

SENATE BILL 773

I3, I2

6lr2915
CF 6lr2919

By: **The President (By Request – Office of the Attorney General)**

Introduced and read first time: February 5, 2016

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Debt Buyers and Collectors – Restrictions**

3 FOR the purpose of prohibiting a debt buyer or a certain debt collector from collecting or
4 attempting to collect an alleged debt under certain circumstances; prohibiting a debt
5 buyer or a certain collector from filing a civil action or initiating an arbitration or
6 certain legal proceeding under certain circumstances; prohibiting a debt buyer or a
7 certain collector from collecting or attempting to collect certain attorney's fees or
8 certain interest under certain circumstances; requiring a debt buyer or a certain
9 collector to include in its first written communication with a debtor a certain notice;
10 requiring a debt buyer or a certain collector to provide a debtor certain records under
11 certain circumstances; prohibiting a certain failure of a debtor from being considered
12 a certain admission of liability; altering the damages for which a certain collector
13 may be liable; defining certain terms; and generally relating to consumer debt
14 collection and debt buyers and collectors.

15 BY repealing and reenacting, with amendments,
16 Article – Commercial Law
17 Section 14–201 through 14–204
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2015 Supplement)

20 BY adding to
21 Article – Commercial Law
22 Section 14–203
23 Annotated Code of Maryland
24 (2013 Replacement Volume and 2015 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That the Laws of Maryland read as follows:

27 **Article – Commercial Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14–201.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) “Collector” means a person collecting or attempting to collect an alleged debt
4 arising out of a consumer transaction.

5 (c) “Consumer transaction” means any transaction involving a person seeking or
6 acquiring real or personal property, services, money, or credit for personal, family, or
7 household purposes.

8 (D) (1) **“DEBT BUYER” MEANS A PERSON THAT PURCHASES OR
9 OTHERWISE ACQUIRES DEBT FROM AN ORIGINAL CREDITOR OR FROM A
10 SUBSEQUENT OWNER OF THE DEBT.**

11 (2) **“DEBT BUYER” DOES NOT INCLUDE A CHECK SERVICES COMPANY
12 THAT ACQUIRES THE RIGHT TO COLLECT ON A PAPER OR ELECTRONIC CHECK
13 INSTRUMENT, INCLUDING AN AUTOMATED CLEARINGHOUSE ITEM THAT HAS BEEN
14 RETURNED UNPAID TO A MERCHANT.**

15 (E) **“ORIGINAL CREDITOR” MEANS THE LENDER, PROVIDER, OR OTHER
16 PERSON ORIGINALLY OWED OR ALLEGED TO BE OWED MONEY BY A CONSUMER IN A
17 CONSUMER TRANSACTION.**

18 [(d)] (F) “Person” includes an individual, corporation, business trust, statutory
19 trust, estate, trust, partnership, association, two or more persons having a joint or common
20 interest, or any other legal or commercial entity.

21 (G) (1) **“PRINCIPAL” MEANS THE UNPAID BALANCE OF A DEBT OR AN
22 OBLIGATION ARISING FROM A CONSUMER TRANSACTION THAT IS OWED OR ALLEGED
23 TO BE OWED TO THE ORIGINAL CREDITOR.**

24 (2) **“PRINCIPAL” DOES NOT INCLUDE INTEREST, FEES, OR CHARGES
25 ADDED TO THE DEBT OR OBLIGATION BY THE ORIGINAL CREDITOR OR ANY
26 SUBSEQUENT OWNERS OF A CONSUMER DEBT.**

27 14–202.

