

HOUSE BILL NO. 444
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Delegate Simon)

A BILL to amend the Code of Virginia by adding in Title 8.01 a chapter numbered 17.4, consisting of sections numbered 8.01-465.26 through 8.01-465.34, relating to Uniform Consumer Debt Default Judgments Act established.

Be it enacted by the General Assembly of Virginia:

10 1. That the Code of Virginia is amended by adding in Title 8.01 a chapter numbered 17.4, consisting of
11 sections numbered 8.01-465.26 through 8.01-465.34, as follows:

CHAPTER 17.4.

UNIFORM CONSUMER DEBT DEFAULT JUDGMENTS ACT.

§ 8.01-465.26. Definitions.

15 *For purposes of this chapter, unless the context requires a different meaning:*

16 "*Charge off*" means a creditor's removal of a consumer debt as an asset from the creditor's financial
17 records.

18 "Complaint" means a warrant in debt or civil claim filed to recover a consumer debt according to the
19 jurisdictional amount.

20 "Consumer" means an individual named as a defendant in an action for collection of consumer debt.

21 "*Consumer debt*" means an obligation or alleged obligation of an individual to pay money that arises out
22 of a transaction in which the money, property, insurance, or service that is the subject of the transaction is
23 primarily for a personal, family, or household purpose.

"Creditor" means a person to which a consumer debt is owed at the time of the charge off or, if the consumer debt was not charged off, at the time of default. "Creditor" includes a person that acquired charged-off debt as an incidental part of acquiring a portfolio of debt that is predominantly not charged off, provided that the acquirer is the person to whom the debt was owed at the time of charge off, or if the debt was not charged off, at the time of default.

29 "Default" means, except as used in the term *default judgment*, a failure to satisfy a consumer debt that
30 gives rise to an action to which this chapter applies.

31 "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
32 electromagnetic, or similar capabilities.

33 "Finance charge" means the same as that term is defined in § 106 of the Truth in Lending Act, 15 U.S.C. §
34 1605.

35 "Outstanding balance" means the amount owed on a consumer debt (i) at the time of the charge off or, if
36 the consumer debt was not charged off, at the time of default or (ii) after disposition of property that secured
37 the debt.

38 "Person" means an individual, estate, business or nonprofit entity, government or governmental
39 subdivision, agency, or instrumentality or other legal entity.

40 "Record" means information (i) inscribed on a tangible medium or (ii) stored in an electronic or other
41 medium and retrievable in perceivable form.

42 "Secured consumer debt" means consumer debt secured by real or personal property.

43 "Sign" means, with present intent to authenticate or adopt a record, to (i) execute or adopt a tangible
44 symbol or (ii) attach to or logically associate with the record an electronic symbol, sound, or process.

45 "Unsecured consumer debt" means a consumer debt not secured by real or personal property.

46 **§ 8.01-465.27. Scope.**

47 A. Except as provided in subsection B, this chapter shall apply to the award of a default judgment in an
48 action for the collection of (i) an unsecured consumer debt; (ii) a secured consumer debt if the action is
49 brought solely to obtain a money judgment; or (iii) a deficiency that remains after disposition of property that
50 secured a consumer debt.

51 B. The provisions of this chapter shall not apply to an action to (i) take possession or dispose of real or
52 personal property, even if such action includes a request for a money judgment or (ii) collect a debt owed to
53 a government, governmental subdivision, or agency in which the government, governmental subdivision, or
54 agency is the plaintiff.

55 **§ 8.01-465.28. Complaint requirements.**

56 A. A default judgment in an action to which this chapter applies shall be entered only if the complaint or
57 amended complaint complies with the provisions of this section and includes the notice required pursuant to
58 § 8.01-465.29.

59 B. The complaint or amended complaint shall state:

60 1. Each name and address of the consumer in the records of the creditor at the time of charge off or, if the
61 consumer debt was not charged off, at the time of default;

62 2. The name of the creditor, including any merchant brand, affinity brand, or facility name associated
63 with the consumer debt;

64 3. At least the last four digits of the account number or other account identifier used in communicating
65 with the consumer before charge off or, if the consumer debt was not charged off, before default;

66 4. The date and amount of the last payment;

67 5. The date of charge off or, if the consumer debt was not charged off, the date of default;

68 6. The amount of the outstanding balance;

69 7. The amount of the judgment sought by the plaintiff, itemizing the outstanding balance and any of the
70 following amounts not included in the outstanding balance (i) total finance charges, (ii) total fees or costs,
71 (iii) total attorney fees, and (iv) total credits and payments;

72 8. A statement as to whether the amount of the judgment may increase due to accrued interest, fees, or
73 other charges;

74 9. The authority of the plaintiff to bring the action;

75 10. Facts sufficient to demonstrate that the action is being commenced in a proper venue;

76 11. Facts sufficient to demonstrate that the action is being commenced within the applicable statute of
77 limitations; and

78 12. Unless the plaintiff is the creditor, (i) the name of each person that acquired ownership of the debt
79 after charge off, or, if the consumer debt was not charged off, after default; and (ii) the date of each such
80 acquisition of the consumer debt.

