

DC Expands Debt Collection Law to Cover More Creditors, Debt Types

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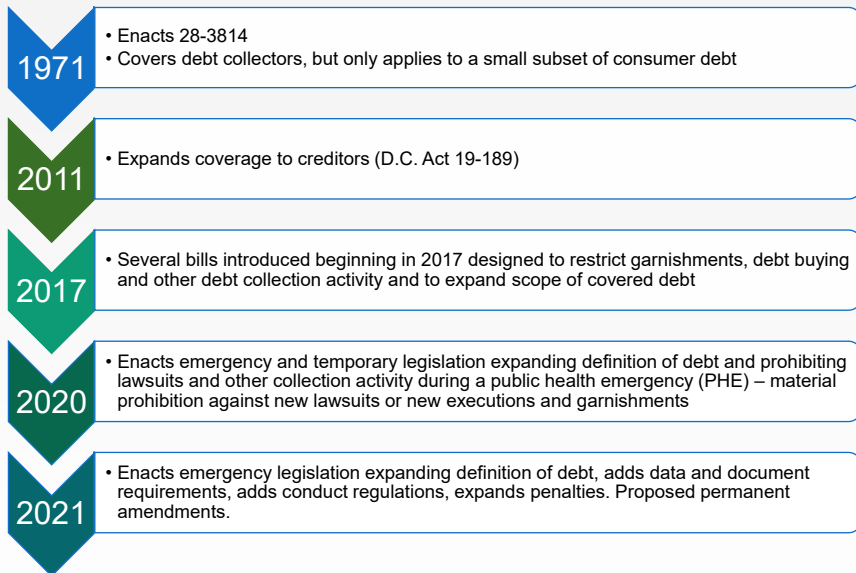
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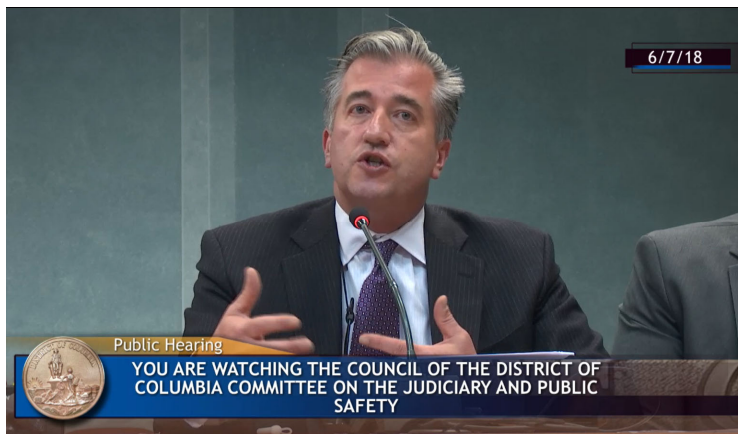
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DC Debt Collection Legislation