28 (A) In collecting or attempting to collect an alleged debt a collector may not:

29 (1) Use or threaten force or violence;

30 (2) Threaten criminal prosecution, unless the transaction involved the
31 violation of a criminal statute;

1 (3) Disclose or threaten to disclose information which affects the debtor's
2 reputation for credit worthiness with knowledge that the information is false;

3 (4) Except as permitted by statute, contact a person's employer with
4 respect to a delinquent indebtedness before obtaining final judgment against the debtor;

5 (5) Except as permitted by statute, disclose or threaten to disclose to a
6 person other than the debtor or his spouse or, if the debtor is a minor, his parent,
7 information which affects the debtor's reputation, whether or not for credit worthiness,
8 with knowledge that the other person does not have a legitimate business need for the
9 information;

10 (6) Communicate with the debtor or a person related to him with the
11 frequency, at the unusual hours, or in any other manner as reasonably can be expected to
12 abuse or harass the debtor;

13 (7) Use obscene or grossly abusive language in communicating with the
14 debtor or a person related to him;

15 (8) Claim, attempt, or threaten to enforce a right with knowledge that the
16 right does not exist; or

17 (9) Use a communication which simulates legal or judicial process or gives
18 the appearance of being authorized, issued, or approved by a government, governmental
19 agency, or lawyer when it is not.

20 **(B) A DEBT BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT BUYER**
21 **MAY NOT COLLECT OR ATTEMPT TO COLLECT AN ALLEGED DEBT:**

22 **(1) IF THE APPLICABLE STATUTE OF LIMITATIONS WOULD PROHIBIT**
23 **A CIVIL ACTION TO COLLECT THE DEBT, UNLESS THE DEBT BUYER HAS FIRST**
24 **PROVIDED THE APPLICABLE NOTICE REQUIRED UNDER § 14-203(B) OR (C) OF THIS**
25 **SUBTITLE;**

26 **(2) WITHOUT CERTIFIED OR OTHERWISE AUTHENTICATED COPIES**
27 **OF:**

28 **(I) THE AGREEMENT BETWEEN THE DEBTOR AND THE**
29 **ORIGINAL CREDITOR OR OTHER DOCUMENTS THAT:**

30 **1. ESTABLISH THE DEBT;**

31 **2. INCLUDE ALL TERMS AND CONDITIONS OF THE DEBT;**

32 **AND**

1 **3. REFLECT THE DEBTOR'S ASSENT;**

2 **(II) 1. THE CHARGE-OFF ACCOUNT STATEMENT FROM THE**
3 **ORIGINAL CREDITOR; OR**

4 **2. IF THE CHARGE-OFF ACCOUNT STATEMENT NEVER**
5 **EXISTED, THE LAST BILL FROM THE ORIGINAL CREDITOR TO THE DEBTOR;**

6 **(III) DOCUMENTS SHOWING ALL CHARGES AND CREDITS TO THE**
7 **DEBTOR'S ACCOUNT AFTER CHARGE-OFF BY THE ORIGINAL CREDITOR;**

8 **(IV) DOCUMENTS ESTABLISHING THE DEBT BUYER'S**
9 **OWNERSHIP OF THE DEBT; AND**

10 **(V) ALL OTHER DOCUMENTS THAT WOULD BE NECESSARY TO**
11 **SUPPORT A JUDGMENT ON AFFIDAVIT;**

12 **(3) WITHOUT PROVIDING THE DEBTOR, IN THE FIRST**
13 **COMMUNICATION BETWEEN THE DEBTOR AND THE DEBT BUYER OR COLLECTOR,**
14 **WRITTEN NOTICE OF THE STATUS OF THE DEBT THAT INCLUDES:**

15 **(I) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE**
16 **DEBT BUYER;**

17 **(II) THE NAME OF THE ORIGINAL CREDITOR;**

18 **(III) THE ACCOUNT NUMBER ASSIGNED TO THE DEBTOR BY THE**
19 **ORIGINAL CREDITOR;**

20 **(IV) 1. A STATEMENT CERTIFYING THAT THE DEBT BUYER IS**
21 **THE SOLE OWNER OF THE SPECIFIC DEBT INSTRUMENT OR ACCOUNT AT ISSUE; OR**

22 **2. A STATEMENT CERTIFYING THAT THE DEBT BUYER OR**
23 **COLLECTOR HAS AUTHORITY TO ASSERT THE RIGHTS OF ALL OWNERS OF THE DEBT;**

24 **(V) A STATEMENT DESCRIBING THE COMPLETE CHAIN OF TITLE**
25 **FROM THE ORIGINAL CREDITOR TO THE PRESENT DEBT BUYER OR COLLECTOR,**
26 **INCLUDING THE DATE OF EACH ASSIGNMENT, SALE, OR OTHER TRANSFER OF THE**
27 **DEBT;**

