Uniform Consumer Debt Default Judgments Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

WITH COMMENTS

October 27, 2023

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The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 132nd year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

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Drafting Committee on Uniform Consumer Debt Default Judgments Act

The Committee appointed by and representing the Uniform Law Commission in preparing this act consists of the following individuals:

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Other Participants

Judith Fox	Indiana, *Reporter*
Steven M. Richman	New Jersey, *American Bar Association Advisor*
Louise M. Nadeau	Connecticut, *Style Liaison*
Tim Schnabel	Illinois, *Executive Director*

Copies of this act may be obtained from:

Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
(312) 450-6600
www.uniformlaws.org

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Prefatory Note

History and Need

Structure and Operation of the Act

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

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

History of the Problem the Act Seeks to Address

The Federal Reserve Bank of New York's *Quarterly Report on Household Debt and Credit* (August 2023) tells us that in the second quarter of 2023 consumers owed nearly $17.06 trillion dollars in consumer debt. Additionally, 4.6% of all consumers had at least one third-party collection account on their credit report and 8.0% of all credit card balances were more than 90 days delinquent. As a result, a substantial number of Americans are dealing with debt collection activity.

The award of judgments by default in judicial proceedings against consumers has raised concerns across the country. Numerous studies report that default judgments are entered in more than half of all debt collection actions. A 2016 Consumer Financial Protection Bureau ("CFPB") survey of debt collection firms and vendors, *Study of Third Party Debt Collection Practices* (July 2016), reported that 60 to 90 percent of judicial debt collection actions result in a default judgment, with the percentage appearing to vary by jurisdiction. Based on caseload statistics from the National Center for State Courts and from individual states, the Pew Charitable Trusts reported in 2020, *How Debt Collectors Are Transforming the Business of State Courts* (May 2020), that in jurisdictions in which data are available, 70% of all debt collection judgments were default judgments and default judgments were more common when the debtor resided in a largely minority neighborhood.

More than ten years ago, the Federal Trade Commission ("FTC") issued a report, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), setting out the concerns and making recommendations for change. Some of the findings and recommendations are found below:

- "States should consider adopting measures to make it more likely that consumers will defend in litigation;"
- "States should require collectors to include more information about the debt in their complaints;" and
- "States should take steps to make it less likely that collectors will sue on time-barred debt and that consumers will unknowingly waive statute of limitation defenses available to them."

FTC and CFPB enforcement actions have led to the development of standards by banking regulators for the sale of debts, *Consumer Debt Sales Risk Management Guidance*, OCC Bulletin 2014-37 (August 4, 2014), and the development of standards and credentialing within the debt collection industry (*see e.g., Receivables Management Certification Program Overview*, Receivables Management Association International (March 2023). Yet, problems still exist. In August of 2018, the Conference of Chief Justices passed a resolution *In Support of Rules Regarding Default Judgments in Debt Collection Cases.* The resolution cites a number of reasons why reform is still needed, including, among other things, the following facts:

- more than one in three adults in the United States have a debt in collection;
- the vast majority of debt collection cases result in default judgments;
- defendants in debt collection cases often lack the resources to hire counsel and may not understand their rights and defenses;
- plaintiffs who obtain default judgments in debt collection cases often invoke powerful post-judgment collection remedies;
- debt collection complaints are sometimes initiated after the statute of limitations for such actions has expired;
- debt collection cases are increasingly filed by third-party debt buyers;
- debt collection complaints are often served at addresses where the defendant no longer lives; and
- plaintiffs file debt collection cases in which they frequently do not provide defendants with the information necessary to assess the validity of their claims.

The Conference of Chief Justices' resolution calls for the enactment of legal requirements "requiring plaintiffs in debt collection cases to file documentation demonstrating their legal entitlements to the amounts they seek to collect before entry of any default judgment."

