

## THE LAW ON DEBT COLLECTION

### WHAT IS A CREDITOR?

A creditor is someone you owe money to. This can be a business or a person. A creditor can collect its own debts.

### WHAT IS A DEBT COLLECTOR?

A debt collector is a person or business trying to get back money or property. A third party collector, such as a collection agency, regularly collects debts owed to others.

### WHY DO WE HAVE DEBT COLLECTION LAWS?

Debt collection laws are in place to protect you against debt collectors who will harass you or use other improper ways of getting you to pay your debts.

### DO CREDITORS OR DEBT COLLECTORS HAVE TO FOLLOW ANY LAWS?

YES! In fact, they must follow both state and federal laws. The federal law is called the Fair Debt Collection Practices Act (FDCPA). South Carolina also has a state law to protect you against abusive debt collection.

### WHAT DO THESE LAWS MEAN FOR ME?

These laws mean that debt collectors must treat you fairly and tell you the truth about your debts. Debt collectors cannot threaten you to make you pay your debts.

### FEDERAL LAW: FAIR DEBT COLLECTION PRACTICES ACT

This law only applies to Third Party Collectors. It covers debts for personal, family, or household needs. After a creditor contacts you for the first time, it has 5 days to tell you in writing (1) how much you owe, (2) to whom you owe, and (3) what to do if you disagree with the debt. This must be written on the front of the paper they send you. If you think they are wrong you may ask them to prove in writing that you owe them money. They must send this 30 days after you ask. They also have to tell the credit bureau that you disagree with the debt. You can write your creditor and ask them to end contact.

### THE FDCPA MAKES IT ILLEGAL TO:

#### HARASS YOU, FOR EXAMPLE:

- Threaten you with harm
- Threaten to get you fired
- Threaten to put you in jail
- Use obscene language
- Call too much or call before 8 am and after 9 pm
- Put you on a list of people who refuse to pay their debts

Make false statements, such as claiming:

- They are lawyers or government workers
- They are from a credit bureau
- You are a criminal
- You owe something more than you actually owe
- They will sue you if they do not, garnish (take, hold) your wages (which is illegal in SC), or arrest you

Use unfair practices, such as:

- Collecting more than you owe
- Demanding a post-dated check, or depositing a post-dated check without telling you
- Lying to get you to accept collect calls or telegrams
- Contacting you by postcard
- Being tricky
- Telling anyone about your debt

## **STATE LAW: SC CONSUMER PROTECTION CODE**

South Carolina law covers third party collectors AND creditors collecting their own debts. It provides many of the same protections as the federal law.

### **CONTACT**

South Carolina law says that you can't stop creditors from contacting you at home, but you can write them and ask them to stop contacting you at work.

There are other laws that protect you in this situation. Other actions that debt collectors take that would be against these other laws include:

- Invasion of privacy
- Intentional infliction of emotional distress, such as making you so mad or scared that you become sick.
- Libel, or writing false things about you
- Slander, or saying false statements
- Abuse of process, or using criminal process to scare you.

### **WHAT HAPPENS WHEN A DEBT COLLECTOR BREAKS THE LAW?**

You may be able to get back money or property that they took from you unfairly. It is even possible that the court might make the debt collector pay you damages as a punishment. You probably need a lawyer to help you do this.

The federal law gives you the right to sue a collector in court. Under South Carolina law, you must first notify the Department of Consumer Affairs that you plan to sue the creditor before going to court.

If you win your case, the debt collector may have to pay your court costs and attorney's fees. However, if you bring a case knowing that the debt collector acted fairly, you could be charged the debt collector's court costs and attorney's fees.

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