**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



*WITHOUT PREFATORY NOTE AND Comments*

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By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**Uniform Consumer Debt Default Judgments Act**

# Section 1. Title

This [act] may be cited as the UniformConsumer 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.*

# 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.

# 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.*

# 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** You are getting this notice because (name of

**Getting This** plaintiff) says you owe money.

**Notice?**

(Name or shortened name of plaintiff) has filed

a lawsuit against you to collect the money.

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**2. What Will Happen** If you do not [file a response to the

**If I Do Nothing?** lawsuit][or][appear at a hearing on (enter date) at (time)], a judgment may be entered against you.

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**3. What Happens** [Your personal property may be taken and sold.]

 **If A Judgment** [Money may be taken directly from your bank

 **Is Entered Against** account.] [Money may be taken directly from your

 **Me?** 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.

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**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).*

# 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.

# 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).

# 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 . . .