

Alabama Debt Collection Laws

Submitted by Brent Yarborough, Zarzaur & Schwartz, P.C.

<http://www.zsattorneys.com/ourattorneys.html>

Published by The national List of Attorneys

www.nationallist.com

Brent Yarborough is an attorney with the Birmingham law firm of Zarzaur & Schwartz, P.C., where he practices in the areas of collections, creditors' rights, commercial litigation, and the defense of consumer law claims. He is a frequent speaker and author on topics related to collections and consumer law. Brent earned his B.A. degree, cum laude, from Birmingham-Southern College and his J.D. degree from Cornell University. Brent serves on the Board of Directors of the National Association of Retail Collection Attorneys (NARCA), on the executive board of the Birmingham Bar Association's Bankruptcy and Commercial Law Section, and on the steering committee of the Central Alabama Financial Education Coalition. Zarzaur & Schwartz, P.C. is a full service creditors' rights law firm. Located in Birmingham, Alabama, the firm serves its many local and national clients throughout the State of Alabama, in all courts and jurisdictions. The firm specializes in the areas of commercial collections, consumer collections, medical collections, utility collections, student loan collections, collateral recovery, commercial bankruptcy, consumer bankruptcy, and the defense of consumer law claims.

Statute of Limitations & Judgments

Collection suits are generally based on breach of contract or stated account, both of which fall under the six (6) year statute of limitations provided in [Alabama Code Section 6-2-34](#). Actions for open or unliquidated account must be brought within three years. See [Ala. Code § 6-2-37\(1\) \(1975\)](#). Judgments are presumed satisfied ten years after entry or last execution. See [Ala. Code § 6-9-191 \(1975\)](#). A judgment may be revived one time, but a judgment cannot be revived after the lapse of twenty years from its entry. See [Ala. Code § 6-9-190 \(1975\)](#). Judgments based on contract actions bear interest at the same rate of interest stated in the contract. All other judgments bear interest at the rate of 7.5 percent per annum. See [Ala. Code § 8-8-10 \(1975\)](#). Alabama has adopted the Uniform Enforcement of Foreign Judgments Act, which can be found at [Ala. Code § 6-9-230 et seq.](#)

Bad Checks

"A person commits the crime of negotiating a worthless negotiable instrument, if the person negotiates or delivers a negotiable instrument for a thing of value and with the intent, knowledge, or expectation that it will not be honored by the drawee." [Ala. Code § 13A-9-13.1](#). This is a Class A misdemeanor. Most, if not all, district attorneys maintain a worthless check unit pursuant to [Ala. Code § 12-17-224 \(1975\)](#). Alabama law also provides a private cause of action for bad checks. The holder of a worthless check may recover punitive damages, compensatory damages, and a reasonable attorney fee. [Ala. Code § 6-5-285 \(1975\)](#). Actions based upon a worthless check must be brought within one year. [Ala. Code § 6-5-285 \(1975\)](#).

Garnishment Exemptions

The first 75% of a debtor's wages are exempt from garnishment. See [Ala. Code § 5-19-15 \(1975\)](#) and [Ala. Code § 6-10-7](#). Section 6-10-6 provides a \$3,000.00 exemption for personal property, but this exemption specifically does not apply to wages, salaries, or other compensation. On the other hand, Section 204 of Article X of the Alabama Constitution (1901) allows a personal property exemption of \$1,000.00. As a result, some debtors attempt to "stack" the exemptions found in Sections 5-19-15 and 6-10-7 with the exemption found in Section 204 of the Alabama Constitution. That is, they use Sections 6-10-7 or 5-19-15 to protect 75% of their wages and then claim that the Alabama Constitution protects an additional \$1,000.00 that is left unprotected by those Code sections. Thus far, the Alabama Court of Civil Appeals has not permitted the "stacking" of these exemptions. [Roberts v. Carraway Methodist Medical Center, 591 So.2d 870 \(Ala.Civ.App. 1991\)](#), established the test for claiming an exemption of wage garnishments: if the total value of all personal property of the debtor, plus the value of a paycheck, is more than \$1,000, then the debtor cannot claim the exemption. See also [Eight Mile Auto Sales, Inc. v. Fair, 25 So.3d 459, 461 \(Ala.Civ.App. 2009\)](#) ("[I]f [defendant's] declaration and claim of exemption includes any wages, the court will allow [defendant] to include wages and other personal property with a total aggregate value of \$1000.00, computed by including 100% of [defendant's] after tax wages for the pay period pursuant to § 6-10-7 . . .") The homestead exemption is \$5,000.00, or \$10,000.00 when the homestead is jointly owned by a husband and wife. [Ala. Code § 6-10-2 \(1975\)](#).

