



National
Consumer Law
Center

*Fighting Together
for Economic Justice*

MODEL CONSUMER DEBT COLLECTION REFORM ACT

(formerly Title I of the Model
Family Financial Protection Act)

National Consumer Law Center®

2013



ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state governments and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

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ABOUT THIS MODEL LAW

This model law was formerly Title I of NCLC's Model Family Financial Protection Act. Because Title II was updated in 2026 and spun off as a standalone model law (the Model Family Property and Income Protection Act), NCLC is now reissuing this model law with a new title and without what was formerly Title II.

This model law was written in 2013 and has not been substantively updated since then. It still may be of use to advocates as a starting point for policies to limit the impact of debt on families. Unlike the new standalone model law, which focuses on protecting income and property after a court has ruled that a person owes a debt in a certain amount, this model law focuses on limits and protections from the time when a debt is originated up until a judgment is entered.

The original authors of this model law were NCLC's former Deputy Director Bob Hobbs and NCLC's current Director of Consumer Reporting and Data Advocacy Chi Chi Wu. NCLC Senior Attorney Carolyn Carter reviewed and made suggestions on both titles of the original model law. NCLC Senior Attorney April Kuehnhoff worked on edits to the Model Family Financial Protection Act after its original publication but focused on Title II. Julie Nepveu, Carolyn Coffey, Henry Sommer, Claudia Wilner, and Ted Mermin also provided invaluable review and feedback for the original model law.

MODEL CONSUMER DEBT COLLECTION REFORM ACT

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BACKGROUND

This model law, the Model Consumer Debt Collection Reform Act, is intended to protect consumers from the most common abuses in the credit and collections industries, restoring balance to an increasingly lopsided system of justice. It is intended to ensure that consumers receive basic protections as creditors pursue collection lawsuits against them.

The Model Consumer Debt Collection Reform Act was formerly Title I of NCLC's Model Family Financial Protection Act (MFFPA). As originally written, that model law included a second title that addressed post-judgment issues. In early 2026, NCLC published an updated version of that title as the [Model Family Property and Income Protection Act](#).

Background information about the history of debt collection in the United States, the parties typically involved, common collection practices, and the need for debt collection reforms can be found in [Chapter 1](#) of NCLC's [Fair Debt Collection Practices](#) manual. Additionally, NCLC publishes a compilation of resources in the issue brief [State Policy Resources: Consumer Debt Collection](#), including links to resources with debt collection data and resources to assist in comparing existing state policies.

SECTION 101. TITLE AND SCOPE

- (a) **Title.** This Act shall be known and cited as the "Model Consumer Debt Collection 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.** 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:

[Subsection \(a\)](#) 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. [Subsection \(b\)](#) 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. These directives will give guidance to the courts when the Act's provisions are applied and interpreted.

SECTION 102. DEFINITIONS

The following definitions apply in this Act:

- (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 and services, including 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:

There are a number of critical definitions in the Act. One of the most important is the concept of the “consumer form contract.” Almost all contracts offered to consumers in modern America are form contracts that the consumer must accept on a “take-it-or-leave it” basis. There is no ability for the consumer to negotiate the terms of the contract, except perhaps the price. The inability to negotiate is especially true for those legal provisions that a consumer is unlikely to understand, much less negotiate over. These contracts are often called “contracts of adhesion” in the law, and unbeknownst to the consumer, they usually contain provisions that are favorable to the business that drafted them, such as mandatory arbitration clauses that deprive consumers of their right to seek justice in a court of law. The Act recognizes the reality of consumers’ lack of negotiating power in these contracts by creating a special category of “consumer form contracts” and creating specific protections for consumers entering into such contracts for personal, family or household purposes.

The definition of “consumer debt” is also 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).

The Act includes definitions for both “debt collectors” and “debt buyers.” The definition of debt collector is a simplified version from the FDCPA. Debt buyers are defined as a subset of debt collectors who purchase delinquent or charged-off consumer debt. The definition of “debt buyer” is taken from the North Carolina Consumer Economic Protection Act of 2009.

SECTION 103. REQUIREMENTS FOR CONSUMER FORM CONTRACTS

- (a) A choice of law provision in a consumer form contract which provides that the contract is to be governed or interpreted pursuant to the laws of another state is void if the contract is signed by the consumer or otherwise formed while the consumer resides in this state. Enforcement and interpretation of such a contract shall be governed by the laws of this state if enforcement of the contract is sought in a court of this state.
- (b) A forum selection provision in a consumer form contract which provides that any claims or actions related to the contract must be litigated in a forum outside of this state is void, if the contract is signed by the consumer or otherwise formed while the consumer resides in this state.