28 **(VI) THE DATE OF DEFAULT OR THE DATE OF THE LAST**
29 **PAYMENT ON THE DEBT; AND**

1 (VII) AN ITEMIZED ACCOUNTING OF ALL AMOUNTS CLAIMED TO
2 BE OWED, INCLUDING ALL FEES AND CHARGES; OR

3 (4) WITHOUT A REASONABLE BASIS TO BELIEVE THAT:

4 (I) THE DEBTOR ACTUALLY OWES THE DEBT; AND

5 (II) THE AMOUNT BEING COLLECTED IS ACCURATE.

6 (C) A DEBT BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT BUYER
7 MAY NOT FILE A CIVIL ACTION OR INITIATE AN ARBITRATION OR ANY OTHER LEGAL
8 PROCEEDING TO COLLECT A DEBT IF THE APPLICABLE STATUTE OF LIMITATIONS ON
9 THE DEBT BUYER'S CLAIM HAS EXPIRED.

10 (D) A DEBT BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT BUYER
11 MAY NOT COLLECT OR ATTEMPT TO COLLECT ANY ATTORNEY'S FEES UNLESS THE
12 DEBT BUYER HAS A CERTIFIED OR OTHERWISE PROPERLY AUTHENTICATED COPY
13 OF THE TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN THE ORIGINAL
14 CREDITOR AND THE DEBTOR THAT:

15 (1) ARE SPECIFICALLY APPLICABLE TO THE DEBT BEING
16 COLLECTED;

17 (2) EXPRESSLY AUTHORIZE THE COLLECTION OF THE ATTORNEY'S
18 FEES; AND

19 (3) INCLUDE ALL APPLICABLE AMENDMENTS TO THE AGREEMENT.

20 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
21 DEBT BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT BUYER MAY NOT
22 COLLECT OR ATTEMPT TO COLLECT ANY PREJUDGMENT INTEREST OR INTEREST
23 SPECIFIED IN THE AGREEMENT BETWEEN THE ORIGINAL CREDITOR AND THE
24 DEBTOR THAT IS IN EXCESS OF:

25 (I) THE ORIGINAL CREDITOR'S CHARGE-OFF AMOUNT; OR

26 (II) IF THERE HAS BEEN NO CHARGE-OFF, THE AMOUNT
27 ALLEGEDLY OWED TO THE ORIGINAL CREDITOR AT THE TIME OF THE SALE OF THE
28 DEBT BY THE ORIGINAL CREDITOR.

29 (2) A DEBT BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT
30 BUYER MAY COLLECT OR ATTEMPT TO COLLECT ANY AMOUNT OF PREJUDGMENT

1 INTEREST OR INTEREST SPECIFIED IN THE AGREEMENT BETWEEN THE ORIGINAL
2 CREDITOR AND THE DEBTOR IF:

3 (I) THE DEBT BUYER HAS A CERTIFIED OR OTHERWISE
4 PROPERLY AUTHENTICATED COPY OF THE TERMS AND CONDITIONS OF THE
5 AGREEMENT THAT:

6 1. ARE SPECIFICALLY APPLICABLE TO THE DEBT BEING
7 COLLECTED;

8 2. EXPRESSLY AUTHORIZE THE COLLECTION OF THE
9 INTEREST; AND

10 3. INCLUDE ALL APPLICABLE AMENDMENTS TO THE
11 AGREEMENT;

12 (II) THE ORIGINAL CREDITOR DID NOT STOP COLLECTING
13 INTEREST ON THE DEBT BEFORE THE SALE OF THE DEBT;

14 (III) THE DEBT BUYER OR COLLECTOR HAS A BREAKDOWN OF:

15 1. THE ORIGINAL CREDITOR'S CHARGE-OFF AMOUNT;
16 OR

17 2. THE AMOUNT ALLEGEDLY OWED TO THE ORIGINAL
18 CREDITOR AT THE TIME THE ORIGINAL CREDITOR SOLD THE DEBT, INCLUDING
19 PRINCIPAL, INTEREST, AND OTHER FEES; AND

