

SB0771/308475/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 771
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with the first “a” in line 6 down through “action” in line 7 and substitute “certain actions may not revive or extend a certain statute of limitations”; in line 11, after “terms;” insert “providing for the application of this Act;”; and in line 15, strike “5-1203” and substitute “5-1204”.

AMENDMENT NO. 2

On page 2, after line 2, insert:

“(B) “CHARGE-OFF” MEANS THE ACT OF A CREDITOR THAT TREATS AN ACCOUNT RECEIVABLE OR ANY OTHER DEBT AS A LOSS OR AN EXPENSE BECAUSE PAYMENT IS UNLIKELY.

“(C) “CHARGE-OFF BALANCE” MEANS THE AMOUNT DUE ON THE ACCOUNT OR DEBT AT THE TIME OF CHARGE-OFF.”;

in lines 3, 5, 11, 14, 16, 23, and 25, strike “(B)”, “(C)”, “(E)”, “(F)”, “(G)”, “(H)”, and “(I)”, respectively, and substitute “(D)”, “(E)”, “(G)”, “(H)”, “(I)”, “(J)”, and “(K)”, respectively; in line 8, strike “(D)” and substitute “(F) (1)”; after line 10, insert:

“(2) “CONSUMER DEBT COLLECTION ACTION” DOES NOT INCLUDE AN ACTION BROUGHT UNDER § 8-401 OF THE REAL PROPERTY ARTICLE BY A LANDLORD OR AN ATTORNEY, A PROPERTY MANAGER, OR AN AGENT ON BEHALF OF A LANDLORD.”;

(Over)

in line 19, strike “A” and substitute “:

(I) A;

and in line 22, after “MERCHANT” insert “;

(II) A BUSINESS ENTITY THAT, IN THE BUSINESS ENTITY’S ORDINARY COURSE OF BUSINESS, DOES NOT PURCHASE OR OTHERWISE ACQUIRE CONSUMER DEBT FROM AN ORIGINAL CREDITOR OR FROM A SUBSEQUENT OWNER OF THE DEBT AND ACQUIRED THE CONSUMER DEBT:

1. AS A DIRECT RESULT OF THE BUSINESS ENTITY BEING THE SUCCESSOR IN A MERGER WITH THE ORIGINAL CREDITOR OF THE DEBT; OR

2. BECAUSE THE BUSINESS ENTITY PURCHASED OR OTHERWISE ACQUIRED THE ORIGINAL CREDITOR IN WHOLE;

(III) A BANK, CREDIT UNION, OR SAVINGS AND LOAN ASSOCIATION THAT ACQUIRED THE CONSUMER DEBT AS A DIRECT RESULT OF BEING THE SUCCESSOR IN A MERGER WITH ANOTHER BANK, CREDIT UNION, OR SAVINGS AND LOAN ASSOCIATION THAT HAD OWNED THE CONSUMER DEBT;

(IV) A MORTGAGE SERVICER THAT IS LICENSED UNDER TITLE 11, SUBTITLE 5 OF THE FINANCIAL INSTITUTIONS ARTICLE, UNLESS THE MORTGAGE SERVICER OR A COLLECTOR ACTING ON THE MORTGAGE SERVICER’S BEHALF COLLECTS OR ATTEMPTS TO COLLECT A DEFICIENCY BALANCE OR DEFICIENCY JUDGMENT IN ANY WAY RELATED TO OR ARISING FROM A FORECLOSURE OR SHORT SALE OF REAL PROPERTY THAT SECURED THE MORTGAGE LOAN;

(V) A SALES FINANCE COMPANY OR ANY OTHER PERSON THAT ACQUIRES CONSUMER DEBT ARISING FROM A RETAIL INSTALLMENT SALE AGREEMENT IF:

1. THE SALES FINANCE COMPANY OR OTHER PERSON ACQUIRED THE DEBT BEFORE THE FIRST INSTALLMENT PAYMENT WAS DUE FROM THE CONSUMER; AND

2. THE RETAIL INSTALLMENT SALE AGREEMENT EXPRESSLY STATED THAT THE CONSUMER WOULD BE REQUIRED TO MAKE THE CONSUMER'S PAYMENTS TO THAT SALES FINANCE COMPANY OR PERSON;

(VI) A BANK, CREDIT UNION, OR SAVINGS AND LOAN ASSOCIATION THAT ACQUIRED FROM ANOTHER BANK, CREDIT UNION, OR SAVINGS AND LOAN ASSOCIATION, IN THE ORDINARY COURSE OF BUSINESS, ALL OF A SPECIFIC TYPE OF CONSUMER DEBT OWNED BY THE OTHER BANK, CREDIT UNION, OR SAVINGS AND LOAN ASSOCIATION EXCEPT FOR CONSUMER DEBT THAT HAD BEEN CHARGED OFF; OR

(VII) AN ATTORNEY, A LICENSED DEBT COLLECTION AGENCY, A PROPERTY MANAGER, OR ANY OTHER PERSON THAT COLLECTS OR ATTEMPTS TO COLLECT CONSUMER DEBT IN AN ACTION UNDER § 8-401 OF THE REAL PROPERTY ARTICLE ON BEHALF OF AN ORIGINAL CREDITOR THAT IS A RESIDENTIAL RENTAL PROPERTY OWNER”.

