

Debt Collection: Consumer Rights & Issues



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This presentation is not meant to serve as a substitute for reading the various laws discussed, seeking legal counsel or otherwise requesting Department guidance and/or interpretations on the laws it administers and enforces. The presentation merely serves as an introduction and overview.

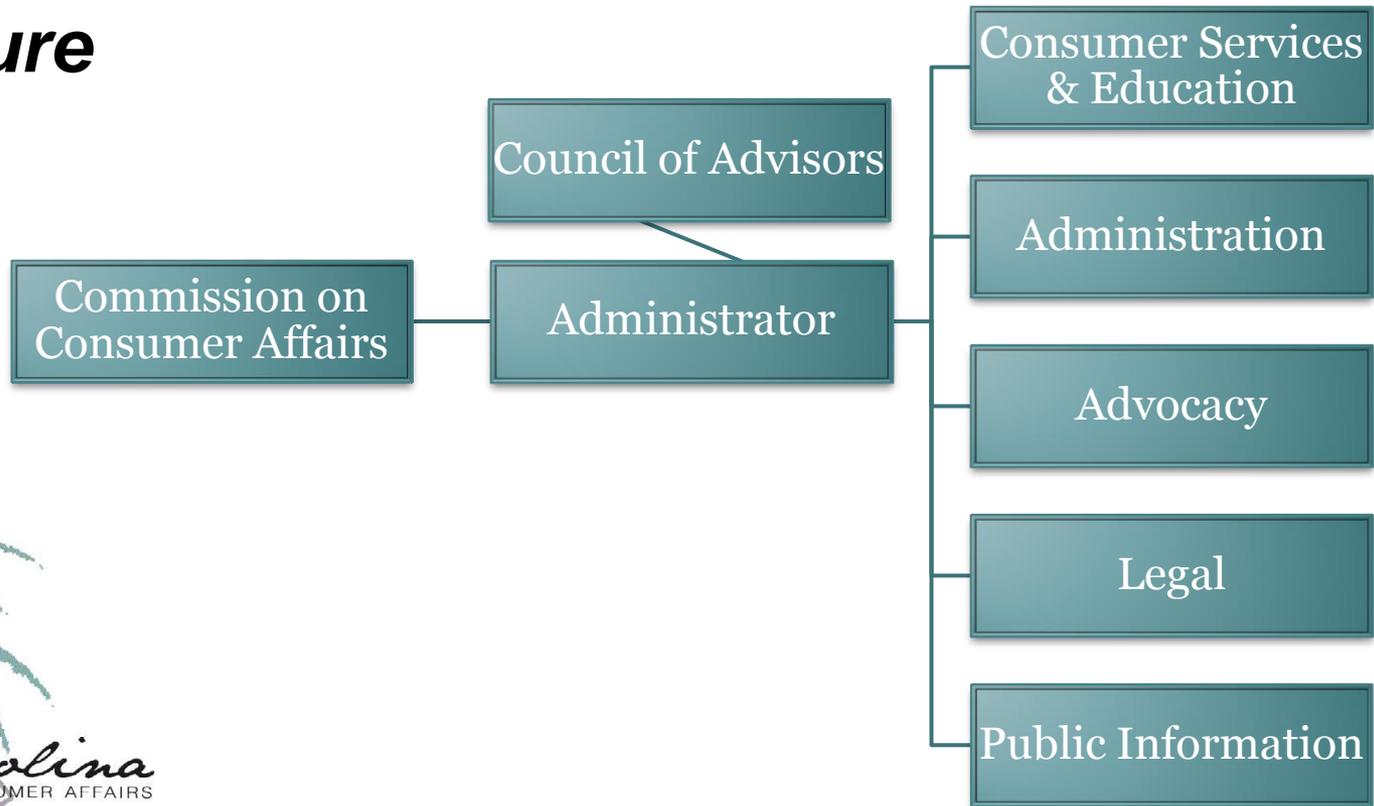
Roadmap

- SCDCA Overview
- Debt Collection: State & Federal Laws
 - [Other SC Laws](#)
- Credit Counseling in SC
 - [Annual Report Data](#)
- FDCPA Annual Report (CFPB)
- Debt Buying Industry - FTC Report
- Resources



SC Department of Consumer Affairs (SCDCA)

- **Organizational Structure**



SCDCA cont

SCDCA created when the Consumer Protection Code was adopted in 1974, becoming effective January 1, 1975.

- The Department is headed by the Administrator:
 - Administrator is hired/appointed by the Commission on Consumer Affairs. The Commission is made up of 9 members:
 - - 4 appointed by the Governor,
 - - 4 elected by the General Assembly, and
 - - The Secretary of State
 - (Commission elects its own chair.)
 - The Administrator also has a Council of Advisors from most areas of the creditor community to advise on credit issues.
 - - The members of the Council are appointed by the Governor, and
 - the Governor appoints the chair of the Council

SCDCA cont

- ***Consumer Services Division***
 - The Consumer Services Division takes and attempts to resolve consumer complaints against businesses, with due regard for the rights of the business.
 - The Services Division receives approximately 450 – 500 written complaints each month and approximately 8 times that many phone calls. (5,500 – 6,000 complaints annually)
 - The Division has consistently resolved about 85% of the complaints in a satisfactory manner.
 - Vehicles & Debt Collection consistently in top 3 complaint categories

SCDCA cont

- ***Administration Division***

- Provides support for the other Divisions including personnel, accounting, data processing and purchasing
- Processes regulatory filings for:
 - Maximum Rate—creditors charging in excess of 18%
 - Credit Grantor Notification—creditors grossing over \$150,000 annual
 - Motor Vehicle Dealer Closing Costs— Dealers charging a closing (“doc”) fee

SCDCA cont

- ***Consumer Advocacy Division***
 - Represents the public at large in intervening in insurance rate cases/ filings. Includes workers' compensation, auto, home, etc.
 - Administers & enforces the following regulatory programs:
 - Continuing Care Retirement Communities
 - Discount Medical Plan Organizations
 - Professional Employer Organizations

SCDCA cont

- ***Legal Division***

- The Legal Division helps the Administrator to administer and enforce the Consumer Protection Code and various other laws that have been assigned to the Department for Regulation.
 - Can investigate and bring enforcement actions, both administratively and in court, for violations of the Consumer Protection Code and various other laws.
 - 3 of Department's 4 investigators are commissioned law enforcement officers.

SCDCA cont

- ***Public Information Division***

- Serves as the main consumer education portal for consumers, business and media.
- Launched SCDCA-TV on YouTube and uses Twitter
- Staff also makes presentations and sponsors webinars on ID Theft, debt collection, foreclosures, credit and other popular topics
- Answers hundreds of calls per month pertaining to consumer scams and laws and disseminates press releases and consumer education brochures.