The National Center for State Courts and the Institute for the Advancement of the American Legal System issued a report in 2020 entitled *Preventing Whack-a-Mole Management of Consumer Debt Cases: A Proposal for a Coherent and Comprehensive Approach for State Courts.* The report notes that "nearly one in four civil cases filed in state courts involve consumer debt collection." It explains that these cases are often filed in courts with "high-volume dockets, for which judges and court staff often lack the resources and expertise to scrutinize claims." As the report points out, courts have an obligation to monitor "compliance with procedural due process" for "both contested and uncontested cases" because so many consumer debt collection cases are resolved by default judgment.

Ad hoc measures have been implemented across the country, resulting in uneven justice and complicated procedures that differ not just from state to state, but from court to court within states. Uniform reforms are needed. Specifically, the Report of the National Center for State Courts calls for changes relating to due process involving "notice, standing, timeliness, and sufficiency of documentation supporting the relief sought." According to the report, these reforms are needed in part because "the vast majority of defendants will be navigating the rules without attorney representation."

In November of 2022, the Michigan Justice for All Commission released a report and study, *Advancing Justice for All in Debt Collection Lawsuits.* Like all previous studies, it found that debt collection was dominating the Michigan District Courts. Most cases are resolved by default, usually resulting in a wage garnishment. The Commission's recommendations mirror those of the earlier studies. They include "[i]ncreasing the amount of information to be included in the complaint to help ensure the plaintiff has provided sufficient evidence to support a default judgment." This act seeks to do just that.

Other State Laws

During the time this act was under development, close to one third of the states had enacted statutes or court rules to deal with consumer debt collection practices and default judgments. This act incorporates the provisions that are most consistent across those statutes and rules, such as a requirement to provide information about the debt in the complaint, information regarding standing to bring the case, and documentation that establishes the existence and ownership of the debt. In particular, this act seeks to incorporate provisions from rules of procedure in Texas (Tex. Fin. Code § 392.307) and Indiana (Ind. Code § 24-5-15.5-5; Trial Rule 9.2; Small Claims Rule 2(B)), recently passed laws in New York and California, and standards set by Receivables Management Association International, a debt collections trade organization. New York's Consumer Credit Fairness Act (2021 N.Y. Sess. Laws 1523 (McKinney)) and California's Fair Debt Buying Practices Act (Civil Code §§ 1788.58 & 1788.60) were passed with collaboration from financial institutions, debt buyers and debt collectors, and consumers. While both the California and New York laws deal with a broader array of consumer debt collection procedures than this act, the act adopts the core principles of those statutes to give consumers the information needed to understand claims being asserted against them and to provide courts the information needed to evaluate the circumstances in which default judgments are entered.

This act differs from many existing state laws that apply only to debt buyers. In the development of this act, observers representing the debt collection industry, courts, and consumers all rejected a narrow scope. Courts have neither the time nor the staff to evaluate each complaint to determine if the plaintiff is or is not a debt buyer. Uniform rules make it easier for courts to handle the volume of debt collection actions many courts are experiencing. Likewise, the debt collection industry objected to having different rules that apply depending on whether the collector originated, was assigned, or purchased the underlying debt. A uniform set of rules for all debts and all states is a more efficient system for all involved.

This act also expressly excludes most claims for the collection of secured debts. Secured debts are regulated by other statutes, including provisions of the Uniform Commercial Code,

state motor vehicle finance laws, mortgage foreclosure laws, and laws creating statutory liens on property. Because of the diversity and complexity of these other laws, the act focuses on the area of greatest exposure to default judgments, i.e., unsecured consumer debts, deficiency judgments, and actions seeking only money judgments.

This act is not a state corollary to the Fair Debt Collection Practices Act. The federal act deals with a broad range of debt collection activities, while this act deals only with the filing of a collection lawsuit. As a result, it will not impose any additional requirements for communications between the creditor and the consumer in the early stages of default. This act does not create or enhance any liability for attorneys involved in debt collection. Therefore, the act should be enacted as a stand-alone statute or court rule, and not as part of a state Fair Debt Collection Practices Act.