- (c) All consumer form contracts involving a loan, extension of credit, deposit account, or other financial services shall be signed by the consumer in writing or electronically in compliance with Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c).
- (d) Any change of terms to a consumer form contract must be agreed to by the consumer by affirmative consent, signed by the consumer in writing or electronically in full compliance with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c).
- (e) A consumer form contract shall not contain:
 - (1) A provision that the consumer will hold the other party harmless, or that otherwise relieves the other party of liability, for any harm or damage caused to the consumer arising from the contract;
 - (2) A confession of judgment clause;
 - (3) A waiver of the right to a jury trial, if applicable, in any action brought by or against the consumer;
 - (4) Any assignment of or order for payment of wages or other compensation for services;
 - (5) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract, or to seek any remedies pursuant to any consumer protection law;
 - (6) A waiver of any provision of this Act or any other consumer protection statute. Any such waiver shall be deemed null, void and of no effect; or
 - (7) A provision requiring or having the practical effect of requiring that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential. This provision shall not affect the right of the parties to agree that certain specified information is a trade secret or otherwise confidential or to later agree, after the dispute arises, to keep a resolution confidential.
- (f) Any consumer form contract or provision thereof violating this Act shall be void and unenforceable. If only one provision of a consumer form contract violates this Act, a court may refuse to enforce other provisions of the contract as equity may require.
- (g) Any consumer credit transaction entered into by a consumer with a person who is required to be licensed but is not licensed is void, and neither the obligee nor any assignee of the obligation shall have any right to collect, receive, or retain any principal, finance charge, or other fees in connection with the transaction.

(h) If a consumer debt was created by or based upon a consumer form contract, any action for collection of that consumer debt shall be based on only a claim for breach of contract and not on an open account, account stated, quantum meruit or other cause of action and shall not allege that the contract is an instrument or contract under seal. Regardless of the cause of action asserted, a consumer may raise a defense based upon the reasonable value of goods or services provided.

Commentary:

The Model Act protects consumers of a state by requiring that consumer form contracts involving financial services (loans, extensions of credit, or deposit [bank] accounts) be signed in writing by the consumer. More importantly, any changes to a consumer form contract involving financial services must be agreed to by the consumer in writing. Currently, some states permit a business to amend or change a contract unilaterally without the consumer's consent, or by using the fiction that a consumer has "consented" to a change by continuing to use the services of the business (e.g., by continuing to use a credit card or bank account). These state laws lead to abuses by lenders who unilaterally amend credit card agreements to increase interest rates and/or penalty fees, or add mandatory arbitration clauses. The Act protects consumers by prohibiting such lopsided power on the part of financial services businesses to change a contract without the consumer's knowing and affirmative agreement.

The Act also protects consumers by prohibiting certain one-sided provisions from being included in a consumer form contact. In particular, it prohibits "choice of law" provisions in consumer form contracts that select laws of states other than the consumer's home state. This is because the laws of the other state (the business's home state) usually are more favorable to the business. Furthermore, such "choice of law" provisions add needless complexity to the contract as few local lawyers or judges will be familiar with the other state's laws. The Act also prohibits "forum selection" provisions which require that all lawsuits related to the contract be brought in a certain state, which makes it impossible for the consumer to bring a claim at all given the expense of filing an action in a distant jurisdiction.

The Act provides that any consumer credit obligation is void if the entity extending the credit did not have a license required by state law. For example, if a state requires payday lenders to be licensed, a loan by an unlicensed lender is void and unenforceable.

Finally, the law would prohibit the use of the account stated cause of action to collect credit card debts.

SECTION 104. REQUIREMENTS FOR DEBT COLLECTION

(a) No person shall attempt to collect on a consumer debt without obtaining reasonable verification that the debtor owes the debt in the amount claimed, which shall include:

- (1) Complete, authenticated documentation that the person attempting collection is the owner of the specific debt instrument or account at issue; and
- (2) Reasonable verification of the debtor's liability and the amount of the debt allegedly owed by the debtor. For purposes of this subparagraph, reasonable verification shall include:
 - (i) documentation of the name of the original creditor;
 - (ii) the name, last address, date of birth, and last four digits of the Social Security Number of the debtor as it appeared on the original creditor's records;
 - (iii) the debtor's last account number with the original creditor;
 - (iv) the date that the debt was incurred, and the date and amount of the last payment by the consumer toward the debt; in the case of credit, the date that the debt was incurred shall be the last extension made for the purchase of goods or services, for the lease of goods, or as a loan of money;
 - (v) a copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability and the terms thereof; and
 - (vi) an itemized accounting of the amount claimed to be owed, including the amount of the principal; the amount of any interest, fees or charges; and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt. If the debt arises from a credit card, the account shall include copies of the last twenty-four (24) periodic statements required by the Truth in Lending Act, 15 U.S.C. § 1637(b), that evidence the transactions, purchases, fees and charges that comprise the debt.

Copies of actual business records of the original creditor and any debt collector or subsequent owner of the debt containing the above documentation shall be provided to the consumer, upon request and without fee, within twenty (20) days of such request.

