**South Carolina General Assembly**

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**H. 3383**

**STATUS INFORMATION**

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Sponsors: Rep. Cobb‑Hunter

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Summary: Debt Collection Agency Licensing Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/20/2011 House Introduced and read first time ([House Journal‑page 3](file:///h:\hj%20archive\2011\01-20-11.docx))

1/20/2011 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 3](file:///h:\hj%20archive\2011\01-20-11.docx))

**VERSIONS OF THIS BILL**

[1/20/2011](file:///p:\pprever\2011-12\3383_20110120.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “DEBT COLLECTION AGENCY LICENSING ACT” BY ADDING CHAPTER 12 TO TITLE 37 SO AS TO ESTABLISH THE LICENSURE AND REGULATION OF DEBT COLLECTION AGENCIES BY THE DEPARTMENT OF CONSUMER AFFAIRS BY, AMONG OTHER THINGS, PROVIDING LICENSURE REQUIREMENTS, INCLUDING FEES, SURETY BONDS, AND RECORD KEEPING REQUIREMENTS, GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION OF A LICENSE, LICENSE RENEWAL PROCEDURES AND REQUIREMENTS, INCLUDING CONTINUING EDUCATION, DEBT COLLECTION PROCEDURES, AND CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act is known and may be cited as the “Debt Collection Agency Licensing Act”.

SECTION 2. Title 37 of the 1976 Code is amended by adding:

“CHAPTER 12

Debt Collection Agency Licensing

Section 37‑12‑10. The General Assembly finds:

(1) The State has a substantial interest in preventing collection agencies from engaging in abusive, deceptive, and unfair collection practices in the collection of debts arising from consumer transactions. It is the purpose of this act to prohibit the licensing of collection agencies that engage in these practices.

(2) This chapter must be liberally construed with respect to consumer protection.

Section 37‑12‑20. As used in this chapter:

(1) ‘Advertise’ means submitting bids, contracting, or making known by a public notice, commercial message, or solicitation of business, directly or indirectly, in this State or another, that services regulated pursuant to this chapter are available for consideration.

(2) ‘Applicant’ means a person who seeks licensure or renewal of a license pursuant to this chapter.

(3) ‘Branch office’ means an additional location in which a licensee actively conducts business authorized by the license.

(4) ‘Collection activity’ means an activity which relates directly or indirectly to practices provided in subsection (10).

(5) ‘Communication’ means the conveyance of information regarding a debt to another person.

(6) ‘Consumer’ means:

(a) a natural person obligated or allegedly obligated to pay a debt incurred primarily for a personal, family, or household purpose;

(b) a consumer as defined in Section 37‑1‑301(10);

(c) a consumer’s spouse, guardian, executor, agent, or administrator; or

(d) the parent of a minor consumer.

(7) ‘Conviction’ means an adjudication of guilt by a court resulting from a trial or plea.

(8) ‘Creditor’ means an individual as defined in Section 37‑1‑301(13). ‘Creditor’ also includes a lessor in a consumer rental‑purchase agreement as defined in 37‑2‑701.

(9) ‘Debt’ means an obligation of a consumer to pay money arising out of a transaction primarily for personal, family, or household purposes, whether or not this obligation has been reduced to judgment.

(10)(a) ‘Debt collection agency’ means a:

(i) person who regularly collects or attempts to collect a debt owed or asserted to be owed another;

(ii) person who furnishes a collection system carrying a name that simulates the name of a debt collector and who supplies forms for use by a creditor despite the fact that the forms direct the debtor to make payments directly to the creditor;

(iii) creditor who, in the process of collecting a debt owed to the creditor, uses a name other than the creditor’s own to indicate a third person is collecting or attempting to collect the debt;

(iv) person regularly engaged in the enforcement of security interests securing debts; or

(v) person who regularly collects or attempts to collect, directly or indirectly, a debt owed for the person’s own account if the indebtedness was acquired from another person and the indebtedness was either delinquent or in default at the time it was acquired.

(b) Collection activities are conducted in this State if a debt collection agency, its employees, or its agents are located in this State or collect or attempt to collect a debt from a consumer located in this State.