AMENDMENT NO. 3

On page 3, strike in their entirety lines 5 through 8, inclusive, and substitute:

(Over)

“(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ON THE EXPIRATION OF THE STATUTE OF LIMITATIONS APPLICABLE TO THE CONSUMER DEBT COLLECTION ACTION, ANY SUBSEQUENT PAYMENT TOWARD, WRITTEN OR ORAL AFFIRMATION OF, OR ANY OTHER ACTIVITY ON THE DEBT MAY NOT REVIVE OR EXTEND THE LIMITATIONS PERIOD.”.

AMENDMENT NO. 4

On page 3, in line 13, strike “(B)(3)(I) THROUGH (V)” and substitute “(B)(3)”; in line 18, after “RULE,” insert “UNLESS THE ACTION IS RESOLVED BY JUDGMENT ON AFFIDAVIT,”; strike beginning with the colon in line 20 down through “INTRODUCES” in line 21 and substitute “INTRODUCES”; in line 22, after “SUBSECTION” insert “IN ACCORDANCE WITH THE RULES OF EVIDENCE APPLICABLE TO ACTIONS THAT ARE NOT SMALL CLAIMS ACTIONS BROUGHT UNDER § 4-405 OF THIS ARTICLE”; and strike beginning with the semicolon in line 22 down through “ASSERTED” in line 25.

On pages 3 and 4, strike in their entirety the lines beginning with line 29 on page 3 through line 13 on page 4, inclusive, and substitute:

“(I) PROOF OF THE EXISTENCE OF THE DEBT OR ACCOUNT MADE BY A CERTIFIED OR OTHERWISE PROPERLY AUTHENTICATED PHOTOCOPY OR ORIGINAL OF AT LEAST ONE OF THE FOLLOWING:

1. A DOCUMENT SIGNED BY THE DEBTOR EVIDENCING THE DEBT OR THE OPENING OF THE ACCOUNT;

2. A BILL OR OTHER RECORD REFLECTING PURCHASES, PAYMENTS, OR OTHER ACTUAL USE OF A CREDIT CARD OR AN ACCOUNT BY THE DEBTOR; OR

3. AN ELECTRONIC PRINTOUT OR OTHER DOCUMENTATION FROM THE ORIGINAL CREDITOR ESTABLISHING THE EXISTENCE OF THE ACCOUNT AND SHOWING PURCHASES, PAYMENTS, OR OTHER ACTUAL USE OF A CREDIT CARD OR AN ACCOUNT BY THE DEBTOR;

(II) IF THERE WAS A DOCUMENT EVIDENCING THE TERMS AND CONDITIONS TO WHICH THE CONSUMER DEBT WAS SUBJECT, A CERTIFIED OR OTHERWISE PROPERLY AUTHENTICATED PHOTOCOPY OF THE ORIGINAL DOCUMENT APPLICABLE TO THE CONSUMER DEBT UNLESS:

1. THE CONSUMER DEBT IS AN UNPAID BALANCE DUE ON A CREDIT CARD;

2. THE ORIGINAL CREDITOR IS OR WAS A FINANCIAL INSTITUTION SUBJECT TO REGULATION BY THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL OR A CONSTITUENT FEDERAL AGENCY OF THE COUNCIL; AND

3. THE CLAIM DOES NOT INCLUDE A DEMAND OR REQUEST FOR ATTORNEY'S FEES OR INTEREST ON THE CHARGE-OFF BALANCE;

(III) DOCUMENTATION INDICATING THAT THE DEBT BUYER OR COLLECTOR ACTING ON BEHALF OF THE DEBT BUYER OWNS THE CONSUMER DEBT, INCLUDING:

1. A CHRONOLOGICAL LISTING OF THE NAMES OF ALL PRIOR OWNERS OF THE DEBT AND THE DATE OF EACH TRANSFER OF OWNERSHIP OF THE DEBT, BEGINNING WITH THE NAME OF THE ORIGINAL CREDITOR; AND

(Over)