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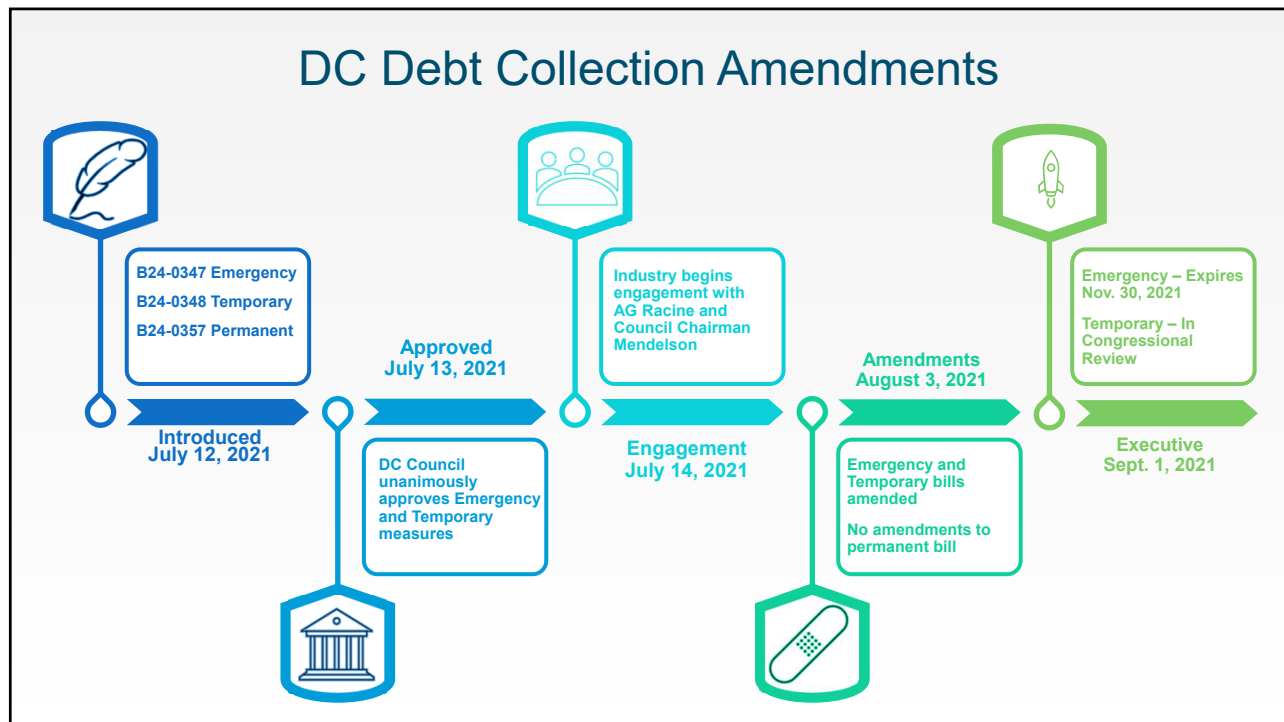


RMAI and its members have engaged with the DC Council for several years

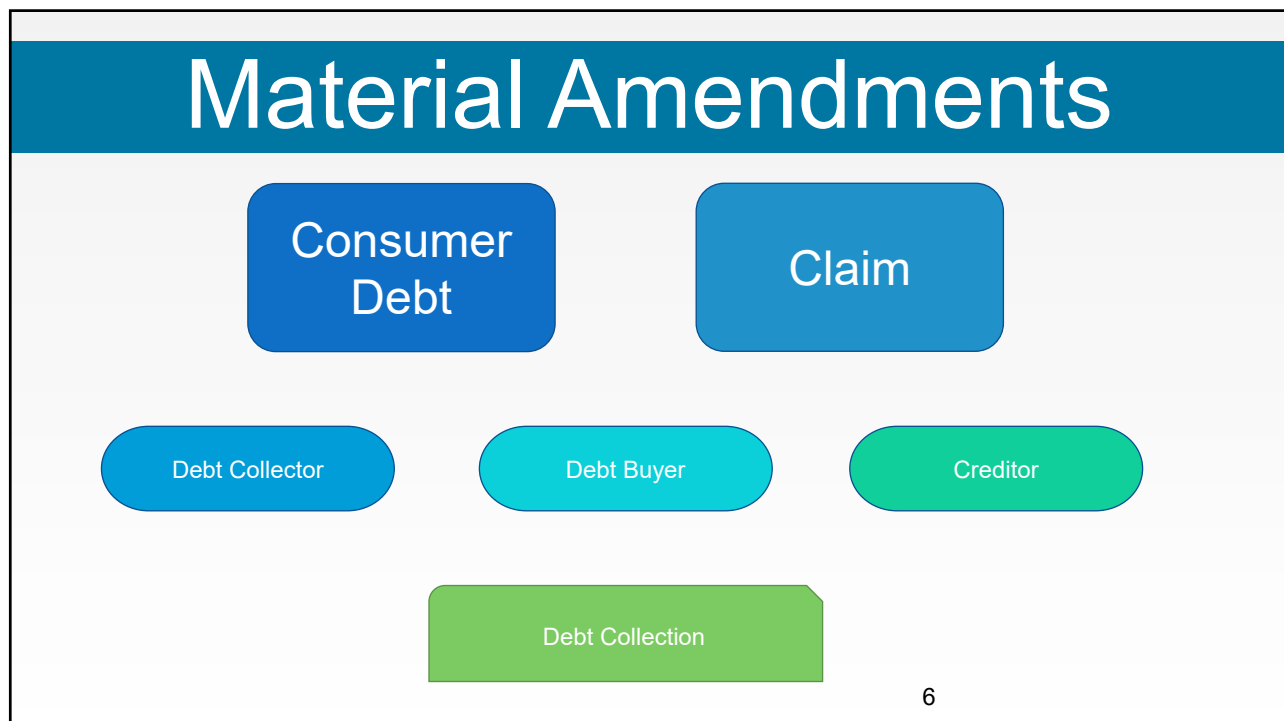
Industry Engagement

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Claims and Consumer Debts

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Consumer Debt

Only Appears in Amended

“Consumer debt . . . money or its equivalent, or a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, as a result of a purchase, lease, or loan of goods, services, or real or personal property for personal, family, medical, or household purposes”