SCDCA cont

- ***Over the last 3 fiscal years (09-12), SCDCA:***
 - SCDCA recovered approximately **\$7.1 million** for consumers in the form of refunds, credits and adjustments.
 - handled more than **16, 000 complaints**
 - processed **over 71,000 licensing/ registration applications** and filings for regulated businesses.
- ***Over the last 5 fiscal years (07-12), SCDCA:***
 - Saved businesses and consumers approximately **\$164 million** as a result of involvement in workers' compensation insurance filings.

Debt Collection

In 2012, about 30 million consumers (14% of Americans) had debt that was or had been subject to collections process, averaging approximately \$1,500.

Debt Collection

- SC & Federal Law Application
- SC & Federal Debt Collection Basics
- Federal Requirements/Protections
- Other SC Debt Collection Laws



Debt Collection cont...

- Application

- **South Carolina**

- *Unconscionable Debt Collection Practices Act*
 - *Creditors*
 - *3rd Parties*
 - *Repossession Agents*



- **Federal**

- *Fair Debt Collection Practices Act*
 - *3rd parties*
 - *Creditors incognito*
 - *As of 1986 an amendment included attorneys who collect debts on a regular basis*



FEDERAL TRADE COMMISSION
FOR THE CONSUMER



Consumer Financial
Protection Bureau

Debt Collection

- SC State law provides consumer protections against unfair debt collection.
 - **The “Unconscionable Debt Collection Practices Act”** requires collectors to treat consumers fairly and prohibits certain methods of debt collection
 - *Creditors*
 - *3rd Parties*
 - *Repossession Agents*



Debt Collection cont...

- Federal law also gives consumers protection when dealing with debt collectors.
 - **Fair Debt Collection Practices Act (FDCPA)**
 - Broader prohibitions, but only applies to debt collectors hired by the creditor and creditors who use a different business name when collecting debts owed to them (“third-party” debt collector)



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Debt Collection cont...

FDCPA ~ Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC)

- FTC had been responsible for administering/enforcing the FDCPA since its enactment in 1977.
- The creation of the CFPB (July 2011) by Dodd-Frank shifted primary responsibility of FDCPA to this new agency.
- CFPB has authority to issue rules & guidance concerning compliance with FDCPA, collect complaint data, educate consumers & collectors, undertake research & policy issues
- Overall enforcement shared with FTC/other agencies



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Debt Collection cont...

FDCPA cont:

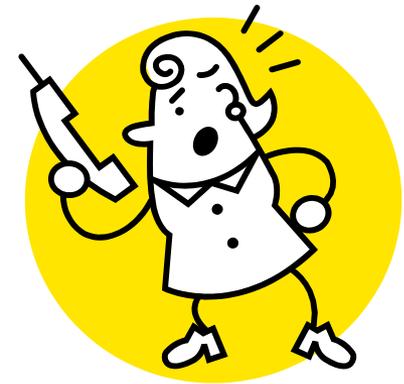
- Applies principally to 3rd party collectors (collection agencies, debt buyers and attorneys regularly engaged in debt collection.
- Effective January 2013: new CFPB has authority to supervise “*larger participants*” in the consumer debt collection market
 - Debt collectors with more than \$10 million in annual receipts from consumer debt collection
 - For first time, a single federal agency supervises creditors and 3rd party debt collection firms and debt buyers

Debt Collection cont...

- *“Larger participants”*:
 - Approximately 175 debt collection firms (4% of debt collection firms)
 - Account for 63% of annual receipts from debt collection market
 - Includes the 3 main types of consumer debt collectors:
 1. Firms that buy defaulted debt and collect proceeds for themselves
 2. Firms that collect defaulted debt owned by another company in return for a fee
 3. Debt collection attorneys

Debt Collection cont...

- State & Federal Law Basics
 - **Communication**
 - Via mail, fax, telephone, in person
 - Allowed between 8am and 9pm
 - Can contact 3rd parties
 - Your phone number
 - Your address
 - Where you work
 - Attorney
 - Cannot call repetitively in a 24-hour period



Debt Collection cont...

- State & Federal Law Basics cont...

Harassment

- Debt collectors may not harass, oppress, or abuse you or any third parties they contact.

They may not:

- Use threats of violence or harm
- Publish a list of consumers who refuse to pay their debts
- Use obscene or profane language
- Repeatedly use the telephone to annoy someone

Debt Collection cont...

False statements

- Debt collectors may not:
 - Falsely imply that they are attorneys or government representatives
 - Falsely imply that you have committed a crime
 - Falsely represent that they operate or work for a credit bureau
 - Misrepresent the amount of your debt
 - Indicate that papers being sent to you are legal forms when they are not
 - Indicate that papers being sent to you are not legal forms when they are

Debt Collection cont...

- **Debt collectors also may not state that:**
 - You will be arrested if you do not pay your debt
 - They will seize, garnish, attach, or sell your property or wages, unless the collection agency or creditor intends to do so, and it is legal to do so
 - Legal actions, such as a lawsuit, will be taken against you, when such action legally may not be taken, or when they do not intend to take such action

Debt Collection cont...

- **Debt collectors may not:**
 - Give false credit information about you to anyone, including a credit bureau
 - Send you anything that looks like an official document from a court or government agency when it is not
 - Use a false name

Debt Collection cont...

Unfair practices

- Debt collectors may not
 - Collect any amount greater than your debt, unless your state law permits such a charge
 - Deposit a post-dated check prematurely
 - Use deception to make you accept collect calls or pay for telegrams
 - Take or threaten to take your property unless this can be done legally
 - Contact you by postcard

Debt Collection cont...

- State & Federal Law Basics cont...

- *Stopping Contacts At Work*

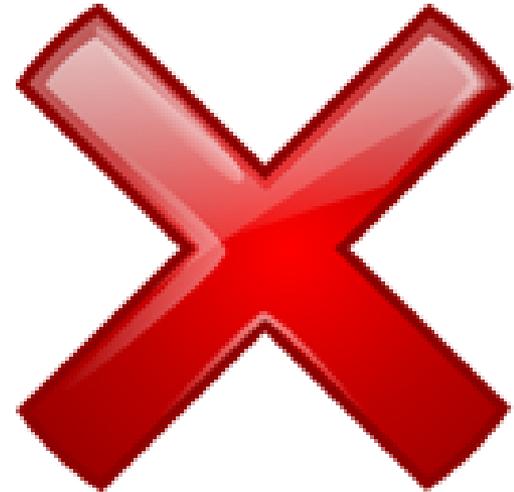
- Letter (you or your employer)
 - Cease contact
 - Limited Contact
 - Verify employment



- ***TIP: Keep copy for yourself & send certified mail, return receipt requested!***

Debt Collection cont...

