

SENATE BILL 771

D3, I3

6lr3462
CF HB 1491

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

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 26, 2016

CHAPTER _____

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Consumer Debt Collection**
3 **Actions – Restrictions**

4 FOR the purpose of prohibiting a creditor or a debt collector from initiating or filing a
5 certain consumer debt collection action under certain circumstances; specifying that
6 ~~a certain debt buyer or a certain collector has a certain burden in a certain consumer~~
7 ~~debt collection action~~ certain actions may not revive or extend a certain statute of
8 limitations; prohibiting a debt buyer or a certain collector from initiating a certain
9 consumer debt collection action unless the debt buyer or the collector possesses
10 certain documents; prohibiting a court from entering a judgment in favor of a debt
11 buyer or a certain collector under certain circumstances; defining certain terms;
12 providing for the application of this Act; and generally relating to consumer debt
13 collection and consumer debt collection actions.

14 BY adding to

15 Article – Courts and Judicial Proceedings

16 Section 5–1201 through ~~5–1203~~ 5–1204 to be under the new subtitle “Subtitle 12.
17 Consumer Debt Collection Actions”

18 Annotated Code of Maryland

19 (2013 Replacement Volume and 2015 Supplement)

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

22 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 **SUBTITLE 12. CONSUMER DEBT COLLECTION ACTIONS.**

2 **5-1201.**

3 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
4 **INDICATED.**

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

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

10 ~~**(B)**~~ **(D) “COLLECTOR” MEANS A PERSON COLLECTING OR ATTEMPTING**
11 **TO COLLECT AN ALLEGED DEBT ARISING OUT OF A CONSUMER TRANSACTION.**

12 ~~**(C)**~~ **(E) “CONSUMER DEBT” MEANS A SECURED OR AN UNSECURED DEBT**
13 **THAT:**

14 **(1) IS FOR MONEY OWED OR ALLEGED TO BE OWED; AND**

15 **(2) ARISES FROM A CONSUMER TRANSACTION.**

16 ~~**(D)**~~ **(F) (1) “CONSUMER DEBT COLLECTION ACTION” MEANS ANY**
17 **JUDICIAL ACTION OR ARBITRATION PROCEEDING IN WHICH A CLAIM IS ASSERTED**
18 **TO COLLECT A CONSUMER DEBT.**

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

23 ~~**(E)**~~ **(G) “CONSUMER TRANSACTION” MEANS ANY TRANSACTION**
24 **INVOLVING A PERSON SEEKING OR ACQUIRING REAL OR PERSONAL PROPERTY,**
25 **SERVICES, MONEY, OR CREDIT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.**

26 ~~**(F)**~~ **(H) “CREDITOR” MEANS A PERSON TO WHOM A CONSUMER DEBT IS**
27 **OWED OR ALLEGED TO BE OWED.**

28 ~~**(G)**~~ **(I) (1) “DEBT BUYER” MEANS A PERSON THAT PURCHASES OR**
29 **OTHERWISE ACQUIRES CONSUMER DEBT FROM AN ORIGINAL CREDITOR OR FROM A**
30 **SUBSEQUENT OWNER OF THE DEBT.**

1 (2) “DEBT BUYER” DOES NOT INCLUDE A:

2 (I) A CHECK SERVICES COMPANY THAT ACQUIRES THE RIGHT
3 TO COLLECT ON A PAPER OR AN ELECTRONIC CHECK INSTRUMENT, INCLUDING AN
4 AUTOMATED CLEARING HOUSE ITEM THAT HAS BEEN RETURNED UNPAID TO A
5 MERCHANT;