(c) Debt collection agency does not mean a person who:

(i) engages in soliciting claims for collection or collecting, or attempting to collect, claims on behalf of a licensee pursuant to this chapter if employed by the licensed debt collection agency;

(ii) collects or attempts to collect claims for one employer if all collection efforts are carried on in the employer’s name and if the individual is employed by the employer;

(iii) conducts collection activities in his true name that are confined and directly related to the operation of the business if the business is that other than a debt collection agency;

(iv) acts on behalf of another only by preparing or mailing periodic billing statements;

(v) acts as a debt collector for another person with whom the debt collector is related by common ownership or corporate control, if the debt collector does so only for a person to whom the debt collector is so related or affiliated and if the principal business of the person is not debt collection;

(vi) acts as a bona fide credit counseling organization licensed pursuant to Title 37 and who assists consumers in the liquidation of the consumer debts by receiving or taking control of a consumer’s funds for distribution to the consumer’s creditors;

(vii) acts as an attorney at law, licensed to practice law in this State, and has a meaningful involvement in the regular collection of or attempted collection of debts in this State or from a consumer located in this State; or

(vii) engages in collection activities on behalf of a claimant agency pursuant to, and in accordance with, Title 12, Chapter 56.

(11) ‘Debt collector’ means a debt collector as defined in Section 37‑1‑301(28).

(12) ‘Department’ means the South Carolina Department of Consumer Affairs.

(13) ‘Licensee’ means a person licensed pursuant to this chapter.

(14) ‘Person’ means a person as defined in Section 37‑1‑301(20).

(15) ‘Principal place of business’ means the primary executive office of a business entity.

(16) ‘Revocation’ means the withdrawal or termination of a license to act as a debt collection agency or to prohibit the renewal of the license on a permanent or temporary basis.

(17) ‘Suspension’ means the withdrawal or termination of a license of a debt collection agency for less than one year.

(18) ‘Verification’ means providing a consumer with sufficient evidence that the information disputed by the consumer is true and accurate information as it relates to that consumer. The evidence must be transmitted in a manner accessible to the consumer and capable of being retained by the consumer.

Section 37‑12‑30. (A) A person may not act as a debt collection agency or engage in collection activities as defined by 37‑12‑20(4) and (10) without obtaining a license issued by the department pursuant to this chapter. A person who seeks a written opinion from the department regarding the applicability of this chapter to its business operations must submit a request in writing accompanied by a nonrefundable fee of twenty‑five dollars.

(B) A person who acts as a debt collection agency on the effective date of this chapter may continue to engage in the business without a license until the department has acted upon the application for a license if the person files an application within sixty days of the effective date of this chapter.

Section 37‑12‑40. (A) A person required to obtain a license shall apply to the department on forms prescribed by the department. An application must be made in writing, under oath, and include:

(1) the name and address of each owner, partner, member, officer, and director of the applicant;

(2) a description of the ownership interest of each owner, partner, member, officer, director, and employee;

(3) an audited financial statement for the applicant from the preceding fiscal year;

(4) a surety bond as required in Section 37‑12‑50;

(5) written consent to a criminal records check. Each owner, partner, member, officer, and director of the applicant must undergo a criminal records check, supported by a set of fingerprints supplied in a manner prescribed by the South Carolina Law Enforcement Division (SLED), by SLED for a state criminal records check, and by the Federal Bureau of Investigation (FBI) for a national criminal records check. The results of these criminal records checks must be reported to the department. The department shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines;

(6) the proposed name under which the licensee intends to operate;

(7) the street address, mailing address, and telephone numbers of the principal location at which the business is to be conducted;

(8) the street address, mailing address, and telephone numbers of all branch offices; and

(9) a personal composite credit report that is less than ninety days old for each owner, partner, member, officer, and director of the applicant.

(B) An application must be accompanied by a nonrefundable investigation fee of five hundred dollars and a nonrefundable annual license fee of seven hundred fifty dollars. The actual cost of obtaining credit reports and national and state criminal record checks by the FBI and SLED must be paid directly to the required entity.

(C) Upon the filing of a complete application for a license and payment of required fees, the department shall determine if licensure requirements are satisfied. If the department finds that the financial responsibility and condition, character, qualifications, and general fitness of the applicant, and of the members or partners if the applicant is a copartnership, association, or limited liability company, and of the officers and directors if the applicant is a corporation, command the confidence of the community and warrant belief that the business may be operated honestly, fairly, and in accordance with applicable state and federal laws, the department shall issue the applicant a license. Otherwise, the department shall deny an application for licensure and notify the applicant of the denial.