- Federal Requirements/ Protections (3rd party ONLY!)
- *Stopping Contact*
 - At Home
 - Letter
 - Limited Contact
 - No further contact OR
 - Specific action will be taken
- ***TIP: Keep copy for yourself & send certified mail, return receipt requested!***



Debt Collection cont...

- Federal Requirements/ Protections

- *Notice*

- In 1st communication or within 5 days of
 - Must Contain:
 - Amount of debt
 - Name of creditor
 - Statements:
 - 30 days to dispute or = assumed valid
 - Verification
 - Name of original creditor



Debt Collection cont...

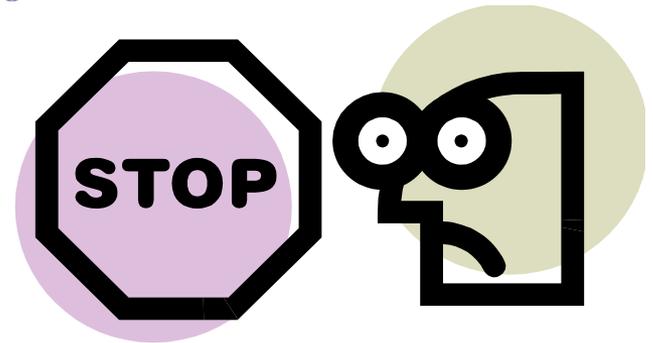
- Federal Requirements/ Protections cont...

- *Letter*

- Within 30 day period
- Send registered mail, return receipt requested and regular mail
- State that debt or any part of debt is in dispute
 - Ie: Not yours, amount listed is wrong, etc
- Be specific
- Same process for original creditor info

- *Debt Collector Must:*

- Stop attempting to collect
- Must seek verification
 - Ie: contract, last billing statement, etc



Debt Collection cont...

- Federal Requirements/ Protections cont...
 - You have the right to sue a collector in a state or federal court within one year from the date the law was violated.
 - If you win, you may recover money for the damages you suffered plus an additional amount up to \$1,000.
 - Court costs and attorney's fees also can be recovered.
 - A group of people also may sue a debt collector and recover money for damages up to \$500,000, or one percent of the collector's net worth, whichever is less.

Debt Collection cont...

▫ South Carolina Consumer Remedies

- Consumers have a right to sue a collector for violating the Unconscionable Debt Collection Practices Act
- Can ask for actual damages and a statutory penalty of not less than \$100 and not more than \$1,000.
- Can be combined with Federal suit



Other SC Debt Collection Laws

- *Collection on Consumer Debt in SC*
 - 2 types of default in consumer transaction
 1. Putting collateral @ risk
 - Ie: Failing to maintain car insurance
 2. Failure to make payments
 - creditor has the right to file suit to collect on the contract or repossess collateral

Other SC Laws cont...

- **Repossession**

- **3 legal means of repossession:**

1. *Voluntary repossession*

- The consumer has the right to give the collateral back to the creditor.
- If the consumer does so freely the repossession is considered to be voluntary.
- Notice of Right to Cure does not have to be given when the consumer voluntarily surrenders the collateral.
- A repossession is not voluntary if the creditor uses force or deception to take possession of the collateral.

Other SC Laws cont...

2. Self-help repossession.

- the creditor may go to pick up the collateral or send a repossession company to pick it up.
- the creditor does not have to go through the court or have the consumer's permission to do a self-help repossession.
- the creditor cannot take any action that may lead to a *breach of the peace*.
 - If the consumer objects, the creditor should leave.
 - Any threat or use of force is a breach of the peace.
 - Also, a creditor may not enter a person's home without permission.

Other SC Laws cont...

3. A claim and delivery action in court.

- Begins with a Summons and Complaint, but it also has a demand for immediate possession of the collateral.
- The consumer = notified that he or she has a right to a hearing before the judge before possession of the collateral is given to the creditor.
- The consumer must ask for this hearing within five days after the Summons and Complaint are served.
- The consumer still has the full thirty (30) days to file a complete Answer.
- If the judge rules that the creditor has the right to immediate possession, a court order is entered and law enforcement may take possession of the property even if it is inside the consumer's home.

Other SC Laws cont...

- **Repossession cont...**

- Before engaging in self-help or claim & delivery, creditor must give consumer a Right to Cure Notice.

- **Right to Cure**

- Missing req'd payment **ONLY**
- Send after 10 days in default (11th day)
- 20 days from letter to “cure”
- Effect- default never occurred
- Number of notices:
 - Closed ended (auto) = 1
 - Open ended (credit card) 1 every 12 months



Other SC Laws cont...

- **Filing a Court Action**

- To collect amount owed, OR To collect deficiency balance:
- Suit must be filed in the county where the consumer lives, except when the collateral is real estate = must be filed in the county where the property is located.
- The lawsuit begins when the creditor files a Summons and Complaint with the court and has them served on the consumer.
- If the amount in issue is \$7,500.00 or less the action may be brought in magistrate's court. If it is more than this amount it must be brought in the Court of Common Pleas, which is at the county courthouse.

Other SC Laws cont...

- **Filing a Court Action cont...**
 - Once the Summons and Complaint have been served, the consumer has thirty (30) days to file and serve a written Answer with the court and the creditor who filed the suit.
 - Failure to file an Answer means the consumer loses and the creditor is entitled to a judgment. (default)
 - The creditor may also get a judgment if the consumer admits owing the money or if the case goes to trial and the judge or jury rules against the consumer.

Other SC Laws cont...

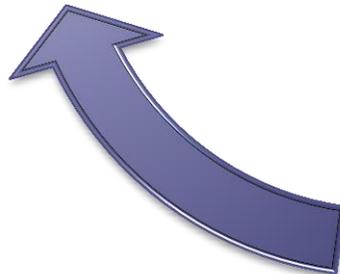
- **Collection of a Money Judgment**

Judgment entered
Automatic lien on real prop. if cty crthouse. Other court= must record

Execution to sheriff
Looking for personal & real property to take and sell

If nulla bona...

Supplemental Proceedings
If no prop. found, court hearing to determine what D has



Other SC Laws cont...

- Collection of Judgment

cont...