2. A CERTIFIED OR OTHER PROPERLY AUTHENTICATED COPY OF THE BILL OF SALE OR OTHER DOCUMENT THAT TRANSFERRED OWNERSHIP OF THE DEBT TO EACH SUCCESSIVE OWNER, INCLUDING THE DEBT BUYER OR COLLECTOR, WITH EACH BILL OF SALE OR OTHER DOCUMENT THAT TRANSFERRED OWNERSHIP CONTAINING SPECIFIC REFERENCE TO THE DEBT;

(IV) DOCUMENTATION OF THE IDENTIFICATION AND NATURE OF THE DEBT OR ACCOUNT, INCLUDING:

1. THE NAME OF THE ORIGINAL CREDITOR;
2. THE FULL NAME OF THE DEBTOR AS IT APPEARS ON THE ORIGINAL ACCOUNT;
3. THE LAST FOUR DIGITS OF THE SOCIAL SECURITY NUMBER OF THE DEBTOR APPEARING ON THE ORIGINAL ACCOUNT, IF KNOWN;
4. THE LAST FOUR DIGITS OF THE ORIGINAL ACCOUNT NUMBER; AND
5. THE NATURE OF THE CONSUMER TRANSACTION, SUCH AS UTILITY EXPENSES, CREDIT CARD, CONSUMER LOAN, RETAIL INSTALLMENT SALES AGREEMENT, SERVICE, OR FUTURE SERVICES;

(V) IF THE CLAIM IS BASED ON A FUTURE SERVICES CONTRACT, EVIDENCE THAT THE DEBT BUYER OR COLLECTOR IS ENTITLED TO AN AWARD OF DAMAGES UNDER THAT CONTRACT;

(VI) IF THERE HAS BEEN A CHARGE-OFF OF THE DEBT OR ACCOUNT, DOCUMENTATION OF:

- 1. THE DATE OF THE CHARGE-OFF;**
- 2. THE CHARGE-OFF BALANCE;**
- 3. AN ITEMIZATION OF ANY FEES OR CHARGES CLAIMED BY THE DEBT BUYER OR COLLECTOR IN ADDITION TO THE CHARGE-OFF BALANCE;**
- 4. AN ITEMIZATION OF ALL PAYMENTS RECEIVED AFTER THE CHARGE-OFF AND OTHER CREDITS TO WHICH THE DEBTOR IS ENTITLED; AND**
- 5. THE DATE OF THE LAST PAYMENT ON THE CONSUMER DEBT OR THE LAST TRANSACTION GIVING RISE TO THE CONSUMER DEBT;**

(VII) IF THERE HAS BEEN NO CHARGE-OFF OF THE DEBT OR ACCOUNT:

- 1. AN ITEMIZATION OF ALL MONEY CLAIMED BY THE DEBT BUYER OR COLLECTOR THAT:**
 - A. INCLUDES PRINCIPAL, INTEREST, FINANCE CHARGES, SERVICE CHARGES, LATE FEES, AND OTHER FEES OR CHARGES ADDED**

(Over)

TO THE PRINCIPAL BY THE ORIGINAL CREDITOR AND, IF APPLICABLE, BY
SUBSEQUENT ASSIGNEES OF THE CONSUMER DEBT; AND

B. ACCOUNTS FOR ANY REDUCTION IN THE AMOUNT
OF THE CLAIM BY VIRTUE OF ANY PAYMENT MADE OR OTHER CREDIT TO WHICH
THE DEFENDANT IS ENTITLED;

2. A STATEMENT OF THE AMOUNT AND DATE OF THE
CONSUMER TRANSACTION GIVING RISE TO THE CONSUMER DEBT OR, IN
INSTANCES OF MULTIPLE TRANSACTIONS, THE AMOUNT AND DATE OF THE LAST
TRANSACTION; AND

3. A STATEMENT OF THE AMOUNT AND DATE OF THE
LAST PAYMENT ON THE CONSUMER DEBT; AND

(VIII) A LIST OF ALL MARYLAND COLLECTION AGENCY
LICENSES THAT THE DEBT BUYER OR COLLECTOR CURRENTLY HOLDS AND, AS TO
EACH LICENSE:

1. THE LICENSE NUMBER;

2. THE NAME APPEARING ON THE LICENSE; AND

3. THE DATE OF ISSUE OF THE LICENSE.”.

AMENDMENT NO. 5

On page 4, after line 13, insert:

“5-1204.

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THIS SUBTITLE MAY NOT BE CONSTRUED TO ALTER ANY LICENSING REQUIREMENT UNDER FEDERAL OR MARYLAND LAW APPLICABLE TO DEBT BUYERS OR COLLECTORS.

AMENDMENT NO. 6

On page 4, before line 14, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any debt collection action commenced before the effective date of this Act.”;

and in line 14, strike “2.” and substitute “3.”.