81 C. Subject to authentication as may be required by law or the Rules of the Supreme Court of Virginia, the
82 plaintiff shall attach to the complaint or amended complaint a copy of:

83 1. At least one of the following that is sufficient to demonstrate the existence of the consumer debt:

84 a. An agreement signed by the consumer;

85 b. A record of a purchase, payment, or use of an account; or

86 c. A record otherwise demonstrating that the consumer debt was incurred; and

87 2. If the plaintiff is not the creditor, documentation sufficient to demonstrate the authority of the plaintiff
88 to collect the consumer debt.

89 **§ 8.01-465.29. Consumer notice.**

90 A. A default judgment in an action to which this chapter applies shall only be entered if the complaint or
91 amended complaint is accompanied by a separate notice warning that a default judgment may be awarded
92 against the consumer.

93 B. The notice shall be in a record substantially similar to the form set forth in subsection C and shall
94 state:

95 1. *That if the consumer does not file an answer to the complaint or amended complaint within the time
96 and in the manner indicated in the summons or does not appear for the hearing referred to in the summons, a
97 default judgment may be entered against the consumer;*

98 2. *That if such default judgment is entered against the consumer, the amount of the judgment, plus
99 interest, remains in effect for at least 10 years, even if the judgment no longer remains on the consumer's
100 credit report;*

101 3. *That after entry of a default judgment, the plaintiff may, as permitted by relevant provisions of law, take
102 steps to recover such judgment by initiating an action for (i) the judicial sale of the consumer's real property;
103 (ii) requesting that the court issue a writ of fieri facias or writ of possession for the seizure or sale, or both, of
104 the personal property of the consumer; (iii) attachment of specific personal property; or (iv) garnishment;*

105 4. *That entry of a default judgment may impair access to employment, insurance, credit, or housing;*

106 5. *That an attorney may provide assistance in understanding the complaint or amended complaint and
107 advice about what action to take in response to such complaint or amended complaint; and*

108 6. *Contact information for a legal aid or attorney referral service that may assist the consumer in finding
109 an attorney who may provide free or reduced cost legal services.*

110 C. *The following notice meets the requirements of this section:*

111 CONSUMER NOTICE

112 WARNING

113 IF YOU DO NOT ACT, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU

114 1. *Why am I getting this Notice?*

115 You are getting this notice because (name of plaintiff) says you owe money. (Name of plaintiff) has filed a
116 lawsuit against you to collect the money you owe.

117 2. *What will happen if I do nothing?*

118 If you do not [] file a response to the lawsuit and/or [] appear at the hearing on the date and time
119 indicated on the attached summons, a judgment may be entered against you.

120 3. *What happens if a judgment is entered against me?*

121 The law provides multiple methods for a creditor to recover money against you. Your property may be
122 taken and sold, money may be taken directly from your bank account, your wages may be garnished, or a lien
123 may be put on your house or other real estate or your real estate may be sold.

124 If the judgment is not paid in full, the amount due may grow because of interest charges.

125 You will owe the amount of the judgment for at least 10 years, even if it no longer appears on your credit

126 *report.*

127 *The judgment may make it harder for you to get a job or insurance and more expensive for you to get a
128 loan or credit card, rent an apartment, or buy a house or car.*

129 *4. Is help available?*

130 *Talk with a lawyer. A lawyer can explain the situation and help you decide what to do. The following
131 office may be able to help you find a lawyer (name and contact information of legal aid or attorney referral
132 service).*

133 **§ 8.01-465.30. Waiver void.**

134 *A waiver by a consumer of any requirement of this chapter shall be deemed void. However, the provisions
135 of this section shall not prevent a voluntary settlement agreement or judgment between the parties that does
136 not result in a default judgment.*

137 **§ 8.01-465.31. Relation to other law.**

138 *The provisions of this chapter supplement all rights and remedies available to a consumer under any
139 other law of the Commonwealth.*

140 **§ 8.01-465.32. Uniformity of application and construction.**

141 *In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law
142 among jurisdictions that enact it.*

143 **§ 8.01-465.33. Relation to Electronic Signatures in Global and National Commerce Act.**

144 *This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce
145 Act, 15 U.S.C. § 7001 *et seq.*, but shall not modify, limit, or supersede 15 U.S.C. § 7001(c) or authorize
146 electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).*

147 **§ 8.01-465.34. Severability.**

148 *If a provision of this chapter or its application to a person or circumstance is held invalid, such invalidity
149 shall not affect another provision or application that can be given effect without such invalid provision.*

150 **2. That the Office of the Executive Secretary of the Supreme Court of Virginia shall promulgate a form
151 consistent with the notice statement described in § 8.01-465.29 of the Code of Virginia, as created by
152 this act.**

153 **3. That the provisions of the first enactment of this act shall become effective on January 1, 2027.**