Common exempt property includes

residence or burial plot (homestead exemption)	first \$50,000 of the consumer's interest (maximum \$100,000 if jointly held)
vehicle	first \$1,200 of the consumer's interest
clothing and household goods	first \$2,500 of the consumer's interest
personal jewelry	first \$500 of the consumer's interest
professional books or tools of the trade	first \$750 of the consumer's interest
cash (when no homestead exemption)	\$1,000

Other SC Laws cont...

- **Limits on Creditor's Remedies**

- *Deficiency Judgment*

- The law does not allow the creditor to seek a deficiency judgment if the seller's original selling price to the consumer was \$4,950.00 or less. (37-5-103)

- *Unconscionability*

- Unconscionable Contract

- Generally = unconscionable when the contract in whole or in part is so one-sided that there is no reasonable belief in fair dealing
 - Ie:
 - when the creditor has no reasonable belief that the consumer can repay the debt
 - when the consumer cannot realistically receive any benefit from the goods or services that are a part of the contract

Other SC Laws cont...

- Unconscionable Practices
 - = for the creditor to take the consumer's household goods as collateral, unless the credit is used to purchase those goods.
 - Items that cannot be taken as collateral include:
 - the consumer's clothing, furniture, appliances, kitchenware, and one radio and one television.
 - Some items are not protected and can be used as collateral.
 - bicycles, computers and other electronic equipment, jewelry (except wedding rings), and a child's car seat.

It is up to the judge to decide if the contract in whole or part is unconscionable. If the judge decides that it is, he or she can void the whole or any part of the contract.

Other SC Laws cont...

- **Statute of Limitations**

- *Contracts*

- General = 3 years (includes unsecured credit cards)
 - Secured transaction = 6 years (includes store credit card)

- *Real Estate*

- 20 years (mortgage of real property)

- *Judgments*

- 10 years

Other SC Laws cont...

- *Garnishment*

- Prohibited *UNLESS*:

- \$\$ owed to government
- \$\$ owed for child support or alimony
- Garnishment order issued and enforced in another state where consumer was a resident



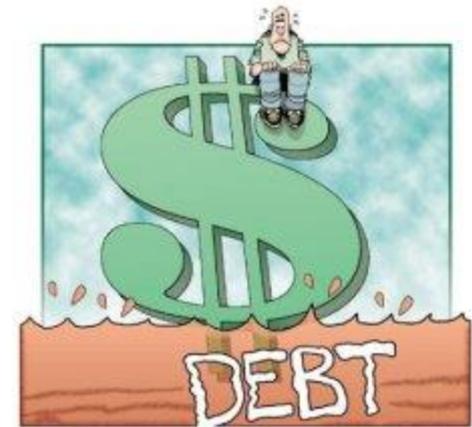
Options for Consumers

- **Self Help**

- Make a Budget... and stick to it!

Budgeting Tips

- Write it Down
- Decide if Purchase = Need? Want?
- Borrow only what you can repay
- Read and understand the credit agreement
- Shop around for Credit
 - **OPT OUT : 1-888-5-OPTOUT**
 - Pay all debts on time- best before interest starts!



Options for Consumers cont...

- Keep in Contact with Your Creditors
- Negotiate
 - Try to work out a modified payment plan you can afford
 - Creditors often “write-off” debt after you haven’t paid for 180 days. Results= hit on credit rating, still owe the debt. Most are still willing to work with you.
 - Get any work outs in writing
- Keep Good Records
- Dispute Own Credit Report (Stay Tuned)



Options for Consumers cont...

Hire Help

- Debt Management, Debt Consolidation, etc.
- Credit Repair, etc.
- Debt Settlement, Debt Negotiation, Foreclosure Assistance, etc.



UP NEXT: Credit Counseling

SC Consumer Credit Counseling Act (SCCCCA)

- § 37-7-101, *et seq.* went into effect December 2, 2005 and applies to contracts and solicitations from that date forward.



- A person may not engage in **credit counseling services** in SC, whether or not the person has an office, facility, agent, or other physical presence in SC, unless licensed by SCDCA.

SCCCCA: Definitions

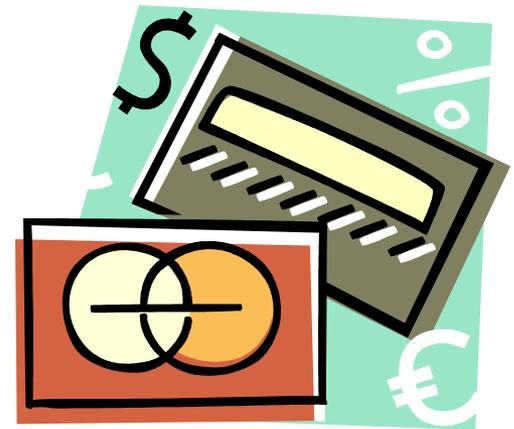
- **“Credit Counseling Services” means:**
 - Receiving money from a consumer to distribute it among the consumer’s creditors; (*Debt Management Plans*)
 - Improving or offering to improve a consumer's credit record, history, or rating; (i.e. *Credit Repair, Credit Improvement, etc.*)
 - Negotiating to defer or reduce a consumer’s obligations with respect to credit extended by others. (*Debt Negotiation/ Settlement, Foreclosure Assistance, etc.*)

SCCCCA: Definitions

- “*Credit Counseling Organization*” means a person providing or **offering to provide** to consumers “credit counseling services” for a fee, compensation, or gain or in the expectation thereof.
- *Credit Counselor* means an employee or agent of a credit counseling organization engaging in credit counseling services

SCCCCA: Purpose

- Establish rights for consumers when being contacted by or hiring a:
 - ***Debt Management Businesses***
 - ***Credit Repair Businesses***
 - ***Debt Settlement Businesses***



REGARDLESS of whether or not the business is located in South Carolina!!!

SCCCCA: Requirements

Be Licensed by SCDCA!!!

http://www.consumer.sc.gov/business/licensing_registration/CreditCounseling/Pages/forms.aspx

- Application for Organization and Credit Counselors
- Bond - at least \$25k
- Financial Education Session
- Budget Analysis/ Contract



SCCCCA: Fees*



Initial Consultation Fee	\$50
Plan Enrollment Fee	\$30
Monthly Maintenance Fee	\$10 per (\$50 max)
Reinstatement Fee	\$25

** **Businesses can charge UP TO these amounts. All credit counseling businesses cannot charge every fee listed- it is dependent on the services provided.***

SCCCCA cont...