(b) Any seller of a consumer debt, whether the original creditor or a debt buyer, shall provide the following to the buyer or assignee when selling the debt:

- (1) the documentation listed in subsection (a); and
- (2) a statement disclosing:

- (i) whether the consumer has disputed or asserted any defenses to any portion of the debt, and notes or recordings of all related communications;
- (ii) any validation, or lack thereof, that the seller has provided the consumer pursuant to the federal Fair Debt Collection Practices Act [and if applicable, any state or local debt collection practices act], or has received from the original creditor or previous seller in response to a dispute or request for validation by the consumer;
- (iii) whether any settlement has been reached concerning any portion of the debt;
- (iv) whether the debt is within the limitation period set forth in [Section 105](#);
- (v) whether the consumer is or has been represented by an attorney and the attorney's contact information;
- (vi) whether the consumer has informed the collector that a time or place is inconvenient to the consumer for communication or has requested that collection contacts cease;
- (vii) whether the debt has been discharged or listed in bankruptcy;
- (viii) any illness or disability claimed by the consumer or known to the seller of the debt;
- (ix) whether the consumer has a disability, is over age 62, or is a limited English speaker;
- (x) whether the consumer is or has been a service member at any time since the formation of the contract; or
- (xi) whether the consumer is known to receive income that is exempt from garnishment or attachment.

(c) No debt collector that is a debt buyer or acting on behalf of a debt buyer shall make any written statement in connection with any attempt to initiate or pursue the collection of a debt unless that statement is supported by the evidence set forth in Paragraph (a) which has been reviewed by the debt buyer. The documentary evidence shall be retained on file by the debt buyer for a period of at least five (5) years and shall be provided to any affected debtor without a fee within ten (10) business days of a request. An affidavit or other sworn statement referring to documents not attached or included as part of that statement is not sufficient to meet this requirement.

(d) Whenever a payment is received by a debt collector, including a debt buyer, toward payment of a consumer debt, an original receipt or an exact copy thereof shall be furnished to the person from whom payment is received within ten (10) days of payment. Copies of all receipts issued pursuant to this section shall be kept by the debt collector for three (3) years. All receipts shall:

- (1) show the amount and date paid, the name of the debt buyer, the account number assigned by the debt buyer, the name of the original creditor, and the account number issued by the original creditor (redacted for security purposes to show only the last four digits). If the debt buyer is in possession of the names of any prior purchasers of the debt and the account numbers issued by those purchasers, this information shall also be included.
- (2) state clearly and conspicuously whether the payment is accepted as payment in full or as a full and final compromise of the debt. If any part of the debt is owed after the payment is made, the receipt shall state clearly and conspicuously the balance due after payment is credited.

(e) A debt collector shall provide written confirmation to the consumer, within five (5) business days, of any debt payment schedule or settlement agreement reached regarding a consumer debt.

(f) In all written communications concerning a consumer debt, the debt collector shall list a telephone number for the purpose of addressing consumer inquiries concerning communications between the debt collector and consumers. During all times when the collector conducts business with consumers, that number shall be answered by natural person(s) qualified to address such consumer inquiries. When a natural person is unavailable, the call shall be routed to the voicemail of a natural person who will return the phone call within two (2) business days.

(g) Notwithstanding any other law, it is lawful for a consumer to record any telephone conversation between the consumer and a debt collector or debt buyer, without the knowledge or consent of the collector. Any such recording shall be admissible in federal and state courts or other legal proceedings respecting debt collection practices or seeking collection of a consumer debt.

Commentary:

As discussed above, debt buyers do not typically possess the underlying documentation of the debt, including the contract, account statements, detailed payment records, and customer service records that would reflect customer disputes. The FTC has noted the problems that arise from this lack of documentation.¹ For example, debt collectors sometimes file lawsuits against the wrong consumer or seek the wrong amount.

Consumers are sometimes sued multiple times by different debt buyers over the same debt.

The Model Act attempts to reform the practice of debt buying by requiring adequate documentation of the history of the consumer debt. It protects consumers by requiring both debt buyers and other debt collectors to possess certain basic information about the debt before initiating collection efforts, including proof of indebtedness by the consumer, date of the debt, identity of the original creditor, and itemization of all fees, charges, and payments. Most importantly, the Act prohibits the collection of consumer debt by any party not in possession of at least a copy of the original contract, or other documentation evidencing the consumer's liability (while [Section 103\(c\)](#) of the Model Act requires a signed contract for credit or financial services, there are other consumer debts such as medical bills that might not involve a contract; also this provision covers accounts that pre-date the Act). This section of the Act espouses a simple and fundamental principle of fairness—no debt collection activity should be permitted unless the collector possesses basic information to verify the debt and to resolve disputes.

Another stronger, more straightforward alternative is to simply ban the sale of consumer debt:

Alternative Section 4. Prohibition on selling of defaulted or charged-off consumer debt

No person shall sell, assign, or transfer any consumer debt that has been charged off or for which the consumer is in default except in connection with the liquidation of the transferor or a merger.

In addition to adequate documentation of the debt, the Act also requires disclosure of critical information when a debt is sold. The creditor and each subsequent holder of the debt must retain and pass on to the next holder all communications from the consumer concerning the debt and information about all known disputes and defenses. Debt collectors should not be permitted to launder the debt of claims and defenses simply by selling it to another collector.

The Act permits consumers to record abusive telephone calls by debt collectors. Many states criminalize or prohibit the recording of telephone calls unless both parties to the call consent to the recording. These laws have the unintended consequence of preventing consumers from recording debt collection calls that are abusive. The Act creates an exception to these laws, allowing the consumer to record a telephone conversation with a debt collector without the debt collector's consent, and providing that such recording shall be admissible in court.

