

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on a temporary basis, Section 28-3814 to include all consumer debt under the District’s collection law; to prohibit deceptive behavior from debt collectors including threatening to accuse people of fraud, threatening to sell or assign consumer debt such that the consumer would lose defense to a claim or disclosing or threatening disclose consumer debt information without acknowledging such debt is in dispute or in a way that would harm the consumers reputation for credit worthiness; to prohibit debt collectors from making more than three phone calls to a consumer in seven days; to prohibit the communication of consumer indebtedness to employer’s, except when such indebtedness is guaranteed by the employer, the employer requests the loan, or the information is an attachment to an execution or judgment allowed by law; to prohibit debt collectors from communicating an individuals indebtedness to family, friends or neighbors except through proper legal processes; to require debt collectors to have complete documentation related to the consumer debt being collected; to require debt collectors who enter into a payment schedule or settlement to provide a written copy of said schedule or agreement; to implement specific requirements for a debt collector when initiating a cause of action against a consumer for consumer debt; to allow for the awarding of damages and other fees to a consumer where a debt buyer violates this section; to establish specific requirements for the awarding of attorney’s fees where the plaintiff is the prevailing party; to establish specific requirements for courts to issue a bench warrant for civil arrest for failure to appear in a debt collection case; to prohibit the imprisonment or jailing or any consumer for failure to pay consumer debt; and to establish debt collection protections during a public health emergency declared by the Mayor.

43 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
44 act may be cited as the “Protecting Consumers from Unjust Debt Collection Practices Temporary
45 Amendment Act of 2021”.

46 Sec. 2. Section 28-3814 of the District of Columbia Official Code is amended as follows:

47 (a) Subsection (a) is amended to read as follows:

48 “(a) This section applies to conduct and practices in connection with collection of
49 obligations arising from any consumer debt (other than a loan directly secured on real estate or a
50 direct motor vehicle installment loan covered by Chapter 36 of Title 28).”.

51 (b) Subsection (b) is amended to read as follows:

52 “(b) As used in this section, the term –

53 “(1) “claim” means any obligation or alleged obligation, arising from a
54 consumer debt;

55 “(2) “consumer debt” means money or its equivalent, or a loan or advance
56 of money, which is, or is alleged to be, more than 30 days past due and owing, unless a different
57 period is agreed to by the debtor, as a result of a purchase, lease, or loan of goods, services, or
58 real or personal property for personal, family, medical, or household purposes;

59 “(3) “creditor” means a claimant or other person holding or alleging to
60 hold a claim;

61 “(4) “debt buyer” means a person or entity that is engaged in the business
62 of purchasing charged-off consumer debt or other delinquent consumer debt for collection
63 purposes, whether it collects the debt itself or hires a third party for collection, including an
64 attorney, in order to collect such debt. A debt buyer is considered a debt collector for all
65 purposes;

66 “(5) “debt collection” means any action, conduct or practice in
67 connection with the collection of claims that are owed or due, or are alleged to be owed or due,
68 to a seller or lender by a consumer;

69 “(6) “debt collector” means a person engaging directly or indirectly in
70 debt collection, and includes any person who sells or offers to sell forms represented to be a
71 collection system, device, or a scheme or method intended or calculated to be used to collect
72 claims;

73 “(7) “person” means an individual, corporation, business trust, estate, trust
74 partnership, limited liability company, association, joint venture, government, governmental
75 subdivision, agency, or instrumentality, public corporation, or any other legal or commercial
76 entity; and

77 “(8) “public health emergency” means a period of time for which the
78 Mayor has declared a public health emergency pursuant to § 7-2304.01, or a state of emergency
79 pursuant to § 28-4102.”.

80 (c) Subsection (c) is amended as follows:

81 (1) Subsection (c) is amended by striking the term “of the following ways:” and
82 inserting “way, including:” in its place.

83 (2) Paragraph 2 is amended to read as follows:

84 “(2) the accusation or threat to falsely accuse any person of fraud or any
85 crime, or any conduct which, if true, would tend to disgrace such other person or in any way
86 subject the person to ridicule, contempt, disgrace, or shame;”

87 (3) Paragraph 4 is amended to read as follows:

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

92 (4) Paragraph 5 is amended by striking the period at the end of the sentence and
93 inserting a semi-colon in its place.

94 (5) New paragraphs 6, 7, and 8 are added to read as follows:

95 “(6) the threat of any action which the creditor or debt collector cannot
96 legally take or any action which the creditor or debt collector in the usual course of business does
97 not in fact take;

98 “(7) disclosing or threatening to disclose information concerning the
99 existence of a debt known to be disputed by the consumer without disclosing the fact that the
100 debt is disputed by the consumer; and

101 “(8) disclosing or threatening to disclose information affecting the
102 consumer's reputation for credit worthiness with knowledge or reason to know that the
103 information is false.”.