Uniform Consumer Debt Default Judgments Act

Section 1. Title

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

Section 2. Definitions

In this [act]:

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

(2) "Consumer" means an individual named as a defendant in an action for collection of a consumer debt to which this [act] applies.

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

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

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

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

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

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

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

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

(9) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(10) "Record" means information:

(A) inscribed on a tangible medium; or

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

(11) "Secured consumer debt" means a consumer debt secured by real or personal property.

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

(A) execute or adopt a tangible symbol; or

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

(13) "Unsecured consumer debt" means a consumer debt not secured by real or personal property.

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

Comment

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

The definition of "consumer" is meant to be broad enough to include the individual obligated to repay the consumer debt as well as a guarantor of the debt or the individual's personal representative, guardian, or person acting in a representative capacity who might be the person named as defendant in the collection action.

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

A "creditor" is the person to which a consumer debt was owed at the time of charge off or default that gives rise to a cause of action subject to this act. The plaintiff, on the other hand, is the person to which the consumer debt is owed when a proceeding for collection of the debt commenced. Suppose, for example, that Bank A originated a loan, and was then acquired by Bank B, which was then acquired by Bank C. The consumer defaults on the loan and Bank C charges off the loan and commences a suit to collect the debt. Bank C would be both the "creditor" and the plaintiff for purposes of this act. Bank C remains the "creditor" even if it charged off the loan and instead of commencing a lawsuit, sold the debt to a third-party debt collector and that third party commences the suit. However, in this case, the plaintiff is now the third-party debt collector. Bank C remains the "creditor" for purposes of this act no matter how many times the debt is sold or transferred prior to commencing a suit.

The definition of "default" does not apply when the word "default" is used as part of the phrase "default judgment," such as in Section 3(a), Section 4(a), Section 5, and Section 6. "Default judgment" is not defined, but instead is determined based on other state law.

The definition of "outstanding balance" is the total amount due to the creditor at the time of charge off or default. This is normally the amount of the consumer debt incurred with the originator of the debt minus any payments made on the debt. The "outstanding balance" would include any such finance charges, costs, or fees that have been added to the original amount of the consumer debt prior to charge off or the default that led to the filing of the action. It is not necessary to itemize these items when stating the amount of the outstanding balance, unless required by other state law.

If the debt was a "secured consumer debt", the "outstanding balance" means the amount of the debt that remains unpaid after disposition of the real or personal property that secured the debt. This amount includes charges and fees incurred by the creditor when disposing of the collateral. As with unsecured debt, it is not necessary to itemize these amounts when stating the outstanding balance, unless required by other state law.

A "secured consumer debt" is a debt secured by real or personal property. Likewise, an "unsecured consumer debt" does not include any debt secured by such a lien. In both cases, personal property includes both tangible and intangible personal property.

Section 3. Scope

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

(1) an unsecured consumer debt;

(2) a secured consumer debt if the action is brought solely to obtain a money judgment; or

(3) a deficiency that remains after disposition of property that secured a consumer debt.

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

(1) an action to take possession of or dispose of real or personal property, even if the action includes a request for a money judgment; or

(2) an action to collect a debt owed to a government, governmental subdivision, or agency in which the government, governmental subdivision, or agency is the plaintiff.

Comment

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

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

A plaintiff seeking a default judgment must comply with all provisions of the act. If an action is filed that is not in compliance with Section 4 and the plaintiff later decides to pursue a default judgment, a new or amended complaint must be filed in accordance with other state law. Therefore, plaintiffs are encouraged to comply with the act in all cases to avoid the need to amend.

The act does not apply to the collection of unsecured consumer debt owed to a governmental entity when the plaintiff is that governmental entity. The collection of such debt is often covered by other state law. However, the act does apply to an unsecured consumer debt owed to a government, governmental subdivision, or agency if that debt has been sold to a third party that is not a government entity and that third party is the plaintiff in the action. The government entity remains the "creditor" under the act, but the act applies because the plaintiff is not that entity.