(D) The department shall reject an application not sufficient in form or substance and provide written notification to an applicant explaining the reasons for its refusal. The refusal must be without prejudice to the filing of a new application.

(E) The department’s evaluation of an application must consider the criminal record of an individual applicant or partner, officer, director, or member of an applicant. The department may not grant a license to an attorney who is not licensed and in good standing with this State’s bar.

Section 37‑12‑50. (A) A debt collection agency shall file and maintain a surety bond with the department before conducting business. The bond must be:

(1) executed for the following amounts based on the total value of South Carolina accounts in possession of the licensee in the previous year:

Annual South Carolina Accounts Amount of Bond

$0 – 99,999 $15,000

$100,000 – $250,000 $30,000

$250,001 – $500,000 $45,000

$500,001 – $1,000,000 $60,000

More than $1,000,000 $150,000

(2) approved by the department;

(3) executed by a surety company authorized by the laws of this State to transact business within this State;

(4) executed to this State;

(5) for the use of the State and a consumer with a cause of action against the debt collection agency;

(6) maintained for three years after revocation, denial, or failure to renew the agency’s license; and

(7) continued in form and remain in full force and effect concurrently with the license unless terminated or canceled by action of the surety as provided in subsection (B).

(B) Upon receiving notice that a surety company intends to withdraw as surety of a licensee, the department shall notify the licensee of the surety company’s intention. The department shall provide the licensee with this notice within forty‑five days of receipt of notice from the surety company. A licensee’s license becomes revoked upon the termination of the bond by the surety company unless, prior to termination, the licensee files a new bond with the department.

Section 37‑12‑60. (A) A license remains valid for one year and expires on the thirty‑first of October or at another time the department designates. An application must be submitted no later than thirty days before the expiration date and must be accompanied by a nonrefundable annual license fee of seven hundred fifty dollars. The department shall assess a delinquency fee of fifty dollars for each day a renewal application is overdue.

(B) A license must plainly state the name and business address of the licensee. In the event of the loss or destruction of a license, a licensee may obtain a duplicate license from the department by filing an affidavit explaining its loss or destruction and paying a fee of twenty dollars. A duplicate license must bear the date and number of the license it replaced.

(C) The department, by order, may refuse to issue or renew a license or may revoke or suspend a license if:

(1) an applicant or licensee is not authorized by the Secretary of State or another entity to do business in this State, if the applicant is required to be authorized;

(2) an applicant, licensee, owner, partner, member, officer, director, or other person occupying a similar status or performing similar functions, or a person directly or indirectly controlling an applicant or licensee:

(a) has filed an application for license that contained a statement that is false or misleading with respect to a material fact;

(b) has violated or failed to comply with a provision of this chapter, regulation promulgated pursuant to this chapter, or an order of the department;

(c) has been convicted of, or pled guilty or nolo contendere to, a felony, or, within the past ten years, a misdemeanor involving collection activities or a related business, or an offense involving breach of trust or fraudulent or dishonest dealing, or money laundering in a domestic, foreign, or military court;

(d) is enjoined permanently or temporarily by a court of competent jurisdiction from engaging in or continuing conduct or practice involving collection activities or a related business;

(e) is the subject of an order of the department denying, suspending, or revoking that person’s license;

(f) is the subject of an order entered by the authority of a state or federal governmental entity with jurisdiction over the debt collection agency or collection agency related industry;

(g) does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or bond requirements, provided in this chapter;

(h) has been the executive officer or controlling shareholder or owned a controlling interest in a debt collection agency or collection agency related business that has been subject to an order or injunction described in subitem (d), (e), or (f) of this item;

(i) has failed to pay the proper filing or renewal fee provided in this chapter or a fine or fee imposed by a governmental entity;

(j) has not reached the age of eighteen.

Section 37‑12‑70. (A) A licensee must complete twenty‑four hours of continuing professional education each year and must earn at least twelve of the twenty‑four hours in a live instructional setting. The continuing education requirements must be met by:

(1) the owner of a sole proprietorship;

(2) all partners in a partnership; or

(3) a member, officer, or other designee of a limited liability company or a corporation that actively participates in the organization’s management.