104 (d) Subsection (d) is amended as follows:

105 (1) Subsection (d) is amended by striking the term “of the following ways:” and
106 inserting “way, including:” in its place.

107 (2) Paragraph 2 is amended by striking the term “and.”

108 (3) Paragraph 3 is amended to read as follows:

109 “(3) causing expense to any person incurred by a medium of
110 communication, or by concealment of the true purpose of the notice, letter, message, or
111 communication; and”.”

112 (4) A new paragraph 4 is added to read as follows:

113 “(4) communicating with the consumer or any member of the consumer's
114 family or household in such a manner that can reasonably be expected to abuse or harass the
115 consumer, including, but not limited to communications at an unreasonable hour or with
116 unreasonable frequency, or by making in excess of three phone calls, inclusive of all numbers the
117 debt collector has for the consumer, in any 7-day period.”.

118 (e) Subsection (e) is amended as follows:

119 (1) Subsection (e) is amended by striking the term “any of the following ways:”
120 and inserting the phrase “such a manner as to harass or embarrass the alleged debtor in any way,
121 including:” in its place.

122 (2) Paragraph 1 is amended to read as follows:

123 “(1) the communication of any information relating to a consumer’s
124 indebtedness to any employer or employer’s agent, except where such indebtedness had been
125 guaranteed by the employer or the employer has requested the loan giving rise to the
126 indebtedness and except where such communication is in connection with an attachment or
127 execution after judgments as authorized by law;”

128 (3) Paragraph 2 is amended to read as follows:

129 “(2) the disclosure, publication, or communication of information relating
130 to a consumer’s indebtedness to any relative, family member, friend or neighbor of the

131 consumer, except through proper legal action or process or at the express and unsolicited request
132 of the relative or family member;”

133 (f) Subsection (f) is amended as follows:

134 (1) Subsection (f) is amended to read as follows:

135 “(f) No creditor or debt collector shall use any unfair, fraudulent, deceptive, or
136 misleading representation, device, or practice to collect a consumer debt or to obtain information
137 in conjunction with their collection of claims in any way, including:”

138 (2) Paragraph 4 is amended by striking the phrase “name and full
139 business address” and inserting “name, phone number, email address, and full business address”
140 in its place.

141 (3) New paragraphs 10 and 11 are added to read as follows:

142 “(10) initiating a cause of action to collect a consumer debt when the debt
143 collector knows or reasonably should know that the applicable statute of limitations period has
144 expired; or

145 “(11) seeking to collect funds from a consumer that the debt collector
146 knows or has reason to know are exempt from attachment or garnishment under federal or state
147 law.”.

148 (g) Subsection (g) is amended as follows:

149 (1) Subsection (g) is amended by striking the term “of the following ways:” and
150 inserting “way, including:” in its place.

151 (2) Paragraph 4 is amended by striking the term “; and” and inserting a semi-
152 colon in its place.

153 (3) Paragraph 5 is amended by striking the period and inserting “; and” in its
154 place.

155 (4) A new paragraph 6 is added to read as follows:

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

158 (h) Subsection (j) is amended as follows:

159 (1) Paragraph 1 is amended by striking the terms “willfully” and “of the foregoing
160 subsections.”

161 (2) Paragraph 2 is amended to read as follows:

162 “(2) Punitive damages may be awarded to any person affected by a willful
163 violation of any provision of this section, when and in such amount as is deemed appropriate by
164 the court or trier of fact.”.

165 (i) Subsection (k) is amended by striking the phrase “before 8 a.m. and after 9 p.m.” and
166 inserting the phrase “before 8 a.m. or after 9 p.m.” in its place.

167 (j) New subsections (l)-(cc) are added to read follows:

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

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

175 “(A) Documentation of the name of the original creditor as well as
176 the name of the current creditor or owner of the consumer-debt;

177 “(B) The debtor's last account number with the original creditor;

178 “(C) A copy of the signed contract, signed application, or other
179 documents that provide evidence of the consumer’s liability and the terms thereof;

180 “(D) The date that the consumer debt was incurred; provided, that
181 in the case of a revolving credit account, the date that the consumer debt was incurred shall be
182 the last extension of credit made for the purchase of goods or services, for the lease of goods, or
183 as a loan of money;

184 “(E) The date and amount of the last payment by the consumer, if
185 applicable; and

186 “(F) An itemized accounting of the amount claimed to be owed,
187 including the amount of the principal; the amount of any interest, fees or charges; and whether
188 the charges were imposed by the original creditor, a debt collector, or a subsequent owner of the
189 debt. If the debt arises from a credit card, the account shall include copies of the last twenty-four
190 (24) periodic statements required by the Truth in Lending Act, 15 U.S.C. § 1637(b), that
191 evidence the transactions, purchases, fees and charges that comprise the debt.