- Common Scams
 - Promises that can't be delivered
 - Undisclosed fees
 - Undisclosed Consequences
 - Not Delivering Service
- Don't Trust a Company If They:
 - Ask you to lie
 - Make Promises/ Guarantees
 - Have No Written Contract / Services in Writing (only PO Box, 800#)
 - Ask for Up Front Payment



SCCCCA: Consumer Complaints

- Complaint

- SCDCA

- 1-800-922-1594
- www.consumer.sc.gov
 - “File A Complaint”

- Documents

- Process

- Common Complaints

- Didn't get what you paid for
 - *Didn't understand services*
 - *Said services not provided*
- Creditors are contacting me
- Unlicensed Company

COMPLAINT FORM

Consumer Complaint
S.C. Dept. of Consumer Affairs
P.O. Box 1621
Columbia, S.C. 29262-1621

2000 Factual Invo. Test Form
Telephone: (803) 724-4200
Toll Free: 1-800-922-1594 ext. 4200
Fax: (803) 724-4200
E-mail: SCCHECK@DCA.SOUTHSC.GOV
www.state.sc.us/consumer

Get complete name and address of BUSINESS COMPLAINED AGAINST.

(Company)
(Who did you deal with?)
(Address)
(City)
(State)
(Phone)

(Your Name)
(Address)
(City)
(State)
(Zip)
(Home Phone) (Office Phone) (County)

1. Have you filed a complaint with any other consumer services agency? Yes ___ No ___
2. Have you filed a summons and complaint with a magistrate's office? Yes ___ No ___
3. Is an attorney handling your complaint? Yes ___ No ___
If you answered yes to any of the above questions, please provide the corresponding name, address, and telephone number.

NOTE: ATTACH TWO COPIES OF CONTRACTS, RECEIPTS, WARRANTIES, CHECKS, BILL OF SALE, ETC.

Please provide a complete explanation of your complaint:

STOP This must attach two copies of any additional information.

Date complained to Company _____ Response _____
What do you want the business to do? _____

PLEASE SIGN AND DATE THIS COMPLAINT.

THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT MAY REQUIRE THE DEPARTMENT OF CONSUMER AFFAIRS TO RELEASE A COPY OF YOUR COMPLAINT AS A PUBLIC RECORD.

FORM CH-1 (REV. 2003) DATE _____ YOUR SIGNATURE _____
AGENCY COPY

UP NEXT: Annual Reports

Credit Counseling Organizations - Annual Report Compilation

- Requirement

On or before April 15th of every year, the Act requires licensees to submit to the Department an annual report on the Credit Counseling Organization's business conducted during the previous calendar year



Annual Report Compilation...

	2011	2010	2009
Total Number of Consumer Contracts	14,758	15,913	15494
Average Amount of Debt per Consumer	\$18,992	\$22,445	\$24,876
Total Amount of Fees Paid for Credit Counseling Services	\$3,449,520	\$3,129,007	\$2,820,957

Annual Report cont...

	2008	2007
Total Number of Consumer Contracts	9,413	14,451
Average Amount of Debt per Consumer	n/a*	n/a*
Total Amount of Fees Paid for Credit Counseling Services	\$2,524,290	\$4,523,848

****Some information unavailable for years prior to updates to Annual Report Form.***

Annual Report cont...

	2011	2010	2009
Number of Licensed Credit Counseling Organizations	41	37	35
Money paid to Consumer's Creditors	\$47,828,825	\$51,092,276	\$50,702,539
Average Length of Contract (Months)	39	43	39
Percent of Completed Contracts	33%	33%	33%

Annual Report cont...

	2008	2007
Number of Licensed Credit Counseling Organizations	27	26
Money paid to Consumer's Creditors	\$42,662,901	\$60,725,201
Average Length of Contract (Months)	35	19
Percent of Completed Contracts	n/a*	n/a*

****Some information unavailable for years prior to updates to Annual Report Form.***

Annual Report cont...

	2011	2007
Total Number of Consumer Contracts	14,758	14,451
Average Amount of Debt per Consumer	\$18,9925	n/a
Total Amount of Fees Paid for Credit Counseling Services	\$3,449,520	\$4,523,848
Number of Licensed Credit Counseling Organizations	41	26
Money paid to Consumer's Creditors	\$47,828,825	\$60,725,201
Average Length of Contract (Months)	39	19
Percent of Completed Contracts	33%	n/a

UP NEXT: FDCPA Annual Report

FDCPA Annual Report 2013



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FEDERAL TRADE COMMISSION
FOR THE CONSUMER

MARCH 20, 2013

Fair Debt Collection Practices Act

CFPB Annual Report 2013



http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf

FDCPA Annual Report 2013

- FTC receives more complaints about debt collection than any other industry
- Complaints from “in-house” and 3rd party debt collectors totaled 125,136 complaints and accounted for 24.1% of all complaints FTC received
 - 3rd party: 102,783 (19.8%)
 - In-house: 22,353 (4.3%)



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FEDERAL TRADE COMMISSION
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FDCPA Annual Report 2013

- FTC accepts complaints regarding debt collection through its Consumer Sentinel database, which provided info to CFPB for this report
- CFPB takes consumer complaints: began with credit cards – mortgage – bank accounts/services, private student loans , consumer loans



Consumer Financial
Protection Bureau



FEDERAL TRADE COMMISSION
FOR THE CONSUMER

FDCPA Annual Report 2013 – Debt Collection Complaints rec'd by FTC

37,543 (36.5%)	Collectors harassed by calling repeatedly or continuously
13,329 (13%)	Collectors used obscene, profane, abusive language
3,312 (3.2%)	Collectors used or threatened violence if consumers failed to pay account
39,993 (38.9%)	Demanding an amount other than permitted by law (<i>most common</i>)
9,814 (9.5%)	Collectors failed to verify disputed debts

FDCPA Annual Report 2013 – Debt Collection Complaints rec'd by FTC

26,139 (25.4%)

Collectors did not provide required written notice of debt – (includes verification process)

30,470 (29.6%)

Collectors falsely threatened lawsuit/other action

12,272 (11.9%)

Collectors illegally disclosed debt to third party (employers, relatives, children, neighbors, friends)

14,482 (14.1%)

Improper calls to consumers' employer (continuing when employer prohibits)

4,928 (4.8%)

Collectors ignored “cease communications” notices

FDCPA Annual Report 2013

Enforcement Activity

- October 2012 – CFPB’s first public enforcement action involving debt collection (several non-public underway)
- 3 American Express subsidiaries required to refund app. \$85 million to 250,00 consumers
- First-party debt collection, so claims relied upon Dodd-Frank Act rather than FDCPA
- Consumers deceived regarding certain benefits to paying off old debt
- Civil penalties \$14.1 million



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FEDERAL TRADE COMMISSION
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Consumer Sentinel Network State Complaint Rates