(B) A licensee must report the continuing professional education completed to the department annually on a form approved by the department. The form must indicate the date, title, instructor, sponsor, and credit hours claimed for coursework completed. A course taught in a live classroom setting may provide one hour of continuing professional education credit for every fifty minutes of classroom instruction. A course sponsor shall maintain attendance records for two years following the date on which it provided the course.

(C) A licensee shall maintain documentation of coursework that an owner, partner, member, officer, or designee of the licensee completed to satisfy the requirements of this section for a period of two years from the date on which the owner, partner, member, officer, or designee completed the coursework. The documentation must consist of certification by the teacher or sponsor of the course indicating the recommended number of credit hours awarded. The department may inspect this documentation during the period the documentation is maintained by the licensee.

(D) The department shall:

(1) offer continuing professional education courses to assist licensees in satisfying the requirements of this chapter; and

(2) appoint a panel comprised of one representative of the department and two licensed members of the debt collection agency industry to approve courses offered by sponsors other than the department. The panel may conduct its meetings by way of a conference call. The department shall develop a questionnaire to ascertain the interest and background of potential members of this panel.

(E) The department immediately shall suspend the license of a licensee who fails to complete the continuing professional education requirement in a timely manner and may not renew the license until the licensee demonstrates compliance with the continuing professional education requirements and, if the license expired, pays a penalty of no more than one hundred dollars. If more than sixty days have lapsed since the license expired, the debt collection agency must apply for a license pursuant to Section 37‑12‑40.

(F) A licensee may request an administrative hearing to appeal the suspension of his license for failure to satisfy continuing professional education requirements.

Section 37‑12‑80. (A) Within ten business days after the occurrence of any of the following events, a licensee shall file a written report with the department describing the event and its expected impact on the licensee’s business:

(1) a filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

(2) an institution of a revocation, suspension, or other proceeding against the licensee by a governmental authority of this State, another state, or the federal government that is related to the licensee’s collection activities;

(3) an institution of legal action on behalf of a consumer or consumers against the licensee or against a partner, member, officer, director, or equivalent of the licensee that is related to the licensee’s collection activities or to the partner, member, officer, director, or equivalent person’s involvement in the business of debt collection;

(4) a felony indictment or conviction of a licensee or its owner, partner, member, officer, director, trustee, beneficiary, or principal;

(5) an opening of a new branch office;

(6) a transfer, issuance, cancellation, or redemption of stock voting rights or membership amounting to ten percent or more of the total voting stock or memberships outstanding; or

(7) other events the department may prescribe by regulation.

(B) A licensee shall provide written notice to the department within thirty days of:

(1) obtaining a court approved settlement or entry by a court of a judgment in a civil action against the licensee; or

(2) the resolution, by any means, of an action or proceeding against the licensee by a governmental authority.

(C) A licensee shall, within ten days of changing the street address or business name stated in his license, deliver the license to the department, provide written notice of the change, and submit a duplicate license fee of twenty dollars to the department. The department shall enter the change or changes in its records, retain and file the surrendered license, and issue a duplicate license with the new information and the date and number of the surrendered license. The department shall suspend a license on the tenth day following the expiration of the time prescribed in this section if the license has not been delivered to the department.

(D) A licensee shall file a new application pursuant to this section within ten business days of a change in:

(1) twenty‑five percent or more in the ownership or management of a limited liability company or corporation holding a license; or

(2) the composition of a partnership holding a license.

(E) A licensee shall report annually to the department a summary of collection activities conducted by the licensee during the previous calendar year. The report must be:

(1) filed with the department before April fifteenth;

(2) made on a form prescribed by the department; and

(3) made under oath.

(F) The department may require a licensee who fails to comply with this section to pay a late penalty fee of fifty dollars for each day a report or required notice is overdue.

Section 37‑12‑90. (A) A licensee shall:

(1) maintain in its office complete and accurate books, accounts, and records for the department to determine if the licensee is complying with the provisions of this chapter. Records must be maintained for at least three years after the debt collection agency has ceased collection of a consumer’s account;

(2) maintain books, accounts, and records from other businesses in which the organization is involved separate from those required in item (1); and

(3) retain its books, accounts, and records for three years at its principal place of business or another appropriate location if a licensee’s license is terminated, canceled, or revoked.

(B) A licensee shall maintain records containing all consumer information including an account allegedly owed by the consumer, payments made on the account, charges made to the account, and relevant correspondence.