20 (IV) THE DEBT BUYER OR COLLECTOR DOES NOT SEEK AN
21 AMOUNT THAT IS MORE THAN A SIMPLE ANNUAL INTEREST RATE OF 6% OF:

22 1. THE PRINCIPAL OF THE ORIGINAL CREDITOR'S
23 CHARGE-OFF AMOUNT; OR

24 2. THE AMOUNT ALLEGEDLY OWED TO THE ORIGINAL
25 CREDITOR AT THE TIME OF THE SALE OF THE DEBT BY THE ORIGINAL CREDITOR.

26 14-203.

27 (A) A DEBT BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT BUYER
28 SHALL INCLUDE IN ITS FIRST WRITTEN COMMUNICATION WITH A DEBTOR A
29 SEPARATE, PROMINENT NOTICE THAT STATES THE FOLLOWING:

1 **“YOU MAY REQUEST A COPY OF THE FOLLOWING RECORDS:**

2 **(1) RECORDS SHOWING THAT (INSERT NAME OF DEBT BUYER OR**
3 **COLLECTOR) HAS THE RIGHT TO COLLECT OR ATTEMPT TO COLLECT THE DEBT;**

4 **(2) THE AGREEMENT BETWEEN YOU AND THE ORIGINAL CREDITOR**
5 **OR OTHER DOCUMENT EVIDENCING THE DEBT;**

6 **(3) RECORDS SHOWING THE HISTORY OF THE DEBT FROM THE DATE**
7 **YOU INCURRED THE DEBT;**

8 **(4) THE CHARGE-OFF ACCOUNT STATEMENT, OR EQUIVALENT**
9 **DOCUMENT, FROM THE ORIGINAL CREDITOR SHOWING THE DATE OF DEFAULT AND**
10 **THE DATE OF THE LAST PAYMENT ON THE DEBT;**

11 **(5) THE CONTRACT BETWEEN THE ORIGINAL CREDITOR AND THE**
12 **DEBT BUYER AND ALL OTHER DOCUMENTS EVIDENCING THE SALE OR TRANSFER OF**
13 **THE DEBT BY THE ORIGINAL CREDITOR AND ALL SUBSEQUENT SALES OR TRANSFERS**
14 **OF THE DEBT, INCLUDING:**

15 **(i) DOCUMENTS SHOWING THE SALE OF THE DEBT TO THE**
16 **CURRENT OWNER; AND**

17 **(ii) DETAILS REGARDING THE PARTICULAR DEBT TO BE**
18 **COLLECTED IN EACH SALE; AND**

19 **(6) IF THE DEBT BUYER OR COLLECTOR IS SEEKING ATTORNEY’S**
20 **FEES OR INTEREST BEYOND THE ORIGINAL CHARGE-OFF AMOUNT OR AMOUNT**
21 **ALLEGEDLY OWED TO THE ORIGINAL CREDITOR AT THE TIME OF THE SALE OF THE**
22 **DEBT BY THE ORIGINAL CREDITOR, THE TERMS AND CONDITIONS OF YOUR**
23 **AGREEMENT WITH THE ORIGINAL CREDITOR, INCLUDING ALL AMENDMENTS TO THE**
24 **AGREEMENT.**

25 **A REQUEST FOR THESE RECORDS MAY BE ADDRESSED TO: (INSERT DEBT**
26 **BUYER OR COLLECTOR’S MAILING ADDRESS AND, IF APPLICABLE, ELECTRONIC MAIL**
27 **ADDRESS). THE RECORDS MUST BE PROVIDED AT NO COST TO YOU.”.**

28 **(B) (1) THIS SUBSECTION APPLIES TO THE COLLECTION OF A DEBT THAT**
29 **IS:**

30 **(i) PAST THE APPLICABLE STATUTE OF LIMITATIONS FOR A**
31 **CIVIL ACTION TO COLLECT THE DEBT; BUT**

1 (II) NOT PAST THE DATE OF OBSOLESCENCE SPECIFIED IN § 605
2 OF THE FAIR CREDIT REPORTING ACT, 15 U.S.C. § 1681c.