SECTION 105. 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 accrual. 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) No person shall attempt to collect a consumer debt, threaten legal action, or file legal action 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) Once the cause of action on the consumer debt has accrued, 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 debt completely cures the default, then a new cause of action may accrue upon a subsequent default.
- (d) A consumer debt of a resident of this state that arose in another jurisdiction or may otherwise have been governed by another jurisdiction's laws shall be governed by Paragraph (a) or the other state's limitations period, whichever is shorter.
- (e) 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.
- (f) No judgment whose enforcement has been barred by the running of the limitations period may be revived or renewed by any means.
- (g) The time period specified in Paragraph (e) 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 Paragraph (e) is shorter than five (5) years, the shorter period shall control.
- (h) Any waiver of any protection provided by or any right of the consumer under [Section 105](#) is void and shall not be enforced by any court or any person.

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.²

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 Wisconsin³ and Mississippi.⁴ 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 the cause of action has already accrued. 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.⁵

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 cause of action has accrued 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.

Paragraph (e) 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 (f) makes it clear that the five-year period cannot be extended.

Paragraph (g) 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.

Paragraph (h) 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.

SECTION 106. REQUIREMENTS FOR LAWSUITS INVOLVING CONSUMER DEBTS

- (a) No debt collector shall bring suit or initiate an arbitration proceeding against a consumer to collect on a consumer debt without first giving the consumer debtor written notice of the intent to file a legal action at least thirty (30) days in advance. The written notice shall include the name, address, and telephone number of the debt collector, the name of the original creditor, the original creditor's last account number (redacted for security purposes to show only the last four digits), a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed.
- (b) In any action brought by a debt collector to collect a consumer debt, all of the following materials must be attached to the complaint:
 - (1) A copy of the contract or other writing evidencing the original debt, which must contain a written signature of the defendant or evidence of the debtor's agreement by electronic means in compliance with Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c). If the debt arises from a credit card and no document signed by the consumer to evidence liability ever existed, then reasonable verification shall include copies of documents generated when the credit card was actually used, including the disclosures required by 15 U.S.C §§ 1637(a) and (b).
 - (2) An itemization of the amount sought, by (i) the amount owed for goods or services or for the lease of goods, or the amount of credit extended; (ii) interest, fees, and charges imposed by the original creditor; (iii) interest, fees, and charges imposed by any debt buyer or other assignee of the debt, if applicable; (iv) attorney's fees; (v) any other fees, costs, or charges sought or imposed; (vi) the amount and date of the last payment by the consumer before default or charge-off, whichever is earlier, and (vii) each payment credited to the debt after default or charge-off.
 - (3) If the action is brought by a debt buyer or other assignee of the debt, a complete copy of the assignment or other writing establishing that the debt buyer or assignee is entitled to collect the debt. If the debt has been assigned more than once, each assignment or other writing evidencing transfer of the interest in the debt must be attached and authenticated to establish an unbroken chain of ownership or assignment. Each assignment or other writing evidencing transfer of ownership or the right to collect must contain the original creditor's account number (redacted for security purposes to show only the last four digits) of the debt purchased or otherwise assigned, the date of purchase and assignment, and must clearly show the debtor's correct name associated with the original account number. The assignment or other writing attached shall be that by which the debt buyer or other assignee acquired the debt, not a document prepared for litigation.

(c) In any action to collect a consumer debt, a debtor's failure to respond to a request for admissions shall not be deemed an admission unless the request is served in accordance with [applicable law or Rule of Civil Procedure] upon an attorney for the debtor.

[If the state or locality requires debt collectors to be licensed:

(d) In any action by a debt collector, the complaint shall allege as part of the cause of action that the plaintiff is duly licensed under this Article [or cite to local licensing requirements] and shall contain the name and number, if any, of the license and the governmental agency that issued it. A debt collector that has failed to obtain the proper license shall be prohibited from bringing any action in the courts of this state to collect a consumer debt.]

Commentary:

The Model Act gives consumers an opportunity to settle debts, resolve disputes, or raise any errors by providing them with a notice thirty days before being faced with a legal action or arbitration proceeding. If the debt is no longer owned by the original creditor, it requires the debt buyer to give the consumer adequate information about the debt so that the consumer can understand which debt s/he is being sued over. Otherwise, a consumer sued by a debt buyer may have no idea why s/he is being sued.

The Model Act also requires that any party taking legal action or initiating arbitration to collect a debt must provide adequate documentation about that debt, similar to the documentation required in [Section 104](#) for debt collection in general. Thus, debt collectors or buyers must provide a copy of the original contract or other documentation that the consumer actually incurred the debt (while a signed contract is required for credit or financial services per [Section 103\(c\)](#) of the Act, there may be accounts that pre-date the Act, especially for credit card accounts). It also requires debt buyers to show that they own the debt they are seeking to collect. This provision is based in part upon the North Carolina Consumer Economic Protection Act of 2009, which requires debt buyers to include with the collection complaint a copy of the original contract and the assignment(s) to show ownership of the debt. In credit card cases, such documentation could arguably be required by the Truth in Lending Act, 15 U.S.C. § 1643(b), which provides that in any action by a creditor to enforce liability for the use of a credit card, the burden of proof is upon the creditor to show that the use was authorized. At least one state supreme court has held that this section of TILA requires creditors to provide evidence that the consumer signed the account application, a copy of the account agreement, and a copy of billing statements.⁶ If creditors are required to provide such evidence, debt collectors should be required to as well.