Section 4. [Complaint] Requirements

(a) A default judgment in an action to which this [act] applies may be entered only if the [complaint] or amended [complaint] complies with this section and includes the notice required under Section 5.

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

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

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

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

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

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

(6) the amount of the outstanding balance;

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

(A) total finance charges;

(B) total fees or costs;

(C) total attorney's fees; and

(D) total credits and payments;

(8) a statement whether the amount of the judgment may increase due to accrued interest, fees, or other charges;

(9) the authority of the plaintiff to commence the action;

(10) facts sufficient to demonstrate that the action is being commenced in a proper venue;

(11) facts sufficient to demonstrate that the action is being commenced within the statute of limitation period applicable to the debt; [and]

(12) unless the plaintiff is the creditor:

(A) the name of each person that acquired ownership of the debt after charge off or, if the debt was not charged off, after default; and

(B) the date of each acquisition [; and

(13) information sufficient to demonstrate that the plaintiff possesses a valid [license, registration, certification, or bond] if required under [cite to state statute that requires a license, registration, certification, or bond for the purpose of debt collection]].

(c) Subject to authentication required by other law of this state and rules of procedure, the plaintiff must attach to the [complaint] or amended [complaint]:

(1) at least one of the following that is sufficient to demonstrate the existence of the consumer debt:

(A) an agreement signed by the consumer;

(B) a record of a purchase, payment, or use of an account; or

(C) a record otherwise demonstrating the debt was incurred; and

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

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

A state that requires a license, registration, certification, or bond for debt collection should

include subsection (b)(13) and insert the appropriate term and statute citation.

Comment

Subsection (a) provides that a default judgment may be entered in an action subject to the act only if the complaint or amended complaint complies with both the requirements of subsections (b) and (c) of this Section and the notice requirements of Section 5. Because of the significant differences that exist among the states regarding the availability of judicial resources, caseloads, and the relationship between statutes and procedural rules, this act defers to other law and procedural rules to determine how these requirements will be implemented. For example, in some courts, the judge or other finder of fact may need to determine if the requirements of this act have been satisfied before entering a default judgment, while in other courts it may be the responsibility of the filing office to determine if the requirements of the act have been satisfied before accepting a complaint. In other courts, a court clerk or master may be responsible for checking for compliance before issuing a default judgment or a rule to show cause why a default judgment should not be entered.

The requirements of this Section and the requirements of Section 5 may be satisfied either in a complaint or amended complaint. As a result, not all complaints seeking a money judgment for enforcement of a consumer debt need comply with this act. Instead, compliance with this act is necessary only in a proceeding in which a default judgment is sought and then entered. If a plaintiff files a complaint that is not in compliance and then later wants to seek a default judgment, how and whether it may file an amended complaint is determined by other state law.

The requirements of this Section apply whether the request for default judgment is made by a record or orally at a hearing or whether a default judgment is entered pursuant to a rule of procedure that provides for a default judgment for failure of the consumer to respond to a complaint or appear at a hearing. In every situation where a default judgment is requested, it may not be entered unless the plaintiff has complied with the act.

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

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

Subsection (b)(1) does not create a requirement for the plaintiff to do any investigation into the consumer's names and address that it is not currently doing as part of the normal course of business. It only requires the plaintiff to list names and addresses currently in its records that it reasonably believes are related to this consumer debt. For example, a plaintiff may conduct a skip trace analysis to locate the debtor and, through that trace, identify 52 Jane Does. The plaintiff was then able, with reasonable certainty, to eliminate 50 of those possible Jane Does because, for example, they were the wrong age or race. Subsection (b)(1) would not require the plaintiff to include those 50 extraneous names and addresses, even if they had been retained in its records. The requirement is for the plaintiff to include only those names and addresses it reasonably believes are connected to the debt in question.

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

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

Some courts may require the information mandated by subsection (b)(3) to be redacted or otherwise filed in a manner so that it is not publicly available. While such action would comply with the act, the complaint sent to the defendant must not be redacted and must include the information required by subsection (b) (3) in a manner that can be read by the defendant.