192 “(2) A debt collector shall provide the information or documents identified
193 in paragraph (1) of this subsection to the consumer in writing within 5 days after the initial
194 communication with the consumer and shall cease all collection of the consumer debt until such
195 information is provided.

196 “(n)(1) A debt collector who enters into a payment schedule or settlement
197 agreement regarding a consumer debt shall provide a written copy of the payment schedule or
198 settlement agreement to the consumer within 7 days.

199 “(2) A consumer shall not be required to make a payment on a payment
200 schedule or settlement agreement until the written agreement required by paragraph (1) of this
201 subsection has been provided by the debt collector.”

202 “(o) Any action for the collection of a consumer debt shall only be commenced
203 within 3 years of accrual. This period shall apply whether the legal basis of the claim sounds in
204 contract, account stated, open account or other cause, and notwithstanding the provisions of any
205 other statute of limitations unless that statute provides for a shorter limitations period. This time
206 period also applies to contracts under seal. This paragraph shall apply to all claims brought after
207 the date of enactment of this Act.

208 “(p) Immediately prior to commencing a legal action to collect a consumer debt,
209 the plaintiff shall undertake a reasonable investigation to verify the defendant’s current address
210 for service of process.

211 “(q) In a cause of action initiated by a debt collector to collect a consumer debt,
212 the debt collector shall attached to the complaint a copy of the signed contract, signed
213 application, or other documents that provide evidence of the consumer’s liability, and shall
214 allege the following information in the complaint or statement of claim:

215 “(1) A short and plain statement of the type of consumer debt;

216 “(2) The information enumerated in § 28-3814(m)(1);

217 “(3) The basis for any interest and fees charged;

218 “(4) The basis for the request of attorney's fees, if applicable;

219 “(5) That the debt collector is the current owner of the consumer debt and
220 a chronological listing of the names of all prior owners of the consumer debt and the date of each
221 transfer of ownership, beginning with the original creditor; and

222 “(6) That the suit is filed within the applicable statute of limitations
223 period.

224 “(r) In a cause of action initiated by a debt collector to collect a consumer debt,
225 prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall
226 file evidence with the court to establish the amount and nature of the debt. The only evidence
227 sufficient to establish the amount and nature of the debt shall be authenticated business records
228 that shall include the information enumerated in § 28-3814(m)(1).

229 “(s) In a cause of action initiated by a debt collector to collect a consumer debt,
230 prior to entry of a default judgment or summary judgment against a consumer, the plaintiff shall
231 file a copy of the assignment or other writing establishing that the plaintiff is the owner of the
232 debt. If the debt has been assigned more than once, then each assignment or other writing
233 evidencing transfer of ownership must be attached to establish an unbroken chain of ownership.
234 Each assignment or other writing evidencing transfer of ownership must contain the original
235 account number of the debt purchased and must clearly show the debtor's name associated with
236 that account number.

237 “(t) In a cause of action initiated by a debt buyer to collect a consumer debt, if a
238 debt buyer seeks a judgment or order against the defendant and has not complied with the
239 requirements of this section, the court shall dismiss the action with prejudice.

240 “(u) A debt buyer that violates any provision of this section with respect to a
241 consumer shall be liable to the consumer for the following:

242 “(1) Actual damages;
243 “(2) Costs and reasonable attorney's fees;
244 “(3) Punitive damages;
245 “(4) If the consumer is an individual, the court may award an additional

246 penalty in an amount not less than \$500 per violation and not to exceed \$4,000 per violation;

247 “(5) In the case of a class action, the amount for each named plaintiff as
248 could be recovered under paragraph (1) of this subsection and an amount as the court may
249 determine for each class member, not exceeding the amount per person that could be recovered
250 under paragraph (2) of this subsection; and

251 “(6) Any other relief which the court determines proper.

252 “(v) If the plaintiff is the prevailing party in any action to collect a consumer debt,
253 the plaintiff shall be entitled to collect attorney’s fees only if the contract or other document
254 evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney’s fees,
255 and subject to the following provisions:

256 “(1) If the contract or other document evidencing indebtedness provides
257 for attorney’s fees in some specific percentage, such provision and obligation shall be valid and
258 enforceable up to but not in excess of fifteen percent (15%) of the amount of the debt excluding
259 attorney’s fees and collection costs.

260 “(2) If a contract or other document evidencing indebtedness provides for
261 the payment of reasonable attorney’s fees by the debtor, without specifying any specific
262 percentage, such provision shall be construed to mean the lesser of 15% of the amount of the
263 debt, excluding attorney’s fees and collection costs, or the amount of attorney’s fees calculated

264 by a reasonable rate for such cases multiplied by the amount of time reasonably expended to
265 obtain the judgment.