An alternative to requiring the documentation specified in this Section is to require the debt buyer or collector to include certain information in the complaint to document the debt. The FTC has recommended that such information should include the name of the original creditor; the last four digits of the original account number; the date of default or

charge-off (another alternative is the date of the last payment before default) and amount due at the time; name of the current owner of the debt; the total amount sought; and a breakdown of the total amount currently due by principal, interest, and fees.⁷ If this alternative is used, debt collectors should also be required to certify that they possess admissible, authenticated evidence of the essential facts concerning the debt.

Finally, this section addresses the use of Request for Admissions by debt collectors as a tactic to take advantage of pro se debtors' lack of legal training. Debt collectors sometimes will send a Request for Admissions to an unrepresented consumer, who will not understand the significance of this particular discovery tactic and fail to respond. By failing to respond, the consumer will be deemed to have admitted to facts establishing liability for the debt, despite the fact that he or she may not really owe the debt or may have other defenses. This tactic is unfair to pro se debtors as it exploits their lack of knowledge of arcane discovery rules which the average layperson would not be expected to understand.

SECTION 107. SERVICE; ADDITIONAL MAILING OF NOTICE IN AN ACTION

- (a) Immediately prior to commencing a legal action to collect a consumer debt, the plaintiff shall undertake a reasonable investigation to verify the defendant's current address for service of process.
- (b) In any action to collect a consumer debt, the plaintiff shall, at the time of filing proof of service of the summons and complaint, submit to the clerk an envelope properly addressed to the defendant, with first-class postage affixed, together with a written notice. This notice is in addition to the requirement in [applicable Rule of Civil Procedure] requiring service of the complaint and summons on the defendant. This additional notice shall consist exclusively of the following language, or language prescribed by the [state supreme court or court rules committee] that addresses the same topics, in clear type of no less than twelve-point in size, in both English and Spanish:

BEFORE ENACTMENT, THIS NOTICE MUST BE CUSTOMIZED SO THAT IT ACCURATELY DESCRIBES THE PARTICULAR STATE'S PROCEDURES.

NOTICE OF LAWSUIT

(DATE)

(NAME OF COURT)
(COUNTY)
(STREET ADDRESS, ROOM NUMBER)
(CITY, STATE, ZIP CODE)

(NAME OF DEFENDANT)
(ADDRESS OF DEFENDANT)

PLAINTIFF (person suing): _____

DEFENDANT (person sued): _____

NAME OF ORIGINAL CREDITOR, UNLESS SAME: _____

CASE NUMBER: _____

ATTENTION: A lawsuit has been filed against you claiming that you owe money for an unpaid credit card, medical, student loan, or other debt. You should expect to get a copy of a document called a “complaint” [Insert description of all forms of service that are permitted in the state, e.g., “delivered by a sheriff’s deputy or by certified mail”].

You should go to the courthouse at the above address as soon as possible to respond [in writing] to the lawsuit. [Or insert other instructions for how to respond.] You can ask the clerk’s office for a copy of the complaint if you have not received it within one week of this notice.

You may wish to contact an attorney. [For courts that provide assistance by a volunteer attorney or have other pro se assistance: If you do not have an attorney, help may be available at the court.] [Insert a reference to legal services organization, www.consumeradvocates.org, or bar association referral service if applicable.]

If you do not respond [in writing] to the lawsuit, the court may enter a judgment against you. Once entered, a judgment can be used against you for five (5) years, and your money, including a portion of your paycheck and/or bank account, may be taken. A judgment will hurt your credit score and can affect your ability to rent a home, find a job, or take out a loan.

There can be other very serious consequences for you if a judgment is entered against you. [If applicable: See [brochure or website] for details.]

It is important that you [insert necessary response: mail a written response to the clerk; appear at the time and place stated above, etc.]. Additional information can be found at the court system website at: _____

(c) The face of the envelope set forth in subsection (a) shall be addressed to the defendant at the address at which process was served, and shall contain the defendant’s name, address (including apartment number), and zip code. The face of the envelope also shall state the appropriate clerk’s office as its return address. The face of the envelope shall not contain any other markings, including any indication it is an attempt to collect a debt or the name of the plaintiff or original creditor.

(d) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in subsection (a). No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty (20) days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the envelope containing the additional notice is returned as undeliverable.