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Consumer Debt

“Consumer Debt” – DC Code

money or its equivalent, or a *loan or advance of money*, which is, or is alleged to be, *more than 30 days past due and owing, unless a different period is agreed to by the debtor, as a result of a purchase, lease, or loan of goods, services, or real or personal property* for personal, family, medical, or household purposes.

“Debt” – FDCPA

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.

FDCPA “debt” and DC Code “consumer debt” are not the same

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Consumer Debt

Some Similar “types”

- Medical debt
- Credit card debt (cash advances questionable)
- Student loans
- Rent
- Utility debt
- Telecom debt
- Debt owed to tradespersons, professionals or others providing goods or services
- Hospitality

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Consumer Debt

Not consumer debt

- Debt incurred for commercial purposes is not subject to the law;
- Debt that is the result of “a loan directly secured on real estate”;
- Debt owed for common expenses pursuant to § 42-1903.12; or
- Debt that is a “direct motor vehicle installment loan covered by [DC Code § 28-360, et seq.]”

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Consumer Debt

Grey area “types”

- Judgments
- Loans not made for, or the “result of a purchase, lease or loan of goods, services or . . . property”

“a loan or advance of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, as a result of a purchase, lease, or loan of goods, services, or real or personal property.”

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Claim

Original

any obligation or alleged obligation, arising from a consumer credit sale, consumer lease, or direct installment loan

Amended

any obligation or alleged obligation, arising from a consumer debt

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Claim

Consumer Debt

- money or its equivalent . . . more than 30 days past due

Claim

- an obligation . . . **arising** from a consumer debt

Arising - to come into existence, to originate from a source

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Consumer Debt and Claim

Understanding the scope of a “claim” and “consumer debt” matters because of its use in key definitions and provisions:

- “Debt collection . . . any action, conduct or practice in connection with the collection of consumer debt”
- “Debt collector . . . a person engaging directly or indirectly in debt collection”
- “Debt buyer . . . a person . . . engaged in the business of purchasing charged-off consumer debt”
- “Creditor means a claimant or other person holding or alleging to hold a claim”
- Some provisions provide they are applicable to claims ((d) for example), others are applicable to “consumer debt” ((m) for example).

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Consumer Debt and Claim

“[W]e must give effect to every word of a statute wherever possible.”

Leocal v. Ashcroft, 543 U.S. 1, 12, 125 S. Ct. 377, 160 L. Ed. 2d 271 (2004); see also *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 70, 131 S. Ct. 716, 724 (2011) quoting *Leocal*, 543 U.S. at 12.

If a “claim” and a “consumer debt” were synonymous, it would not “give effect to every word.”

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Consumer Debt and Claim

Potential reading of “consumer debt” and “claim”

Judgments are “claims,” but not consumer debt

Bankruptcy claims are “claims,” but not consumer debt

Arbitration awards are “claims,” but not consumer debt

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Creditor, Debt Collector, Debt Buyer

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Creditor

Original

Creditor means a claimant or other person holding or alleging to hold a claim

Amended

Creditor means a claimant or other person holding or alleging to hold a claim

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Debt Collection

Original

any action, conduct or practice in connection with the solicitation of claims for collection or in connection with the collection of claims, that are owed or due, or are alleged to be owed or due, a seller or lender by a consumer

Amended

any action, conduct or practice in connection with the collection of consumer debt

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Debt Collector

Original

any person engaging directly or indirectly in debt collection

Amended

a person engaging directly or indirectly in debt collection

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Debt Buyer

Original

No reference, but would likely fit in "debt collector"

Amended

a person or entity that is engaged in the business of purchasing charged-off consumer debt or other delinquent consumer debt for collection purposes . . . is considered a debt collector for all purposes

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Servicer Issues

FDCPA

Excludes from “debt collector” “any person collecting . . . a debt which was not in default at the time it was obtained by such person”
1692a(6)(F)(iii)

DC Code

No exception

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Creditor Issues

Debt buyer – defaulted debt that is part of a larger portfolio of performing loans

Can read definition of “debt collector” to include employees of creditors

- debt collector – “a person engaging directly or indirectly in debt collection.”
- creditor – “a claimant or other person holding or alleging to hold a claim.