January 1 – December 31, 2012

Fraud & Other Complaints

Rank	Consumer State	Complaints Per 100,000 Population ¹	Complaints
1	Florida	693.5	133,973
2	Georgia	590.2	58,543
3	Maryland	564.2	33,199
4	Delaware	563.2	5,165
5	Nevada	559.9	15,446
6	Colorado	545.2	28,285
7	Virginia	517.4	42,355
8	Arizona	510.2	33,434
9	Michigan	500.9	49,501
10	New Hampshire	499.7	6,600
11	California	492.3	187,270
12	Washington	488.9	33,720
13	New Jersey	480.2	42,565
14	Oregon	471.8	18,399
15	Texas	458.6	119,510
16	Massachusetts	443.4	29,469
17	Connecticut	443.0	15,906
18	Pennsylvania	441.9	56,397
19	Tennessee	435.1	28,091
20	Ohio	434.2	50,128
21	Rhode Island	433.1	4,549
22	Hawaii	429.0	5,973
23	Missouri	427.2	25,725
24	North Carolina	422.6	41,212
25	New York	420.5	82,289
26	South Carolina	420.2	19,850
27	Idaho	419.4	6,693
28	New Mexico	416.0	8,675
29	North Dakota	403.9	2,826
30	Alabama	403.8	19,470
31	Louisiana	399.0	18,403

Identity Theft Complaints

Rank	Victim State	Complaints Per 100,000 Population ¹	Complaints
1	Florida	361.3	69,795
2	Georgia	193.9	19,232
3	California	122.7	46,658
4	Michigan	122.2	12,075
5	New York	110.1	21,538
6	Nevada	109.9	3,032
7	Texas	108.6	28,299
8	Arizona	107.3	7,032
9	Maryland	105.0	6,178
10	Alabama	104.9	5,060
11	Illinois	100.9	12,993
12	Mississippi	100.2	2,990
13	Delaware	98.4	902
14	New Jersey	95.1	8,430
15	Colorado	93.8	4,864
16	Rhode Island	91.7	963
17	South Carolina	90.6	4,282
18	New Mexico	89.1	1,858
19	Pennsylvania	88.7	11,324
20	Tennessee	88.1	5,690
21	Louisiana	87.6	4,031
22	Connecticut	81.2	2,915
23	North Carolina	81.1	7,910
24	Virginia	80.8	6,616
25	Washington	77.9	5,373
26	Ohio	77.0	8,891
27	Missouri	74.8	4,505
28	Arkansas	74.4	2,195
29	Massachusetts	73.4	4,879
30	Kansas	72.0	2,077



FTC Consumer Sentinel Info - South Carolina

Fraud and Other Complaints Count from South Carolina Consumers = 19,850

Top 10 Fraud and Other Complaint Categories Reported by South Carolina Consumers

Rank	Top Categories	Complaints	Percentage ¹
1	Debt Collection	2,808	14%
2	Banks and Lenders	1,621	8%
3	Shop-at-Home and Catalog Sales	1,391	7%
4	Auto Related Complaints	1,149	6%
5	Impostor Scams	1,107	6%
6	Telephone and Mobile Services	1,030	5%
7	Prizes, Sweepstakes and Lotteries	871	4%
8	Internet Services	814	4%
9	Foreign Money Offers and Counterfeit Check Scams	637	3%
10	Advance Payments for Credit Services	631	3%

¹Percentages are based on the total number of CSN fraud and other complaints from South Carolina consumers (19,850).

Note: These figures exclude complaints provided by the South Carolina Department of Consumer Affairs.

January 1 – December 31, 2012

UP NEXT: Debt Buying

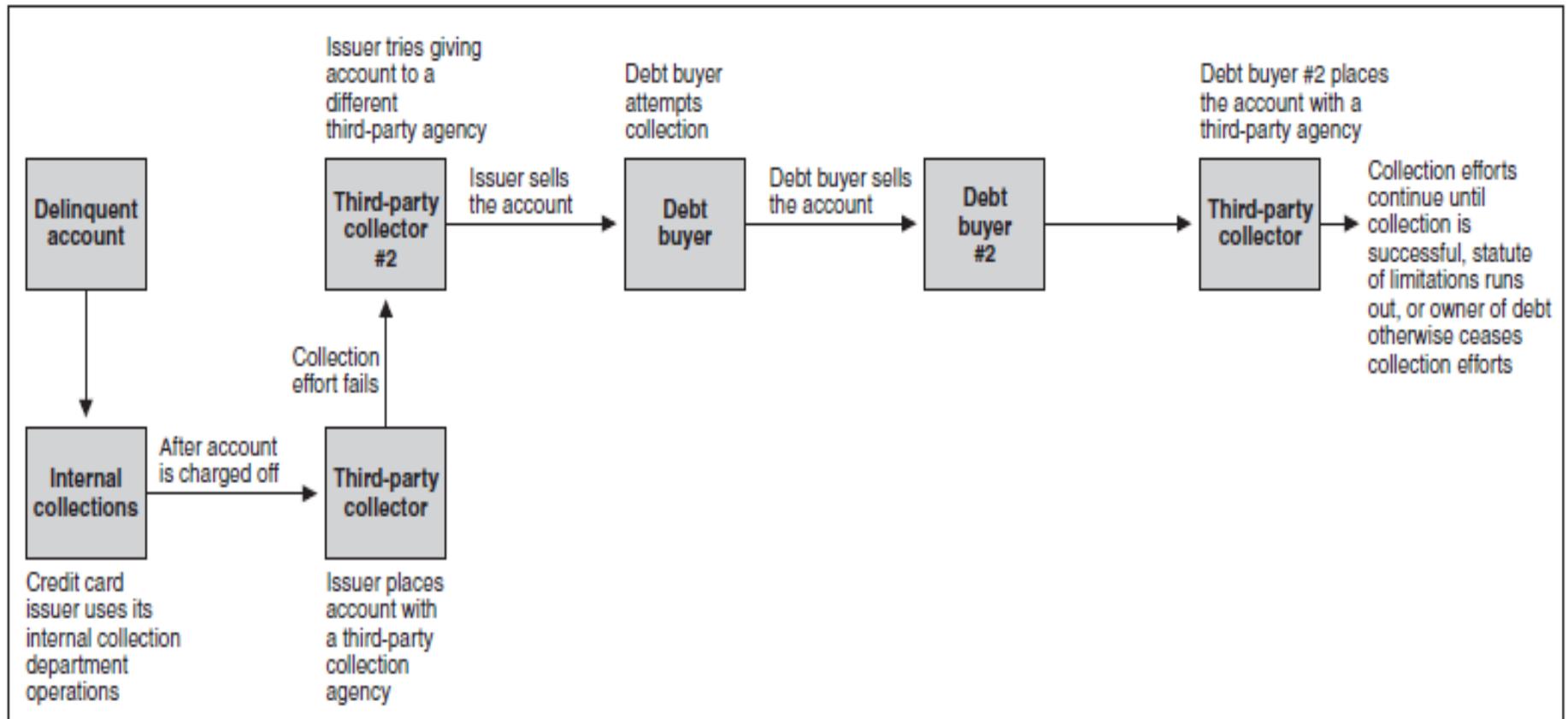
Debt Buying Industry



- “Debt buying” refers to the sale of debt by creditors or other debt owners to buyers who then attempt to collect the debt or sell it to other buyers.
- Debt buying can reduce the losses that creditors incur in providing credit, thereby allowing creditors to provide more credit at lower prices.
- Debt buying, however, also may raise significant consumer protection issues.