Commentary:

A party initiating a lawsuit is required to provide “service” of the lawsuit by having the summons and complaint mailed or physically delivered to the address of the person being sued. One of the most problematic practices by debt buyers and debt collectors is “sewer service,” in which the summons and complaint are never delivered but the individual paid to complete service claims to have done so. The FTC has noted problems with inadequate or improper service in debt collection litigation.⁸

The Model Act addresses these problems by requiring verification of the address and providing for an additional notice of the lawsuit to be mailed to the consumer-defendant by the clerk of the court. This additional notice is modeled in part on a similar additional notice required by the New York City Civil Courts.⁹ This additional notice ensures that the consumer-defendant has proper notification of the lawsuit and is afforded the opportunity to defend him/herself in court. The additional notice also includes information about the consequences if the court issues a judgment against the consumer. States will need to customize the notice so that it accurately reflects the state’s procedures.

SECTION 108. DEFAULT JUDGMENT

(a) Prior to entry of a default judgment or summary judgment against a consumer in any action initiated by a debt collector to collect a consumer debt, the plaintiff shall file:

(1) evidence with the court to establish the amount and nature of the consumer debt. The only evidence sufficient to establish the amount and nature of the debt shall be properly authenticated business records that satisfy the requirements of [cite state Rules of Evidence]. The authenticated business records shall include at least all of the following items:

(i) the original creditor’s last account number (redacted for security purposes to show only the last four digits);

(ii) the name of the original creditor;

(iii) the amount of the original debt;

(iv) an itemization of interest, charges, and fees claimed to be owed;

- (v) the original charge-off balance, or, if the balance has not been charged off, an explanation of how the balance was calculated;
- (vi) an itemization of post charge-off interest, charges, or fees, where applicable;
- (vii) the date of last payment by the consumer;
- (viii) a statement of the applicable limitations period and the filing date of the case;
- (ix) the amount of interest claimed and the contractual or legal basis for the interest charged; and
- (x) sufficient information to indicate whether the interest rate exceeded [cite to state usury cap] at any point.

(b) If the plaintiff is a debt buyer, the plaintiff shall file one or more affidavits authenticating the documents listed in Section 106(b), signed by a person or persons qualified to authenticate the documents.

(c) In any case involving consumer debt, if the defendant debtor appears for trial on the scheduled trial date, but the debt collector fails to appear or is not prepared to proceed to trial and there is not good cause for a continuance, judgment shall be entered for the debtor dismissing the action with prejudice. The court may award the debtor's costs of preparing for trial, including lost wages, transportation expenses, and attorney's fees.

(d) In any case involving collection of a consumer debt, in addition to the grounds set forth in [applicable Rule of Civil Procedure], the defendant debtor shall be permitted to move to set aside a default judgment under [applicable Rule of Civil Procedure] within the following:

- (1) One (1) year after entry of default on grounds of mistake, inadvertence, surprise or excusable neglect;
- (2) Two (2) years after entry of default on grounds of deception, fraud or misrepresentation by a debt collector or its attorney to a pro se consumer, including a false representation that the case would be dismissed;
- (3) At any time after a void judgment is granted, if the motion is made within a reasonable time. For a default judgment, this may be a reasonable time after the discovery of the existence of the judgment or order. For purposes of this provision, a void judgment in a case involving consumer debt shall include a case in which the consumer is not the person obligated to pay the debt or is the victim of mistaken identity, identity theft, or fraud by another person who incurred the debt;
- (4) At any time for lack of personal jurisdiction, if the debtor was not properly served with notice of the action.

(e) If the provisions of [applicable Rule of Civil Procedure] provide for a time period to set aside a default judgment on a particular basis that is different than the time periods set forth in this section, the longer time period shall apply.

Commentary:

Debt collectors and debt buyers most often obtain judgments against consumers by default, i.e., they win because the consumer never appears to defend him or herself. Oftentimes in such cases, the debt collector or buyer is not required to provide any evidence it is actually entitled to the judgment, including that the consumer really owes the debt, the correct amount of the debt, and that the debt buyer really has ownership of the debt.

The Model Act requires that any party seeking a judgment for a consumer debt provide the court with sufficient documentation as to the amount and nature of the debt, similar to the documentation required in [Sections 104](#) and [106](#) for initiating a lawsuit and debt collection in general. It also requires a breakdown of the debt so that it is clear what is the original principal and original charge- off amount versus fees added post-charge-off. Debt collectors or buyers must provide a copy of the original contract or other documentation that the consumer actually incurred the debt. This also requires debt buyers to show that they actually own the debt they are seeking to collect, in order to prevent a second judgment from being issued for the same debt.

This provision also gives consumers the right to obtain a default judgment if they appear for trial to defend themselves and the collector does not show up. The FTC has cited the unnecessary costs imposed on consumers when this situation occurs and recommended that state courts take measures to deter it.¹⁰ Massachusetts small claims courts have established similar rules requiring dismissal of a lawsuit if the defendant-consumer shows up for trial and the plaintiff-collector does not appear or is unprepared for trial for no good reason.¹¹

Finally, it gives consumers certain amounts of time to ask the court to remove or set aside a default judgment. These time periods are based on a combination of federal and California law. If the consumer is not actually liable for the debt, because s/he was the wrong consumer being sued or the victim of identity theft or fraud committed by someone else, this provision gives consumers the ability to set aside the default judgment at any time.