Sometimes account numbers are changed as the consumer debt is sold or assigned to different entities. The consumer may not recognize the new account number. This provision only requires the plaintiff to identify account numbers or identifiers used in communicating with the consumer before charge off or, if the debt was not charged off, before default. While a plaintiff may provide both the new and old account number, the objective of the subsection is to provide the defendant with the account number that identifies the debt.

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

Subsection (b)(5) requires the plaintiff to provide the date of the charge off or default that led to the filing of the action. A consumer may default and cure the default on a debt more than once in the life of that debt. It is not necessary for the plaintiff to list every default that may have occurred. It is only necessary to identify the last default that led to the filing of the cause of action. If the debt has been charged off, it is not necessary to identify both the default and the charge off. The plaintiff can satisfy this section by stating either the date of default or the charge off.

Subsection (b)(6) requires the plaintiff to state the outstanding balance. The outstanding balance is the total amount due to the creditor at the time of charge off or default. This is normally the amount of the consumer debt incurred with the originator of the debt minus any payments made on the debt. This includes any finance charges, costs, or fees that have been added to the original amount of the consumer debt prior to charge off or the default that led to the filing of the action. It is not necessary to itemize these items when stating the amount of the outstanding balance, unless required by other state law. Subsection (b)(6) requires a single total amount due. This does not, however, override or otherwise change any requirements that may exist in other state or federal law to provide an itemized accounting to the consumer at the time of charge off or, in the case of a secured debt, at the time the property securing the debt is sold.

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

Subsection (b)(8) requires the plaintiff to notify the consumer if the amount stated in subsection (b)(7) is likely to be larger by the time judgment is entered. The amount stated in subsection (b)(7) is the amount due at the time the complaint is filed, but charges may accrue after that date. This would most commonly be interest or additional late fees, but may be other contractual fees that only become relevant after the commencement of the action. Attorney's fees are a good example of the latter. Subsection (b)(8) requires a statement informing the consumer of these facts, but not an actual number. So, for example, "the debt continues to accrue interest at a rate of $0.27 a day" would satisfy this subsection. The plaintiff may also say that the amount of attorney's fees requested in subsection (b)(7) is the amount due at the time the action was commenced, but that it may be larger depending on how the action is resolved by the court. Likewise, the plaintiff may wish to simply state that it will be requesting the court to award attorney's fees, the amount of which will be subject to the court's discretion.

Subsection (b)(9) requires the plaintiff to identify, in a simple statement, its authority to collect the debt. Some examples of statements that would satisfy this subsection are: "the plaintiff is the originator of the debt", "the plaintiff is a purchaser of the debt", or "the plaintiff is a person to whom the right to collect the debt was assigned". If the plaintiff is not the owner of the debt but has the authority to collect based on some other authority such as an assignment or joint ownership agreement, it must be disclosed here. Subsection (b)(12) requires information about each assignment. The information required by subsections (b)(9) and (b)(12) may be combined into one statement. It is not required to repeat the information. Although this provision does not require the submission of any particular record to support the information stated, subsection (c)(2) may require specific documentation of these statements.

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

Subsection (b)(10) requires a statement of facts to establish that the action was commenced in the proper venue. It is not meant to supplant any other state law or rule of civil procedure that determines venue. The plaintiff is only required to state the facts to support the choice of venue, not explain or defend that choice. A proper statement could include the address of the consumer or the place where the contract was signed.

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

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

Subsection (b)(13) is optional for states that have requirements for creditors and debt buyers to have a license, registration, certification, or bond. It requires a statement as to whether the plaintiff possesses any relevant state license, registration, certification, or bond required by other state law to collect debts. This is not a requirement to divulge any other kind of license,

registration, certification, or bond. For example, the plaintiff may have a license to make loans in a state. Information about that license is not required. Only information specific to the ability of the plaintiff to collect debts in the state is required.