Example - Life Cycle of A Delinquent Account...

Figure 2: Illustrative Example of the Lifecycle of a Sample Delinquent Credit Card Account



Debt Buying Industry

- FTC initiated a study of debt buying industry in late 2009
~ report released Jan 2013
- Obtained information about debts and debt buying practices from 9 of the largest debt buyers (collectively bought 76.1% of the debt sold in 2008)

This report is available online at:

<http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>

The Structure and Practices of the
Debt Buying Industry



Federal Trade Commission
January 2013

Debt Buying Industry

9 Debt Buyers in FTC study:

- Sherman Financial Group, LLC
- Encore Capital Group Inc.
- eCAST Settlement Corp.
- NCO Portfolio Management, Inc.
- Arrow Financial Services, LLC
- Portfolio Recovery Associates, L.L.C.
- Unifund Corp.
- B-Line, LLC
- Asta Funding, Inc.

Debt Buying Industry

- FTC looking at debt buying market and the process of buying and selling debt.
- Examine the practice and the types of information problems that the FTC has found can occur when debt collectors seek to recover and verify debts.
- Data on more than 5,000 portfolios, containing nearly 90 million consumer accounts with face value of \$143 billion – mostly credit card debt

How Debt Buying Works:

- Most original creditors try to collect debts before selling to others
- Throughout collection process, original creditors may decide to sell some or all of the debts they own and that they (or their third-party debt collectors) have not been able to recover
- Debts sold by original creditors are typically bundled into portfolios

Debt Buying Industry

- When offering portfolios, sellers in the debt buying industry generally categorize the age of debt as follows:
 - **Fresh debts:** up to 6 months in age, and the original creditors sell them without making any attempt to collect following charge-off;
 - **Primary debts:** up to 12 months in age, and the original creditors have hired one 3rd party debt collector to try to recover following charge-off
 - **Secondary and tertiary debts:** up to 18 or 30 months in age respectively, and the original creditors have hired two or more 3rd party debt collectors to attempt to recover following charge-off.

Debt Buying Industry - Key Findings

- Buyers paid an average of 4.0 cents/dollar of debt face value.
 - Older debt sold for a significantly lower price than newer debt.
- Buyers typically received the information required for validation notices. (FDCPA)
 - Buyers also typically received additional information that could make validation notices more useful, but they usually did not provide it to consumers.

Debt Buying Industry - Key Findings

- Buyers rarely received dispute history & few underlying documents about debts.
 - Including information that would allow them to break down the outstanding balance into principal, interest, and fees
- Limitations were placed on debt buyer access to account documents.
 - given a defined amount of time (~6 months to 3 years) to request up to a specified max # of documents (at no charge)

Debt Buying Industry - Key Findings

- Consumers disputed 3.2% of debts that buyers attempted to collect themselves.
 - Est. \$1million/per year disputed
 - About half of disputed debts were reported as verified
- Few disputed debts were resold
 - FDCPA prohibits debt collectors, (buyers) from seeking to recover on unverified disputed debt, but does not bar from reselling such to other purchasers, or bar subsequent purchasers from seeking to collect the debt

Debt Buying Industry - Not Creditors?

- Some debt buyers have argued that because they collect debts they own (not debts others own) the FDCPA does not govern their activities because they are creditors.
- *Kimber v. Federal Financial Corp.*, the court rejected that argument, holding that debt buyers that seek to recover on debts that were in default when the debt buyers acquired them are debt collectors for purposes of the FDCPA. (668 F.Supp. 1480 (1987))
- Since *Kimber*, many other courts have concluded that such debt buyers are debt collectors for purposes of the FDCPA

Debt Buying Industry - Fair Credit Reporting Act

- Another federal statute governing debt buyers is the Fair Credit Reporting Act (“FCRA”), which imposes accuracy standards on consumer reporting agencies (CRA) and entities, including debt buyers and other debt collectors
- Debt collectors and other entities that furnish information to CRAs (often referred to as “furnishers”) violate the FCRA if :
 - they report information they know or have reasonable cause to believe is inaccurate.
 - FCRA also allows consumers to dispute the completeness or accuracy of information, including delinquent accounts, on their credit reports, and requires furnishers to conduct “reasonable investigations” of disputes submitted directly to them concerning the accuracy of information reported.

UP NEXT: Credit Report Disputes

Disputing Items on Credit Report

- Right to Dispute: SC law (*FIFITPA*) *Mirrors FCRA Dispute Provisions*
 - Fair Credit Reporting Act
 - *Consumer Can Dispute*:
 - Inaccurate, incomplete or untimely items
 - To credit reporting agency “CRA” and/or
 - Furnisher (Creditor)
 - *Requirements*:
 - CRA - Notify furnisher within 5 days
 - CRA & Furnisher - Investigate (unless frivolous)
 - CRA & Furnisher - Note File= in dispute
 - If no resolution in 30 days, CRA must remove info
 - *Resolution*
 - Notify consumer within 5 days
 - 100 word dispute

Disputing Items on Credit Report

- Right to Dispute~ **FIFITPA Additions**
 - **If CRA DENIES inaccuracy MUST:**
 - Give basis;
 - Send copy of file, including which creditors were contacted;
 - Give sufficient evidence that info is accurate
 - §37-20-170
 - **If CRA ADMITS inaccuracy MUST:**
 - Correct & contact creditors/requestors from the last six months

Disputing Items on Credit Report

- Right to Dispute (FIFITPA) cont...
 - Penalties for willful or negligent violations
 - Damages, Reasonable atty's fees & costs
 - §37-20-170
 - Private Cause of Action
 - Department of Consumer Affairs to Enforce
 - Complaints: 1-800-922-1594 or www.consumer.sc.gov "File A Complaint"
 - Pattern or Practice

Disputing Items on Credit Report

<http://www.consumer.ftc.gov/articles/pdf-0032-building-a-better-credit-report.pdf>



Resources

- SCDCA Debt Collection Brochure
 - www.consumer.sc.gov
 - “News Releases & Publications”; “Consumer Education”

What is a debt collector not allowed to do?