SECTION 109. CONFIRMATION OF ARBITRATION AWARDS

(a) In any proceeding to confirm an arbitration award to collect a consumer debt, the party seeking to confirm the award shall plead:

(1) the actual terms and conditions of the agreement to arbitrate; and

(2) compliance with Sections 103 through 106 of this Act.

(b) The party seeking to confirm the award shall attach to its petition:

- (1) the agreement to arbitrate;
- (2) the demand for arbitration or notice of intention to arbitrate, with proof of service; and
- (3) written evidence of the arbitration award, with proof of service.

(c) If the arbitration award does not contain a statement of the claims submitted for arbitration, of the claims ruled upon by the arbitrator, and of the calculation of figures used by the arbitrator in arriving at the award, then the petition shall contain a statement setting forth such items.

(d) The court shall not grant confirmation of an arbitration award based on a consumer credit transaction unless:

- (1) the party seeking to confirm the award has complied with this section; and
- (2) the party against whom an arbitration award is sought to be confirmed either
 - (i) attended a hearing before the arbitrator;
 - (ii) signed a writing after the submission to the arbitrator of the claim that is the basis for the arbitration award, agreeing to submit the claim to the arbitrator; or
 - (iii) was the subject of a court order compelling arbitration as provided by [applicable rule provision].

(e) A party may seek to confirm an arbitration award in the courts of this state within one year after the award is made. A party against whom an arbitration award is made may seek to vacate the award in the courts of this state within one year after the award is made.

Commentary:

One of the most troublesome practices is the use of mandatory binding arbitration to collect consumer debts. These arbitration proceedings are often extremely lopsided. For example, in cases handled by the National Arbitration Forum (NAF), the creditor or business prevailed over the consumer in 94.7% of the cases. The Minnesota Attorney General shut down NAF's consumer debt arbitration business in 2009 for bias and deception, including the fact that NAF was owned by the same corporation that owned Mann Bracken, a large national debt collection law firm that filed debt collection claims with NAF.

Credit card issuers dropped collection by arbitration after the NAF scandal. However, there are no laws or regulations that explicitly prohibit them from taking up the practice again. The Model Act would prohibit state courts from confirming an arbitration award unless certain conditions were met, including compliance with other parts of the law. This section also includes a provision based on Pennsylvania law that, in order for the court to confirm the arbitration award, it must find that the consumer actually participated in the arbitration, was compelled to participate but did not do so, or agreed to arbitration after the claim arose.

SECTION 110. INTEREST; ATTORNEY'S FEES

- (a) If the plaintiff is the prevailing party in any action to collect a consumer debt, any pre- or post-judgment interest the court awards the plaintiff shall be limited to the rate of interest equal to the weekly average 1-year constant maturity treasury yield, but not less than 2 per cent per annum nor more than 5 per cent per annum, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment. A higher rate of interest on the judgment, including the rate provided for in the contract, shall not be permitted.
- (b) Any pre or post-judgment interest awarded by the court shall not be compounded.
- (c) If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff shall be entitled to collect attorney's fees only if the contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney's fees, and subject to the following provisions:
 - (1) if the contract or other document evidencing indebtedness provides for attorney's fees in some specific percentage, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of the amount of the debt excluding attorney's fees and collection costs.
 - (2) if a contract or other document evidencing indebtedness provides for the payment of reasonable attorney's fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean the lesser of fifteen percent (15%) of the amount of the debt, excluding attorney's fees and collection costs, or the amount of attorney's fees calculated by a reasonable rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment.
 - (3) the documentation setting forth a party's obligation to pay attorney's fees shall be provided to the court before a court may enforce those provisions. Such documentation must include all of the materials specified in [Section 106](#).

(d) If the debtor is the prevailing party in any action to collect a consumer debt, the debtor shall be entitled to an award of reasonable attorney's fees. The amount of the debt that the creditor sought shall not be a factor in determining the reasonableness of the award. In the alternative, at the debtor's election, a prevailing debtor shall be awarded the amount of attorney's fees that the plaintiff would have been entitled to collect if the plaintiff had been the prevailing party.

Commentary:

Paragraph (a) limits the amount of interest that can be assessed to a consumer debtor when a debt collector prevails in a collection lawsuit against the consumer debtor. The section says that the maximum interest rate that a court can award the debt collector is the same as the interest rate permitted under federal law for civil judgments, 28 U.S.C. § 1961, though with a minimum of 2% interest and a maximum of 5%. This section is necessary because in some states, post-judgment interest laws were passed during times of high inflation, and can be as high as 12%, which essentially doubles the amount of the debt after five years. Also, without these limits, creditors may seek to impose the contract interest rate, which may be much higher. Paragraph (b) prohibits the court from compounding any pre- or post-judgment interest it awards. Pre-judgment interest here is intended to refer only to interest that accrues after the maturity of a credit obligation, i.e., after the date the final payment is due, either under the original contract terms or after acceleration.