(C) A licensee shall retain a record of each employee’s first name, last name, and no more than one alias that must consist of a first and last name. An employee may not use the alias of another employee. A licensee shall retain these records for three years after the termination of an employee.

Section 37‑12‑100. (A) The department may enforce the provisions of this chapter and investigate a suspected violation.

(B) The department’s investigation may require a licensed person, unlicensed person, or an applicant to:

(1) respond to questions concerning activities regulated pursuant to this chapter; and

(2) provide relevant records, which must be made available to the department within three business days of a request unless the department grants an extension. The department may inspect records on site. A licensee shall pay reasonable and necessary expenses for the department to examine records located outside of this State.

Section 37‑12‑110. A licensee shall provide written notice to a consumer and the consumer’s creditor when the consumer satisfies his debt. The notice must be provided within twenty days of the satisfaction and must include:

(1) the names of the original creditor and the current creditor, if different;

(2) the name and address of the consumer;

(3) the amount of the original debt;

(4) the amount satisfied; and

(5) a statement that the debt is satisfied.

Section 37‑12‑120. A licensee that dissolves or otherwise ceases collection activities in this State must notify the department at least seven days in advance of dissolution. The notification must contain a withdrawal plan that includes a timetable for disposition of the business, and the location in which books, records, and accounts will be maintained until the end of the retention period.

Section 37‑12‑130. (A) A licensee’s initial written notification with a consumer must include:

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) the name and contact information of the original creditor;

(4) the date or dates in which the debt or debts were incurred;

(5) a statement informing the consumer that:

(a) the consumer shall dispute the validity of the debt, or any part of the debt, within thirty days of receiving notice of the debt or the debt will be considered valid by the licensee; and

(b) if the consumer notifies the licensee in writing within thirty days after receiving notice that the consumer disputes the debt, the licensee shall obtain verification of the debt or a copy of the judgment against the consumer and the debt collection agency shall mail a copy of the verification or judgment to the consumer;

(6) the licensee’s license number;

(7) a conspicuous statement in at least 10‑point, boldface type that states: ‘You may contact the South Carolina Department of Consumer Affairs if you have complaints concerning a debt collection agency’. The department’s current phone number, mailing address, and Internet website address must be included;

(8) a conspicuous statement in at least 10‑point, boldface type that states: ‘You have the right to request in writing that a debt collection agency cease further communication with you. A written request to cease communication will not prohibit the debt collection agency from taking any other action authorized by law to collect a debt’; and

(9) if the statute of limitations has expired on the debt that the debt collection agency is collecting or attempting to collect, the statement provided in Section 37‑12‑140(B).

(B) The information listed in subsection (A) must be included in the licensee’s initial written communication with a consumer regarding the collection of a debt. If a licensee’s initial communication with a consumer regarding the collection of a debt is made in a manner other than written communication, a licensee shall send a consumer written notice within five days of the initial communication.

(C) A licensee shall suspend collection of a debt if a consumer notifies the licensee within the thirty‑day period that the consumer disputes the debt. The licensee may not resume collection until the licensee obtains and submits verification of the debt or a copy of the judgment to the consumer.

(D) A court may not construe a consumer’s failure to dispute the validity of a debt pursuant to this section as the consumer’s admission of liability for the debt.

(E) A licensee may not communicate credit information to a consumer reporting agency within thirty–five days after the licensee mails the initial written notice to a consumer unless the consumer’s last known address is invalid.

Section 37‑12‑140. (A) Each written communication to a consumer regarding the collection of a debt must include the following:

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) the name and contact information of the original creditor;

(4) the date or dates in which the debt or debts were incurred;

(5) the licensee’s license number;

(6) a conspicuous statement in at least 10‑point, boldface type that states: ‘You may contact the South Carolina Department of Consumer Affairs if you have complaints concerning a debt collection agency’. The department’s current phone number, mailing address, and Internet website address must be included;

(7) a conspicuous statement in at least 10‑point, boldface type that states: ‘You have the right to request in writing that a debt collection agency cease further communication with you. A written request to cease communication will not prohibit the debt collection agency from taking any other action authorized by law to collect a debt’; and

(8) if the statute of limitations has expired on the debt that the debt collection agency is collecting or attempting to collect, the statement provided in subsection (B).