Licensing & Bonding

With respect to debt collector licensing and bonding, [Ala. Code § 40-12-80](#) imposes a license tax on *collection agencies*, depending on the size of the town in which the agency is physically located: 20,000 or more inhabitants - \$100; towns and cities of fewer than 20,000 inhabitants - \$25. The section defines a collection agency as follows: "[e]ach person who shall employ agents to solicit claims for collection from persons, firms, or corporations in the state shall be deemed a collection agency within the meaning of this section." In an unpublished opinion, the United States District Court for the Northern District of Alabama held that the statute only applies to collection agencies with a physical presence (offices, employees, or agents) in Alabama, thus an agency did not violate the FDCPA when it attempted to collect a debt from an Alabama consumer without paying the license tax.

Debt buyers are not subject to any additional licensing or bonding requirements. Also, there are no formal pleading or documentation rules applicable to debt buyers. However, most courts will not enter a judgment without proof of the original debt and a complete chain of title, reflecting each and every assignment from the original issuer of the account to the current plaintiff. The original debt is generally proved through copies of the original contract, the account application, or account statements.

Assignments can often be proved with a bill of sale for each assignment, though a growing number of judges require proof that the debtor's specific account was part of the portfolio of accounts assigned.

No *lawyer* may appear in the courts of Alabama unless that lawyer is licensed to practice here, though mechanisms are available for pro hac vice admissions for purposes of one case. To date, the Office of General Counsel of the Alabama State Bar has not issued a formal opinion on whether sending collection letters or making collection phone calls is the practice of law.

Door-Closing Statute

Pursuant to [Ala. Code § 10-2B-15.01](#)(a) “[a] foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.” Alabama’s door-closing statute is found at [Ala. Code § 10-2B-15.02](#)(a) and serves to bar nonqualified foreign corporations from enforcing contracts in Alabama courts. However, if the nonqualified corporation’s activities are considered “interstate” rather than “intrastate,” then the corporation is protected from the door-closing statute by the Commerce Clause of the United States Constitution. See [Allstate Leasing Corp. v. Scroggins](#), 541 So.2d 17 (Ala.Civ.App. 1989) (citing *Green Tree Acceptance, Inc. v. Blalock*, 525 So.2d 1366 (Ala. 1988)).

The Alabama Court of Civil Appeals has held that a debt buyer’s purchase of chattel paper did not constitute “doing business” within the State of Alabama under the door-closing statute, thus that statute could not be used as a defense to the debt buyer’s collection suit. [Casa Investments Company v. Boles](#), [931 So.2d 53, 59](#) (Ala.Civ.App. 2005).

Commercial & Consumer Collections

Procedures for collection of commercial debts are identical to procedures in most other common law states – no special or unique rules or statutes apply.

With respect to practices relating to consumer collections, Alabama Courts find credit card liability by virtue of use of the card alone, coupled with receipt and non-dispute of billing statements. This principle finds expression variously in several contexts, as follows:

1. Use of the Card Creates an Implied Contract. Its most direct expression can be found in [Jefferson v. HSBC Bank, Nevada N.A.](#), 2008 WL 2559395 (M.D. Ala. June 23, 2008), where the Court rejected the debtor’s argument that “he is not subject to the provision [of the cardholder agreement] because he did not receive a copy of the Agreement until after he used the credit account . . .” The Court said, “Plaintiff [Debtor] is wrong. In contracts, as in life, we must look before we leap. This court, like other courts, consistently holds that use of a credit card indicates a user’s assent to be bound by the terms of the cardmember agreement.” (citations omitted). Similarly, in [Taylor v. First North American National Bank](#),

325 F.Supp.2d 1304 (M.D. Ala. 2004), the Court also held that a cardholder's use of the card signaled her assent to the terms of the card agreement.