This section prohibits seeking attorney's fees from a consumer in a collection lawsuit to only those instances in which the underlying contract or other document obligates the consumer for such fees. This section also limits these fees to a reasonable percentage of the amount owed by the consumer. Finally, this section gives the consumer the right to collect attorney's fees if s/he prevails, to the same extent the collector could have collected them, i.e., 15% of the amount of the debt or a reasonable hourly rate, if the contract provides for attorney's fees for the collector.

SECTION 111. PRESERVATION OF LEGAL RIGHTS

(a) Prior to a dispute arising, a written agreement shall not waive or have the practical effect of waiving the rights of a party to that agreement to resolve that dispute by obtaining:

- (1) Injunctive, declaratory, or other equitable relief;
- (2) Relief on a class-wide basis;
- (3) Punitive damages;
- (4) Multiple or minimum damages as specified by statute;

- (5) Attorney's fees and costs as specified by statute or as available at common law; or
- (6) A hearing at which that party can present evidence in person.

(b) Any provision in a written agreement violating this section shall be void and unenforceable. A court may refuse to enforce other provisions of the agreement as equity may require.

(c) Any person who is a party to an agreement that violates this section can bring an action in court to reform such an agreement so that it complies with this Act. The party or parties responsible for drafting the offending provisions shall be liable for the reasonable attorney's fees and costs of the person or entity bringing the action if that action prevails or where, after the action is commenced, the parties reform the contract voluntarily.

Commentary:

This provision reaffirms the state's policy of using private litigants to effectuate justice for all of a state's citizens. Written agreements should not waive, prior to a dispute arising, individual rights that benefit the justice system as a whole. For example, the threat of punitive damages deters misconduct aimed at others. State authorization of class actions, statutory minimum or multiple damages, and statutory attorney's fees all encourage private litigation to remedy law violations where law enforcement would otherwise be impractical. Injunctive relief can provide protections for other citizens. The state also has an interest in court orders being publicized so that other citizens can be better informed, and for litigants to be allowed to appear in person to present their grievances in public.

The Model Act does not in any way prevent parties, after a dispute arises, from settling the manner with a confidentiality clause or without providing for statutory remedies. Nor does the model in any way limit the ability of parties to agree, prior to a dispute arising, to settle the matter via arbitration. The model law just prevents waiver of certain individual rights whose preservation is important for the operation of the justice system, whether the dispute is resolved in court, in arbitration, or otherwise.

Such waivers are present both in arbitration clauses and elsewhere in contracts, and the state has an interest in prohibiting such waivers wherever they appear.

This model law is not targeted at arbitration agreements, but requires courts to void any contractual provision (in an arbitration clause or elsewhere in a contact) that waives, prior to a dispute, enumerated individual rights that implicate important state interests. Because it sets general standards and does not target arbitration, the Model Act should not run afoul of the Federal Arbitration Act (FAA). The FAA specifically allows courts to refuse to enforce provisions "upon such grounds as exist at law or equity for the revocation of any contract."

*Because the Model Act applies to any contract involving any person, not just consumer form contracts, it is written to avoid court rulings that preempt state statutes whose scope is more limited. At least four circuits interpret very literally “any contract” in the above quoted FAA language, and find FAA preemption even where a state statute specifies grounds to revoke any contract, but the scope of the statute is limited to contracts involving only consumers or only franchisees. See *Ting v. AT & T*, 319 F.3d 1126 (9th Cir. 2003); *Saturn Distribution Corp. v. Paramount Saturn, Ltd.*, 326 F.3d 684 (5th Cir. 2003); *Bradley v. Harris Research, Inc.*, 275 F.3d 884 (9th Cir. 2001); *OPE Int'l Ltd. P'ship v. Chet Morrison Contractors, Inc.*, 258 F.3d 443 (5th Cir. 2001); *KKW Enterprises, Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42 (1st Cir. 1999); *Doctor's Associates, Inc. v. Hamilton*, 150 F.3d 157 (2d Cir. 1998); see also *Mgmt. Recruiters Int'l, Inc. v. Bloor*, 129 F.3d 851, 856 (6th Cir. 1997).*

ENDNOTES

1. Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection and Arbitration* (July 2010) at 14-17.
2. 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).
3. 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.”).
4. 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.”).
5. ME ST T. 32 § 11013(8).
6. Danner v. Discover Bank, 99 Ark. App. 71 (Ark. Ct. App. 2007).
7. Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection and Arbitration* (July 2010), at iii, 17.
8. Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection and Arbitration* (July 2010), at 8-11.
9. N.Y. City Civ. Ct. Unif. Rules § 208.6.
10. Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection and Arbitration* (July 2010), at 21-22.
11. Mass. Ann. Laws Unif. Small Claims Rules 7(c). Pennsylvania’s “Credit Card Court” similarly dismisses cases if the plaintiff does not appear at an initial mandatory conciliation conference. Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection and Arbitration* (July 2010), at 22.



National
Consumer Law
Center

NATIONAL HEADQUARTERS

7 Winthrop Square, Boston, MA 02110
(617) 542-8010

NCLC.ORG

WASHINGTON OFFICE

Spanogle Institute for Consumer Advocacy 1001
Connecticut Ave, NW, Suite 510
Washington, DC, 20036
(202) 452-6252