(B) Prior to communicating or attempting to communicate with a consumer regarding the collection of a debt on which the statute of limitations has expired, a licensee must provide the consumer with a conspicuous statement in at least 10‑point, boldface type that states: ‘We are required by law to give you the following warning about payments on this debt. The statute of limitations prohibits a creditor from taking legal action, including using arbitration or suing you, to make you pay this debt. BE AWARE that if you voluntarily pay anything toward this debt, this payment can restart the creditor’s right to take legal action to make you pay the entire debt’.

Section 37‑12‑150. (A) A licensee who receives payment from a consumer who owes multiple debts shall apply the payment as the consumer instructs and may not apply the payment to a debt disputed by the consumer.

(B) A licensee that receives payment from a consumer must furnish an original receipt or a duplicate of the original receipt to the consumer. The licensee must retain a copy of the receipt in its office for a period of three years after the receipt is issued. A receipt must:

(1) be prenumbered by the printer, used, and filed in consecutive numerical order;

(2) include the name, street address, and license number of the licensee;

(3) include the name of the creditor for whom collected;

(4) include the amount and date of the payments made to the account; and

(5) include the last name of the person accepting payment.

(C) A licensee who orally receives a consumer’s authorization for payment of a debt also must:

(1) obtain the consumer’s written authorization for the payment prior to the payment date; or

(2) record by audio tape or digital means the consumer’s verbal authorization and retain the recording for a period of three years; and

(3) send the consumer to another employee of the licensee to verify the amount of the payment, the means by which the payment is made, and the consumer’s verbal authorization for payment. The licensee must maintain a detailed record of the authorization and verification for a period of three years.

(D) A licensee shall refund a consumer’s payment within five days of a dispute if:

(1) a licensee does not comply with subsections (B) or (C); and

(2) the consumer disputes the purported authorization within sixty days of the payment.

(E) A licensee shall provide a written account statement to the consumer within ten days of a written request. The statement must include the:

(1) consumer’s name;

(2) creditor’s name;

(3) amounts paid by the consumer;

(4) dates on which the creditor received the payments;

(5) allocation of money to principal, interest, court costs, attorney fees, and other costs as applicable; and

(6) the total outstanding balance at the end of the period covered by the statement.

(F) A licensee shall provide the consumer one account statement annually at no charge, and additional statements upon the consumer’s request and payment of a fee not to exceed two dollars per statement.

Section 37‑12‑160. A licensee or other person engaged in collection activities is subject to the provisions of the South Carolina Unconscionable Debt Collection Practices Act as provided in Section 37‑5‑108.

Section 37‑12‑170. (A) A debt collection agency may not:

(1) violate a provision of this chapter;

(2) commit fraud or make a wilful misrepresentation in its application;

(3) transfer or attempt to transfer a license except as permitted in Section 37‑12‑80;

(4) fail or refuse to cooperate with an investigation by the department pursuant to this chapter;

(5) report solely in its own name credit or debt information to a consumer reporting agency;

(6) share or have a common waiting room with a practicing attorney or lending institution;

(7) contact a consumer at the consumer’s place of employment if the debt collection agency knows or has reason to know that the consumer’s employer prohibits the consumer from receiving the communication;

(8) communicate with the consumer with respect to the debt if a consumer notifies the debt collection agency in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collection agency to cease further communication with the consumer, except:

(a) to advise the consumer that the debt collection agency’s further efforts are being terminated;

(b) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by a debt collection agency or creditor; or

(c) when applicable, to notify the consumer that the debt collection agency or creditor intends to invoke a specified remedy;

(9) make the false representation or implication that a sale, referral, or other transfer of an interest in a debt causes the consumer to lose a claim or defense to payment of the debt;

(10) threaten to communicate to a person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;

(11) use false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer;

(12) fail to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collection agency is attempting to collect a debt and that information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collection agency, except that this paragraph does not apply to a formal pleading made in connection with a legal action;

(13) use any language or symbol, other than the debt collection agency’s address, on an envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collection agency may use its business name if the name does not indicate that it is in the debt collection business;

(14) in an attempt to bring legal action on a debt against a consumer fail to:

(a) in the case of an action to enforce an interest in real property securing the consumer’s obligation, bring the action only in a judicial district or similar legal entity in which the real property is located; or

(b) in the case of an action not described in subitem (a), bring the action only in the judicial district or similar legal entity:

(i) in which the consumer signed the contract sued upon; or

(ii) in which the consumer resides at the commencement of the action.