266 “(3) The documentation setting forth a party's obligation to pay attorney’s
267 fees shall be provided to the court before a court may enforce those provisions. Such
268 documentation must include all of the materials specified in subsection (o) of this section.

269 “(w) Before a court may issue a bench warrant for civil arrest for failing to appear
270 in a debt collection case under this section, the following conditions must be met:

271 “(1) The plaintiff must have personally served its motion for contempt, or
272 other related motion or filing, on the defendant; and

273 “(2) The defendant must have failed to appear at two contempt hearings.

274 “(x) Notwithstanding any other law or court rule, a consumer who is compelled to
275 attend pursuant to a civil arrest warrant shall be brought before the court the same day.

276 “(y) Notwithstanding any other law or court rule, no person shall be imprisoned or
277 jailed for failure to pay a consumer debt, nor shall any person be imprisoned or jailed for
278 contempt of court or otherwise for failure to comply with a court order to pay a consumer debt in
279 part or in full.

280 “(z) A violation of the Fair Debt Collection Practices Act, approved September
281 20, 1977 (91 Stat. 874; 15 U.S.C. § 1692 *et seq.*), as amended, shall constitute a violation of this
282 section.

283 “(aa)(1) Notwithstanding subsection (a) of this section, subsections (aa) and (bb)
284 of this section shall apply to any debt, including loans directly secured on motor vehicles or
285 direct motor vehicle installment loans covered by Chapter 36 of this title.

286 “(2) During a public health emergency and for 60 days after its
287 conclusion, no creditor or debt collector shall, with respect to any debt:
288 “(A) Initiate, file, or threaten to file any new collection lawsuit;
289 “(B) Initiate, threaten to initiate, or act upon any statutory remedy
290 for the garnishment, seizure, attachment, or withholding of wages, earnings, property, or funds
291 for the payment of a debt to a creditor;
292 “(C) Initiate, threaten to initiate, or act upon any statutory remedy
293 for the repossession of any vehicle; except, that creditors or debt collectors may accept collateral
294 that is voluntarily surrendered;
295 “(D) Visit or threaten to visit the household of a debtor at any time
296 for the purpose of collecting a debt;
297 “(E) Visit or threaten to visit the place of employment of a debtor
298 at any time; or
299 “(F) Confront or communicate in person with a debtor regarding
300 the collection of a debt in any public place at any time, unless initiated by the debtor.
301 “(3) This subsection shall not apply to:
302 “(A) Collecting or attempting to collect a debt that is, or is alleged
303 to be, owed on a loan secured by a mortgage on real property or owed for common expenses
304 pursuant to § 42-1903.12; or
305 “(B) Collecting or attempting to collect delinquent debt pursuant to
306 [subchapter XVII of Chapter 3 of Title 1].
307 “(4) Any statute of limitations on any collection lawsuit is tolled during
308 the duration of the public health emergency and for 60 days thereafter.

309 “(bb)(1) During a public health emergency and for 60 days after its conclusion, no
310 debt collector shall initiate any communication with a debtor via any written or electronic
311 communication, including email, text message, or telephone. A debt collector shall not be
312 deemed to have initiated a communication with a debtor if the communication by the debt
313 collector is in response to a request made by the debtor for the communication or is the mailing
314 of monthly statements related to an existing payment plan or payment receipts related to an
315 existing payment plan.

316 “(2) This subsection shall not apply to:

317 “(A) Communications initiated solely for the purpose of informing
318 a debtor of a rescheduled court appearance date or discussing a mutually convenient date for a
319 rescheduled court appearance;

320 “(B) Original creditors collecting or attempting to collect their own
321 debt;

322 “(C) Collecting or attempting to collect a debt which is, or is
323 alleged to be, owed on a loan secured by a mortgage on real property or owed for common
324 expenses pursuant to § 42-1903.12;

325 “(D) Receiving and depositing payments the debtor chooses to
326 make during a public health emergency;

327 “(E) Collecting or attempting to collect delinquent debt pursuant to
328 [subchapter XVII of Chapter 3 of Title 1].

329 “(cc) Subsections (aa) and (bb) of this section shall not be construed to:

330 “(1) Exempt any person from complying with existing laws or rules of
331 professional conduct with respect to debt collection practices;

332 “(2) Supersede or in any way limit the rights and protections available to
333 consumers under applicable local, state, or federal foreclosure laws; or

334 “(3) Supersede any obligation under the District of Columbia Rules of
335 Professional Conduct, to the extent of any inconsistency.”.

336 Sec. 3. Fiscal impact statement.

337 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
338 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
339 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

340 Sec. 4. Effective date.

341 (a) This act shall take effect following approval by the Mayor (or in the event of veto by
342 the Mayor, action by the Council to override the veto), a 60-day period of congressional review
343 as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
344 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
345 Columbia Register.

346 (b) This act shall expire after 225 days of its having taken effect.