Subsection (c) requires that records be attached subject to authentication as required by other state law or rules of procedure. It does not impose a specific requirement for the certification of the records. Instead, whether and when authentication is required and the manner in which authentication, when required, must be conducted is determined by other law of the state. For example, some courts may require authentication when the action is commenced, while others may only require authentication of all records at the time a motion or other request for a default judgment is filed. Some may not require authentication unless the authenticity of a record is challenged. Likewise, depending on the laws and rules of procedure of a state, authentication could be accomplished by a verification, affidavit, or certification of business records.

Subsection (c)(1) requires the complaint to include a record of any agreement signed by the consumer that gave rise to the debt. Because not all debts are the result of a signed contract, subsection (c)(2) allows a record of a purchase, payment, or use of an account to demonstrate the existence of a consumer debt. Subsection (c)(1)(C) also allows other records to demonstrate the existence of a consumer debt, such as a writing sufficient to satisfy the statute of frauds acknowledging the existence of the debt. This subsection cannot be satisfied by evidence of an oral agreement, but instead requires some record to demonstrate the existence of the debt.

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

Section 5. Consumer Notice

(a) A default judgment may be entered in an action to which this [act] applies only if the [complaint] or amended [complaint] served on the consumer is accompanied by a separate notice warning that a default judgment may be awarded against the consumer.

(b) The notice must be in a record substantially similar to the form in subsection (c) that states:

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

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

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

(4) entry of a judgment may impair access to employment, insurance, credit, or housing; [and]

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

(6) the name and contact information for a legal aid or attorney referral service that may be able to help the consumer find an attorney, and if the consumer cannot afford an attorney, may be able to provide free or reduced-cost legal services].

(c) The following notice meets the requirements of this section:

Consumer Notice

Warning
If You Do Not Act, A Default Judgment May Be Entered Against You

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1. Why Am I Getting This Notice?	You are getting this notice because (name of plaintiff) says you owe money. (Name or shortened name of plaintiff) has filed a lawsuit against you to collect the money.

2. What Will Happen If I Do Nothing?	If you do not [file a response to the lawsuit][or][appear at a hearing on (enter date) at (time)], a judgment may be entered against you.
3. What Happens If A Judgment Is Entered Against Me?	[Your personal property may be taken and sold.] [Money may be taken directly from your bank account.] [Money may be taken directly from your wages.] [A lien may be put on your house or other real estate and the house or real estate may be sold.] If the judgment is not paid in full, the amount due may grow because of interest charges. You will owe the amount of the judgment for at least [insert limitation period for enforcement of the judgment], even if it no longer appears on your credit report. The judgment may make it harder for you to get a job or insurance and more expensive for you to get a loan or credit card, rent an apartment, or buy a house or car.
4. Is Help Available?	Talk with a lawyer. A lawyer can explain the situation and help you decide what to do. [The following office may be able to help you find a lawyer: (insert name and contact information for legal aid or lawyer referral service that may be able to help defendant find a lawyer). If you cannot afford a lawyer, you may be able to obtain one for free or reduced cost.]

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

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

The state should include in subsection (b)(3) and paragraph 3 of the form only the bracketed actions that state law allows against a consumer for the satisfaction of a default judgment. The state should also select either (1) "or", if the creditor must choose only one collection method,

or (2) "and", if the creditor may use multiple collection methods.

Subsection (b)(6) is optional and, if included, can be modified to best suit the interests of the state. For example, as an alternative to using the optional text, the notice could provide contact information for a legal aid or lawyer referral service, but not indicate that free or reduced-cost services may be available, or could indicate that free or reduced-cost services may be available, but not provide contact information for a legal aid or lawyer referral service.

Paragraph 4 of the form in subsection (c) should mirror the decision regarding subsection (b)(6).