(c) nothing in this section may be construed to authorize the initiation of legal action by debt collectors;

(15) design, compile, or furnish a form knowing that the form would create the false belief in a consumer that a person other than the creditor of the consumer is participating in the collection of or in an attempt to collect a debt the consumer allegedly owes the creditor, which in fact the person is not participating;

(16) in collection letters or publication, or in an oral or written communication, imply or suggest that health care services will be withheld in an emergency situation;

(17) fail to ensure that national credit reporting agencies are provided with accurate information concerning each consumer who owes a debt;

(18) continue to contact a consumer in an attempt to collect a debt after a court of competent jurisdiction has entered a judgment in favor of the debt collection agency or creditor for whom the debt collection agency accepted the account for collection, except as otherwise required or permitted by law; and

(19) take or attempt to take legal action to collect a debt on which the statute of limitations has expired.

Section 37‑12‑180. (A) A person who violates the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than twelve months, or both, for each offense. Each violation is considered a separate offense.

(B) A consumer injured or damaged by a violation of this chapter or regulation promulgated pursuant to this chapter may initiate a civil action to recover:

(1) actual damages sustained;

(2) statutory damages of not less than two thousand dollars and not more than five thousand dollars for each violation;

(3) punitive damages; and

(4) reasonable attorney’s fees and other costs associated with the action. In determining attorney’s fees, the amount of the recovery on behalf of the consumer is not controlling.

(C) In addition to other penalties that may be imposed, a consumer injured or damaged by a violation of this chapter or regulation promulgated pursuant to this chapter may initiate a civil action to recover from a person who wilfully violates a provision of this chapter:

(1) three times the amount of actual damages sustained;

(2) statutory damages of not less than three thousand dollars and not more than ten thousand dollars for each violation;

(3) punitive damages; and

(4) reasonable attorney’s fees and other costs associated with the action. In determining attorney’s fees, the amount of the recovery on behalf of the consumer is not controlling.

(D) A person must commence an action initiated pursuant to this section within three years from the date on which he discovered or reasonably should have discovered the facts giving rise to the claim.

(E) The remedies provided by this section are cumulative and in addition to remedies otherwise available.

Section 37‑12‑190. (A) The administrator may conduct routine examinations of the books and records of any person to determine compliance with this chapter, regulations promulgated thereunder, or orders of the department.

(B) The department may issue an administrative order that requires a person to cease and desist if it is determined that the person has violated, is violating, or will violate a provision of this chapter, a regulation promulgated by the department, or an order of the department.

(C) The department may issue an administrative order that requires a person to refund or reimburse monies received in violation of this chapter or taken as a result of a false, misleading, or deceptive representation. This order may be issued by the department in conjunction with a cease and desist order pursuant to subsection (B) of this section.

(D) The department may issue an administrative order imposing an administrative penalty against a person found to have violated a provision of this chapter, a regulation promulgated by the department, or an order of the department, in an amount not to exceed ten thousand dollars for each offense. Each violation is considered a separate offense.

(E) A person who is aggrieved by an administrative order of the department may request a contested case hearing before the Administrative Law Court in accordance with the court’s rules of procedure. If the person fails to request a contested case hearing within the time provided by the court’s rules of procedure, the administrative order becomes final and the department may bring an action to enforce its order pursuant to Title 1, Chapter 23, Code of Laws of South Carolina, 1976.

(F) The department may increase the required bond upon finding that the licensee has engaged intentionally, recklessly, or repeatedly in a course of conduct in violation of this chapter, a regulation promulgated by the department, or an order of the department.

(G) In addition to the powers and duties provided in this chapter, the department has the powers and duties granted to the Administrator in Part 1 of Chapter 6, Title 37 to administer and enforce the provisions of this chapter and may promulgate regulations necessary to effectuate the purposes of this chapter.

Section 37‑12‑200. A violation of a provision of this chapter is considered a violation of Section 39‑5‑20 of the South Carolina Unfair Trade Practices Act. A remedy rendered pursuant to Section 39‑5‑20 of the South Carolina Unfair Trade Practices Act is cumulative of and in addition to those available pursuant to this chapter.

Section 37‑12‑210. A debt collection agency shall comply with applicable state and federal statutes, rules, and regulations.

Section 37‑12‑220. The department may use a fee or fine collected pursuant to this chapter to administer the provisions of this chapter.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect September 1, 2011.

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