sold to a debt buyer or any other entity. When this Act requires the original creditor to be identified, the name shall be that which was used in its dealings with the consumer.

### **Commentary**

*This Act defines and explains a number of critical terms. The definition of “consumer debt” is important in that the Act’s protections apply only to debts for personal, family or household purposes. The definition is the same as that of a “debt” under the Fair Debt Collection Practices Act (FDCPA).*

### **Section 3. Limitations on Actions for Consumer Debts**

(a) Any action for the collection of a consumer debt shall only be commenced within three (3) years of the accrual of the cause, which shall be the earliest of the date of

charge-off, placement for collection with a debt collector, or 180 days after the last payment. This period shall apply whether the legal basis of the claim sounds in contract, account stated, open account or other cause, and notwithstanding the provisions of any other statute of limitations unless that statute provides for a shorter limitations period. This time period also applies to contracts under seal. This paragraph shall apply to all claims brought after the date of enactment of this Act.

(b) When the period described in Paragraph (a) has expired, the consumer debt is extinguished and there shall be no right to collect the consumer debt. No person shall threaten legal action, file legal action, or otherwise attempt to collect a consumer debt after the three-year period described in Paragraph (a) has expired. Any violation of this section shall also be a violation of [insert citation to state UDAP law].

(c) If a consumer debt has been charged-off, placed for collection with a debt collector, or no payment has been made on the debt for over 180 days, any subsequent payment toward the debt or any oral or written affirmation of the debt shall not extend the three-year limitations period, nor shall it bar the consumer from asserting any defenses to the collection of the debt. If a payment on a defaulted or charged-off debt completely cures the default, then a new cause of action may accrue upon a subsequent default or charge-off.

(d) A consumer debt of a resident of this state that arose in another jurisdiction or a consumer debt that may otherwise be governed by another jurisdiction's laws shall be governed by Paragraph (a) or the other state's limitations period, whichever is shorter. Any choice of law provision contained in a consumer form contract will be deemed procedural with respect to statute of limitations and will not alter the period described in Paragraph (a).

## **Commentary**

*Paragraph (a) provides a single uniform, reasonable statute of limitations for consumer debts. Sixteen states already provide a three-year statute of limitations for written contracts, oral contracts, or both, so this model law's choice of a three-year period is not an unusual departure from existing practice.<sup>46</sup>*

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<sup>46</sup> National Consumer Law Center, *Collection Actions*, § 3.6.4.2 (3d ed. 2014) (showing that the limitations period for oral contracts, written contracts, or both, is two years in one state, three years in sixteen states, four years in seven states, five years in six states, six years in seventeen states, and more than six years in three states).

*Paragraph (b) extinguishes the debt after the statute of limitation passes. This would prevent any collection activities for stale debt. This provision is based on similar statutes in Wisconsin<sup>47</sup> and Mississippi.<sup>48</sup> This section also clarifies that both collecting and suing on a debt whose statute of limitations has passed is prohibited and provides a private remedy for collection efforts in violation of this provision.*

*Paragraph (c) prohibits the practice of deeming partial payment or acknowledgment of the debt as restarting the clock on the statute of limitations where: 1) the debt has been charged-off, 2) the debt has been placed for collection with a debt collector, or 3) no payment has been made on the debt for over 180 days. This language would prohibit the statute of limitations from restarting at any time after one of these three things has happened, not just after the statute of limitations has run. For example, if a consumer makes a partial payment one year after the debt was charged-off, the statute of limitations would not restart.*

*Alternatively, Paragraph (c) can be written to prohibit the statute of limitations from restarting after the statute of limitations has expired. Maine recently adopted a statute with this approach, which states:*

Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period.<sup>49</sup>

*Notably, the language adopted in Maine would prohibit the statute of limitations from restarting at any time after limitations period has run, but would permit restarting the statute of limitations when a partial payment is made after the charge-off date but before the statute of limitations has run. Thus, this approach provides consumers with more limited protections.*

*Paragraph (d) specifies that even if another state's laws may apply to the legal claims at issue, the statute of limitations in Paragraph (a) will apply and govern collection efforts in the state adopting this provision, unless the other state's statute of limitations is shorter.*

## **Section 4. Limitations on Actions upon Judgments or Decrees**

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<sup>47</sup> Wis. Stat. § 893.05 (“When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.”).

<sup>48</sup> Miss. Code § 15-1-3 (“The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy.”).

<sup>49</sup> ME ST T. 32 § 11013(8).



(a) Any actions, proceedings, or executions upon a judgment or decree on a consumer debt must be commenced within five (5) years after the entry of the judgment or decree.

(b) No judgment whose enforcement has been barred by the running of the limitations period may be revived or renewed by any means.

(c) The time period specified in 4(a) applies to actions, proceedings, or executions in this state upon judgments rendered in other jurisdictions as well as judgments rendered in this state, except that, if the judgment was rendered in a foreign jurisdiction where the period of time specified in Section 4(a) is shorter than five (5) years, the shorter period shall control.

### **Commentary**

*Paragraph (a) provides that judgments for consumer debts last for five years. This five-year limitation provides ample time for collection on a judgment while guaranteeing to consumers that they will not face collection efforts indefinitely on debts that they are unable to repay.*

*Paragraph (b) makes it clear that the five year period cannot be extended.*

*Paragraph (c) applies the five year period in Paragraph (a) to enforcement actions in this state on judgments obtained in foreign jurisdictions unless that jurisdiction specifies a limitation on actions upon judgments or decrees shorter than five years, in which case the shorter limitations period controls.*

## **Section 5. Prohibition of Waiver of Rights**

Any waiver of any protection provided by or any right of the consumer under this Act is void and shall not be enforced by any court or any person.

### **Commentary**

*This section ensures that the consumer protections in this statute cannot be voluntarily given up or “waived” by a consumer, preventing boilerplate language in consumer form contracts which would deprive consumers of these important protections.*