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

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

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

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

18 (IV) A MORTGAGE SERVICER THAT IS LICENSED UNDER TITLE
19 11, SUBTITLE 5 OF THE FINANCIAL INSTITUTIONS ARTICLE, UNLESS THE
20 MORTGAGE SERVICER OR A COLLECTOR ACTING ON THE MORTGAGE SERVICER’S
21 BEHALF COLLECTS OR ATTEMPTS TO COLLECT A DEFICIENCY BALANCE OR
22 DEFICIENCY JUDGMENT IN ANY WAY RELATED TO OR ARISING FROM A
23 FORECLOSURE OR SHORT SALE OF REAL PROPERTY THAT SECURED THE MORTGAGE
24 LOAN;

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

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

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

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

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

12 ~~(H)~~ (J) “DEBTOR” MEANS AN INDIVIDUAL WHO OWES OR IS ALLEGED TO
13 OWE A CONSUMER DEBT.

14 ~~(I)~~ (K) (1) “PRINCIPAL” MEANS THE UNPAID BALANCE OF A DEBT OR
15 AN OBLIGATION ARISING FROM A CONSUMER TRANSACTION THAT IS OWED OR
16 ALLEGED TO BE OWED TO THE ORIGINAL CREDITOR.

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

20 5-1202.

21 (A) A CREDITOR OR A COLLECTOR MAY NOT INITIATE A CONSUMER DEBT
22 COLLECTION ACTION AFTER THE EXPIRATION OF THE STATUTE OF LIMITATIONS
23 APPLICABLE TO THE CONSUMER DEBT COLLECTION ACTION.

24 ~~(B) IN ANY CONSUMER DEBT COLLECTION ACTION MAINTAINED BY A DEBT~~
25 ~~BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT BUYER, THE DEBT BUYER~~
26 ~~OR COLLECTOR SHALL HAVE THE BURDEN OF SHOWING THAT THE STATUTE OF~~
27 ~~LIMITATIONS HAS NOT EXPIRED.~~

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

33 5-1203.

1 (A) A DEBT BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT BUYER
 2 MAY NOT INITIATE A CONSUMER DEBT COLLECTION ACTION UNLESS THE DEBT
 3 BUYER OR COLLECTOR POSSESSES ALL OF THE DOCUMENTS LISTED IN SUBSECTION
 4 ~~(B)(3)(I) THROUGH (V)~~ (B)(3) OF THIS SECTION.

5 (B) (1) THIS SUBSECTION APPLIES TO A CONSUMER DEBT COLLECTION
 6 ACTION, INCLUDING A SMALL CLAIM ACTION UNDER § 4-405 OF THIS ARTICLE, THAT
 7 IS MAINTAINED BY A DEBT BUYER OR A COLLECTOR ACTING ON BEHALF OF A DEBT
 8 BUYER.

9 (2) IN ADDITION TO ANY OTHER REQUIREMENT OF LAW OR RULE,
 10 UNLESS THE ACTION IS RESOLVED BY JUDGMENT ON AFFIDAVIT, A COURT MAY NOT
 11 ENTER A JUDGMENT IN FAVOR OF A DEBT BUYER OR A COLLECTOR UNLESS THE
 12 DEBT BUYER OR COLLECTOR:

13 ~~(I) INTRODUCES~~ INTRODUCES INTO EVIDENCE THE
 14 DOCUMENTS SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION IN ACCORDANCE
 15 WITH THE RULES OF EVIDENCE APPLICABLE TO ACTIONS THAT ARE NOT SMALL
 16 CLAIMS ACTIONS BROUGHT UNDER § 4-405 OF THIS ARTICLE; ~~AND~~

17 ~~(II) MAKES AVAILABLE FOR EXAMINATION AT A TRIAL AN~~
 18 ~~INDIVIDUAL WITH KNOWLEDGE OF THE FACTS PERTINENT TO THE CLAIMS~~
 19 ~~ASSERTED.~~

20 (3) A DEBT BUYER OR A COLLECTOR ON BEHALF OF A DEBT BUYER
 21 SHALL INTRODUCE THE FOLLOWING EVIDENCE IN A CONSUMER DEBT COLLECTION
 22 ACTION:

23 ~~(I) THE AGREEMENT BETWEEN THE DEBTOR AND THE~~
 24 ~~ORIGINAL CREDITOR OR OTHER DOCUMENTS THAT:~~

- 25 ~~1. ESTABLISH THE DEBT;~~
- 26 ~~2. INCLUDE ALL TERMS AND CONDITIONS OF THE DEBT;~~
- 27 ~~AND~~
- 28 ~~3. REFLECT THE DEBTOR'S ASSENT;~~

29 ~~(II) 1. THE CHARGE OFF ACCOUNT STATEMENT FROM THE~~
 30 ~~ORIGINAL CREDITOR; OR~~

31 ~~2. IF THE CHARGE OFF ACCOUNT STATEMENT NEVER~~
 32 ~~EXISTED, THE LAST BILL FROM THE ORIGINAL CREDITOR TO THE DEBTOR;~~

~~(III) DOCUMENTS SHOWING ALL CHARGES AND CREDITS TO THE ACCOUNT AFTER CHARGE-OFF BY THE ORIGINAL CREDITOR;~~

~~(IV) DOCUMENTS ESTABLISHING THE DEBT BUYER'S OWNERSHIP OF THE ACCOUNT; AND~~

~~(V) ALL OTHER DOCUMENTS THAT WOULD BE NECESSARY TO SUPPORT A JUDGMENT ON AFFIDAVIT.~~

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

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

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

11 **1. THE NAME OF THE ORIGINAL CREDITOR;**

12 **2. THE FULL NAME OF THE DEBTOR AS IT APPEARS ON**
13 **THE ORIGINAL ACCOUNT;**

14 **3. THE LAST FOUR DIGITS OF THE SOCIAL SECURITY**
15 **NUMBER OF THE DEBTOR APPEARING ON THE ORIGINAL ACCOUNT, IF KNOWN;**

16 **4. THE LAST FOUR DIGITS OF THE ORIGINAL ACCOUNT**
17 **NUMBER; AND**

18 **5. THE NATURE OF THE CONSUMER TRANSACTION,**
19 **SUCH AS UTILITY EXPENSES, CREDIT CARD, CONSUMER LOAN, RETAIL INSTALLMENT**
20 **SALES AGREEMENT, SERVICE, OR FUTURE SERVICES;**

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

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

26 **1. THE DATE OF THE CHARGE-OFF;**

27 **2. THE CHARGE-OFF BALANCE;**

28 **3. AN ITEMIZATION OF ANY FEES OR CHARGES CLAIMED**
29 **BY THE DEBT BUYER OR COLLECTOR IN ADDITION TO THE CHARGE-OFF BALANCE;**

1 4. AN ITEMIZATION OF ALL PAYMENTS RECEIVED AFTER
2 THE CHARGE-OFF AND OTHER CREDITS TO WHICH THE DEBTOR IS ENTITLED; AND

3 5. THE DATE OF THE LAST PAYMENT ON THE CONSUMER
4 DEBT OR THE LAST TRANSACTION GIVING RISE TO THE CONSUMER DEBT;

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

7 1. AN ITEMIZATION OF ALL MONEY CLAIMED BY THE
8 DEBT BUYER OR COLLECTOR THAT:

9 A. INCLUDES PRINCIPAL, INTEREST, FINANCE CHARGES,
10 SERVICE CHARGES, LATE FEES, AND OTHER FEES OR CHARGES ADDED TO THE
11 PRINCIPAL BY THE ORIGINAL CREDITOR AND, IF APPLICABLE, BY SUBSEQUENT
12 ASSIGNEES OF THE CONSUMER DEBT; AND

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

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

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

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

25 1. THE LICENSE NUMBER;

26 2. THE NAME APPEARING ON THE LICENSE; AND

27 3. THE DATE OF ISSUE OF THE LICENSE.

28 5-1204.

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

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

4 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2016.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.