3 (2) THE NOTICE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION
4 ALSO SHALL STATE SEPARATELY THE FOLLOWING:

5 “THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE
6 AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. IF YOU DO NOT PAY THE DEBT,
7 (INSERT NAME OF THE DEBT BUYER OR COLLECTOR) MAY CONTINUE TO REPORT IT
8 TO THE CREDIT REPORTING AGENCIES AS UNPAID FOR AS LONG AS THE LAW
9 PERMITS THIS REPORTING.

10 PLEASE BE AWARE THAT, IF YOU MAKE A PAYMENT ON THE DEBT, ADMIT TO
11 OWING THE DEBT, PROMISE TO PAY THE DEBT, OR WAIVE THE STATUTE OF
12 LIMITATIONS ON THE DEBT, THE TIME PERIOD IN WHICH THE DEBT IS ENFORCEABLE
13 IN COURT MAY START AGAIN.

14 IF YOU WOULD LIKE TO LEARN MORE ABOUT YOUR LEGAL RIGHTS AND
15 OPTIONS, YOU MAY CONSULT AN ATTORNEY OR A LEGAL ASSISTANCE OR LEGAL AID
16 ORGANIZATION.”.

17 (C) (1) THIS SUBSECTION APPLIES TO THE COLLECTION OF A DEBT THAT
18 IS PAST:

19 (I) THE APPLICABLE STATUTE OF LIMITATIONS FOR A CIVIL
20 ACTION TO COLLECT THE DEBT; AND

21 (II) THE DATE OF OBSOLESCENCE SPECIFIED IN § 605 OF THE
22 FAIR CREDIT REPORTING ACT, 15 U.S.C. § 1681c.

23 (2) THE NOTICE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION
24 ALSO SHALL STATE SEPARATELY THE FOLLOWING:

25 “THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE
26 AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT, AND WE WILL NOT REPORT IT TO
27 ANY CREDIT REPORTING AGENCY.

28 PLEASE BE AWARE THAT, IF YOU MAKE A PAYMENT ON THE DEBT, ADMIT TO
29 OWING THE DEBT, PROMISE TO PAY THE DEBT, OR WAIVE THE STATUTE OF
30 LIMITATIONS ON THE DEBT, THE TIME PERIOD IN WHICH THE DEBT IS ENFORCEABLE
31 IN COURT MAY START AGAIN.

1 IF YOU WOULD LIKE TO LEARN MORE ABOUT YOUR LEGAL RIGHTS AND
2 OPTIONS, YOU MAY CONSULT AN ATTORNEY OR A LEGAL ASSISTANCE OR LEGAL AID
3 ORGANIZATION.”.

4 (D) IF A DEBTOR REQUESTS THE RECORDS DESCRIBED IN THE NOTICE
5 REQUIRED UNDER SUBSECTION (A) OF THIS SECTION, THE DEBT BUYER OR A
6 COLLECTOR ACTING ON BEHALF OF THE DEBT BUYER SHALL PROVIDE THE
7 RECORDS TO THE DEBTOR, AT NO COST TO THE DEBTOR, WITHIN 10 DAYS AFTER THE
8 DATE OF THE REQUEST.

9 (E) THE FAILURE OF A DEBTOR TO REQUEST THE RECORDS DESCRIBED IN
10 IN THE NOTICE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION MAY NOT BE
11 CONSIDERED AN ADMISSION OF LIABILITY ON THE PART OF THE DEBTOR IN ANY
12 LAWSUIT OR ARBITRATION PROCEEDING.

13 [14-203.] 14-204.

14 A collector who violates any provision of this subtitle is liable for [any] THE
15 GREATER OF:

16 (1) ANY damages proximately caused by the violation, including damages
17 for emotional distress or mental anguish suffered with or without accompanying physical
18 injury; OR

19 (2) STATUTORY DAMAGES IN THE AMOUNT OF \$1,000.

20 [14-204.] 14-205.

21 This subtitle may be cited as the Maryland Consumer Debt Collection Act.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2016.