A debt collector cannot:

- Use obscene or profane language.
- Deposit or threaten to deposit a postdated check before the date on the check.
- Misrepresent the character, amount or legal status of the debt.
- Send a document that appears to be authorized, issued or approved by a state or federal agency or a court.
- Claim or imply that if the debt is not paid, you will be arrested or your wages will be garnished, UNLESS the creditor is legally allowed to do those acts AND intends to do so.

A Special Note About Wage Garnishment

Wage garnishment is prohibited in South Carolina EXCEPT in 3 cases:

- if money is owed to the government
- if money is owed for child support
- if a garnishment order has been entered in another state while the consumer was a resident there but the consumer later moves to South Carolina

Funding provided through a grant from the Central Carolina Community Foundation

Central Carolina Community Foundation

Who can you contact if you believe a debt collector violated the law?

Contact the Department of Consumer Affairs toll-free at 1.800.922.1594 or online at www.sccconsumer.gov.

What about federal law?

The Fair Debt Collection Practices Act also gives consumers protection when dealing with debt collectors. This law has broader prohibitions, but only applies to debt collectors hired by the creditor and creditors who use a different business name when collecting debts owed to them.

Helpful Tip:

Federal law places limits on how long a negative item can be reported on a consumer's credit report. For example, credit reporting agencies cannot report an account that has been put into collections or that has been charged off more than 7 ½ years after it was reported. For more information on the federal law, contact the Department or the Federal Trade Commission.

contact us



[3600 Forest Drive] [Columbia, SC 29204]
[800.922.1594] [www.sccconsumer.gov]

Debt Collection



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SOUTH CAROLINA
DEPARTMENT OF CONSUMER AFFAIRS

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Welcome

The South Carolina Department of Consumer Affairs ("DCA"/ "Department") is the state's consumer protection agency. Established in 1974, DCA has more than thirty-five years of experience in protecting South Carolina consumers while recognizing those businesses that act honestly and fairly.

The Department accomplishes its mission by: 1.) acting as an effective regulator, 2.) providing complaint mediation services that are unmatched at both state and federal levels, 3.) saving millions for both consumers and small businesses through insurance rate filing intervention, and 4.) serving as an educational portal for consumers and businesses alike.

Click [here](#) to learn more about the agency.

What's New?

In addition to opting into the free credit report monitoring offered by the Department of Revenue by calling 866-578-5422 or going to www.protectmyid.com/scdor, here are some steps you can take:

Helpful Links

**IDENTITY THEFT
RESOURCES**

**Dept. of Revenue
Security Breach**

**Credit Card
Repayment
Calculator**



**Online Filing
thru SCBOS**



SC CONSUMER AFFAIRS
SCDCA

FTC It's tough enough 2 find job or start your own biz, even w/o scammers trying 2 take advantage. Get tips 2 avoid scams:
go.usa.gov/g36e
16 minutes ago · reply · retweet · favorite



SCDCA on Twitter

The screenshot shows the Twitter profile for SC Consumer Affairs (@SCDCA). The profile bio reads: "Protecting consumers from inequalities in the marketplace since 1979! Columbia, SC - http://www.consumer.sc.gov". The profile has 753 tweets, 231 followers, and 2,147 following. The "Tweets" section shows three recent posts from February 6th and 5th, all mentioning "lythiADY". The first tweet says: "If you issue a fraud alert on your credit report, you are eligible for another free report from each credit bureau. [ow.ly/INDSf](#)". The second tweet asks: "Did you know there are limits on how long a negative item can be reported on a consumer's credit report? [ow.ly/htCYv](#)". The third tweet asks: "Worried about Identity Theft? Check out this video [ow.ly/htADY](#)". The left sidebar includes navigation links for Tweets, Following, Followers, Favorites, and Lists, along with a "Follow SC Consumer Affairs" form.

SCDCA on Facebook

The screenshot shows the Facebook page for the SC Department of Consumer Affairs. The page header includes the Facebook logo and navigation options. The main content area features a large banner with the text "Consumers" and "SC Department of Consumer Affairs is on Facebook." Below the banner, there is a "SC Department of Consumer Affairs" section with a profile picture, a bio, and a "Like" button. The bio states: "The SCCA aims to protect and educate consumers in the state of South Carolina. SCCA seeks to inform about Identity Theft, Lottery/Sweepstakes Scams, Phishing Scams, Work at Home Scams, Fraud, and much more." The page also shows a "Like" count of 45 and a "Map" location in Columbia, South Carolina. The bottom of the page displays a "Highlights" dropdown menu and a "Also On" section with a link to the website: <http://www.consumer.gov>.

SCDCA on YouTube

The screenshot shows the YouTube channel page for the SC Dept. of Consumer Affairs. The channel has 64 subscribers and 96,859 video views. The "Uploaded videos" section lists three videos: "What Should I Be Monitoring?" (1:10), "Worried About Identity Theft?" (9:09), and "Business responsibilities under new FIFITP." (4:06). The "About SC Dept. of Consumer Affairs" section provides a description: "The most important question at the South Carolina Department of Consumer Affairs is the first one we ask: How can we help you? The videos on this channel details the various ways the Department helps S.C. consumers through advocacy, mediation, edu." The page also includes a "Featured Playlists" section with "Uploaded Videos" and "My Top Videos".

Consumer Financial Protection Bureau

• www.consumerfinance.gov

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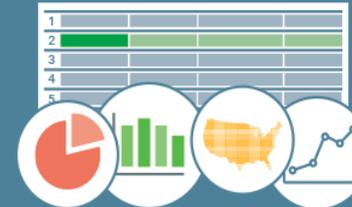
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We're releasing the nation's largest public database of federal consumer financial complaints with information on more than 90,000 individual complaints on financial products and services. [Check it out.](#)



Reminder: Sound off on our student loan affordability initiative

A few weeks ago, we announced that we're gathering information to identify policy options for borrowers to find affordable options on their private student loans. In that short period of time, we've received over 20,000 responses from individuals and organizations telling us what could be done. We've already posted many of the responses online – [...]

APR 4
[Now accepting money transfer complaints](#)

APR 4
[How do you build financial capability?](#)

APR 3
[My next chapter: focusing on the work we do with others](#)

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