Comment

Some courts do not require the filing of a separate motion when requesting a default judgment. In others, the consumer is given notice of a hearing and, if the consumer fails to appear, a default judgment is entered. When an answer is required by rules of procedure, some courts will enter a default judgment automatically if a defendant fails to respond to a complaint. Because of these variations in state laws and in rules of procedure in courts within states, this section requires a notice warning the consumer that a default judgment may be awarded to accompany the complaint that is served on the consumer. Regardless of the procedures for requesting and obtaining a default judgment, the notice required by this Section must be served in compliance with other state law before the court may award a default judgment.

Subsection (a) requires that the notice accompany the complaint being served on the consumer. The term "served" will be determined by other state law or procedures for initiating a civil lawsuit. In the case of an arbitration, the manner for giving service may be determined by the arbitration agreement, the rules of the arbitration organization incorporated in the agreement, or other law and procedures of the state. For example, for states that have adopted the Revised Uniform Arbitration Act, notice is either provided for in the agreement or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action.

This act does not determine the appropriate remedy for a judgment entered in violation of its requirements. Instead, the act relies on other state law regarding the reopening, modification, or vacation of a judgment to address the consequences of the entry of a judgment not in compliance with its requirements.

The consumer notice should be a separate record. The intent of this subsection is that the notice be conspicuous and not buried in the middle of the complaint. Whether it must be filed separately from the complaint will be determined by other state law and procedures. The act specifies, however, that it must be served on the consumer along with the complaint.

If the plaintiff later amends the complaint under applicable state law, the amended complaint and notice must be provided to the consumer according to the laws and procedures applicable to the filing of an amended complaint.

If the notice required by this Section is not served on the consumer in the manner required by other state law, a default judgment may not be entered. The plaintiff may cure the

defect by filing the notice as part of an amended complaint in accordance with other state law and procedures.

Subsection (b)(1) requires that the notice specify what action the consumer needs to take to avoid a default judgment. This may vary by state and even by venue within the state. The consumer notice should be tailored to the specific action.

Subsection (b)(2) requires a statement informing the consumer about the judgment, if entered. If the state allows for judgment interest, the notice should state that interest will continue to accrue on the judgment. While it is not necessary to disclose the amount of the interest, the notice should identify if the judgment will accrue at a rate determined by other state law or by the contract that created the debt. The notice must also contain a statement about the specific statute of limitations for judgments. Some states allow judgments to be renewed once the initial statute of limitations has expired. So, for example, the statute of limitations for enforcing judgments may be 5 years but could be renewed by the plaintiff if unpaid in that period. Therefore, the statement could read, "The judgment will be in effect for five years but may be renewed as allowed by state law." Many consumers mistakenly believe that because a judgment has fallen off their credit report it is no longer due. This subsection requires an affirmative statement that the judgment may remain in effect regardless of whether it appears on a consumer's credit report.

Subsection (b)(3) includes a statement of actions that state law authorizes a plaintiff to take to collect a judgment, once entered. It is important that the notice indicates the action that state law allows but does not state that the plaintiff intends to seek any specific remedy. The Fair Debt Collection Practices Act forbids a debt collector from threatening to take action it does not intend to take. Therefore, this statement should describe what other state law may allow and not what action the credit intends to take. A statement such as "(name of state) law allows a creditor to seek an order garnishing wages or placing a lien on real property" to satisfy the judgment would satisfy this subsection.

Likewise, subsection (b)(4) requires a simple statement of the possible ramifications of having a judgment entered against a consumer. These provisions are intended to warn the consumer of the possible results of ignoring the collection action. It is not a statement of what will actually occur in any individual case.

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

Section 6. Waiver Void

A waiver by a consumer of a requirement of this [act] is void. This section does not prevent a voluntary settlement agreement or judgment between the parties that does not result in a default judgment.

Comment

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

Section 7. Relation to Other Law

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

Section 8. Uniformity of Application and Construction

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

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

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

Comment

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

Section 10. Transitional Provision

This [act] applies to an action commenced on or after [the effective date of this [act]].

[Section 11. Severability

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

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

Section 12. Effective Date

This [act] takes effect . . .