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Sub (c)

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Sub (c)

“No creditor or debt collector shall collect or attempt to collect **any money** alleged to be due and owing by means of any threat, coercion, or attempt to coerce in any way, including:”

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Sub (c)

Using the phrase “collect any money” without reference to consumer debt or claim, presents risk

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Sub (c)

(4) the threat to sell or assign to another the consumer debt with a representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to collection attempts in violation of this section;

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Sub (d)

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Sub (d)

“No creditor or debt collector shall unreasonably oppress, harass, or abuse any person in connection with the collection of or attempt to collect ***any claim*** alleged to be due and owing by that person or another in any way, including:”

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Sub (d)

(d)(4)

- 3 calls in 7-day period
- “inclusive of all phone numbers and accounts”
- Two exceptions, but they apply only to “debt collectors”
 - “calls made to a debt collector by a consumer”
 - “to a single completed call made by a debt collector in response to the consumer's request for a returned phone call”

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Sub (e)

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Sub (e)

“No creditor or debt collector shall unreasonably publicize information relating to any alleged ***indebtedness*** or ***debtor***”

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Sub (f)

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Sub (f)

UDAAP provision refers to both “consumer debt” and “claims”

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Sub (f)

(2) the failure to clearly disclose in all written communications made to collect or attempt to collect a ***claim*** or to obtain or attempt to obtain information about a consumer, that the creditor or debt collector is attempting to collect a ***claim*** and that any information obtained will be used for that purpose;

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Sub (f)

(4) the failure to clearly disclose the name, phone number, email address, and full business address of the person to whom the ***claim*** has been assigned for collection, or to whom the ***claim*** is owed, at the time of making any demand for money

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Sub (f)

(6) attempting to collect debts owed by a deceased consumer from a person with no legal obligation to pay the amounts alleged to be owed

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Sub (I)

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Sub (I)

(1) Notwithstanding any other provision of law, when the applicable statute of limitations period has expired, any subsequent payment toward or written or oral affirmation of such a **consumer debt** shall not extend the limitations period.

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Sub (m)

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Sub (m)

(1) No debt collector shall collect or attempt to collect a **consumer debt**, unless the debt collector has complete and authenticated documentation that **the person attempting collection is the owner** of the consumer debt, and the debt collector is **in possession** of the following information or documents:

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Sub (m)

(m)(1) – Possession of:

- Name of the original creditor
- Name of the current creditor
- Last account number with the original creditor
- A copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability and the terms thereof
- The date that the consumer debt was incurred (for revolving credit account, the last extension of credit made for the purchase of goods or services, for the lease of goods, or as a loan of money
- "Date and amount of the last payment by the consumer, if applicable" and
- An itemized accounting
 - Principal, interest, fees or charges and whether the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the debt
 - Credit-card – runs from post-charge off and "shall" include copies of the charge-off statement and the most recent monthly statement recording a purchase transaction, last payment, or balance transfer

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Sub (m)

(m)(2) – Consumer notice "in the first written communication with the consumer" 12-pt type:

You have the right to request all of the following concerning your debt:

- (1) Documentation of the name of the original creditor as well as the name of the current creditor or owner of your debt;
- (2) Your last account number with the original creditor;
- (3) A copy of the signed contract, signed application, or other documents providing evidence of your liability and its terms;
- (4) The date that your debt was incurred;
- (5) The date of your last payment, if applicable; and
- (6) 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.

You may request the above information by contacting us by phone, mail, or email, at the following:

[phone number, mailing address, and email address of debt collector *in the same typeface*]

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Sub (m)

(m)(2) “debt collector shall cease all collection of the consumer debt until the above notice is provided to the consumer in writing”

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Sub (m)

- (m)(2) upon consumer request for information:
- “shall provide **all of the information listed in paragraph [(m)](1)**” within 15 days “of receipt”
 - If the information is not provided within the 15-day period, “the debt collector shall cease all collection of the consumer debt until such information is provided”

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Sub (n)

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Sub (n)

(1) “. . . payment schedule or settlement agreement regarding a **consumer debt** shall provide a written copy . . . within 7 days”

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Sub (n)

(2) "A consumer shall not be required to make a payment . . . until the written agreement . . . has been provided by the debt collector"

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Sub (o)

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Sub (o)

“Any action for the collection of a **consumer debt** shall only be commenced within 3 years of accrual. . . .unless that statute provides for a shorter time period”

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Sub (p)

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Sub (p)

“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”

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Sub (q)

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Sub (q)

Applies to a “cause of action initiated by a **debt collector** to collect a **consumer debt**”

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Sub (q)

- Attach to the Complaint “a copy of the signed contract, signed application, or other documents that provide evidence of the consumer's liability”
- Allege “in the complaint or statement of claim:
 - (1) A short and plain statement of the type of consumer debt;
 - (2) The information enumerated in subsection (m)(1) of this section, except that the debt collector shall only include the last 4 digits of the debtor's last account number with the original creditor;
 - (3) The basis for any interest and fees charged;
 - (4) The basis for the request of attorney's fees, if applicable;
 - (5) That the debt collector is the current owner of the consumer debt and a chronological listing of the names of all prior owners of the consumer debt and the date of each transfer of ownership, beginning with the original creditor; and
 - (6) That the suit is filed within the applicable statute of limitations period”

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Sub (r)

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Sub (r)

In a cause of action initiated by a debt collector to collect a consumer debt, prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall file evidence with the court to establish the amount and nature of the debt

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Sub (r)

The only evidence sufficient to establish the amount and nature of the debt shall be authenticated business records that shall include the information enumerated in subsection (m)(1) of this section, except that the debt collector shall only include the last 4 digits of the debtor's last account number with the original creditor

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Sub (s)

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Sub (s)

Applies to a “cause of action initiated by a **debt collector** to collect a **consumer debt**”

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Sub (s)

Prior to entry of default judgment or summary judgment the “plaintiff,”

- “shall file a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt”
- for debt assigned more than one, “then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership”

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Sub (s)

Prior to entry of default judgment or summary judgment the “plaintiff shall state:

- (1) The date on which the debt was sold or assigned to the plaintiff;
- (2) The name of each previous owner of the account from the original creditor to the plaintiff and the date on which the debt was assigned to that owner by the original creditor or subsequent owner; and
- (3) The amount due at the time of the sale or assignment of the debt by the original creditor.”

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Sub (t)

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Sub (t)

If a “debt buyer or debt collector” fails to comply “with the requirements of this section . . . the court shall dismiss the action with prejudice”

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Penalties

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Creditor and Debt Collector - Sub (j)

- (1) All damages proximately caused by the violation
- (2) "Punitive damages may be awarded to any person affected by a willful violation of any provision of this section when and in such amount as is deemed appropriate by the court or trier of fact."

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Debt Collectors - Sub (u)

- "may be liable for . . .
- (1) Actual damages;
 - (2) Costs and reasonable attorney's fees;
 - (3) Punitive damages;
 - (4)(A) If the consumer is an individual, the court may award an additional penalty in an amount not less than \$500 and not to exceed \$4,000;"

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Debt Collectors - Sub (u)

Class Actions:

(4)(B) Each named plaintiff can recover same statutory penalties in (A) and for each class member, “as the court may determine . . . but not exceeding” the statutory penalties “per person that could be recovered under . . . (A). . . times the number of class members”

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Sub (v)

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Sub (v)

Attorney's fees recoverable only if provided by contract and

- only up to "15% of the amount of the debt excluding attorney's fees and collection costs"
- must provide documentation supporting right to fees and "must include all of the materials specified in subsection (m)(1) of this section"

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Sub (z)

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Sub (z)

Any violation of the FDCPA is a violation of the DC Code

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Odds and Ends

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Odds and Ends

- Public health emergency prohibitions
- Civil arrest provisions
- As part of the COVID-19 legislation prohibiting lawsuits, SOL was tolled “during the duration of the public health emergency and for 60 days thereafter.” On July 24, 2021, D.C. Act 24-125 was signed into law which effectively repealed the ban and so tolling ended as well.

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Permanent Bill and Advocacy

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Permanent Bill

- Hearing 11/30/21
- RMAI and others have lobbyists
- The more industry lobbyists the better
- The permanent bill does not include many of the amendments made to the emergency act and temporary bill

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