2. No Signature Required. Moreover, Alabama courts have consistently rejected a consumer's assertions, and implicit arguments, that the absence of a signature on a written contract, cardmember agreement, or other document nullifies his credit card obligations and permits him to purchase as many items as possible with complete impunity. As stated in [Merrill, Lynch, Pierce, Fenner & Smith v. Kilgore](#), 751 So.2d 8 (Ala. 1999):

This Court has held that the object of a signature on a contract is to show mutuality and assent, and that mutuality and assent can be manifested in ways **other than** a signature. Unless required by a statute to be in writing, **a contract does not have to be signed to be enforceable**, so long as it is accepted and acted upon.
Kilgore, 751 So.2d at 11 (internal citations omitted) (emphasis added).

See also, [Taylor](#), 325 F.Supp.2d at 1313 ("Under Alabama law there is no requirement that a contract contain a signature to demonstrate assent; the existence of a contract may be inferred from external and objective manifestations of assent.") The Alabama Supreme Court likewise held that no signature was required in connection with a bank account in [SouthTrust Bank v. Williams](#), 775 So.2d 184 (Ala. 2000).

3. Account Stated. Finally, even if none of the above were true, liability can still attach on the wholly separate and independent cause of action known as "account stated," which in no way depends on the existence of a card agreement. The Alabama Supreme Court described the elements of account stated as follows in [Gilbert v. Armstrong Oil Co., Inc.](#), 561 So.2d 1078 (Ala. 1990):

An account stated is an agreement between parties who have had previous monetary transactions that the statement of account and the balance struck are correct and a promise, express or implied, that the debtor will pay that amount. *Wilhite v. Beasley*, 497 So.2d 103, 105 (Ala. 1986). When an account is rendered or presented to the debtor and the debtor does not object to it within a reasonable time, the failure to object is regarded as an admission that the account is correct, and it becomes an account stated.
Gilbert, 561 So.2d at 1081.

The two elements of account stated are thus (1) presentment of the account in a statement to the debtor, and (2) the failure of the debtor to object or dispute the account within a reasonable time. E.g. [Mahoney v. Loma Alta Property Owners Assn.](#), 4 So.3d 1130, 1134 (Ala.Civ.App. 2008) ("An account rendered, and not objected to within a reasonable time becomes an account stated, and failure to object will be regarded as an admission of correctness of the account."); [Ayers v. Cavalry SVP I, LLC](#), 876 So.2d 474, 478 (Ala.Civ.App. 2003) (in an account stated lawsuit, "[a]n implied agreement to pay a bill can arise . . . where there has been a showing that the bill was rendered and the recipient of the bill failed to object within a reasonable time.") (citation omitted); [Car Center, Inc. v. Home Indemnity Co.](#), 519 So.2d 1319,

1323 (Ala. 1988); [University of South Alabama v. Bracy](#), 466 so.2d 148, 150 (Ala.Civ.App. 1985). Any dispute of the statements must be raised shortly after the debtor receives the statement. A dispute raised after the lawsuit is filed is too late. [Gilbert](#), 561 So.2d at 1079. An account is thus deemed rendered when it is presented to the account debtor, and not later. [Yarbrough v. Armour & Co.](#), 15 So.2d 281 (Ala.App. 1943).

Most importantly, no card member agreement, written contract, or signature is required to establish consumer liability on an account-stated cause of action. As the Alabama Court of Civil Appeals stated in [Karrh v. Crawford-Sturgeon Ins., Inc.](#), 468 So.2d 175 (Ala.Civ.App. 1985): “[T]he production of the original written contract is not necessary in an action on an account stated, as an account stated is not founded on the original liability.” *Karrh*, 468 So.2d at 177 (internal citation omitted) (emphasis added).

4. Open Account. In [Rose Manor Health Care, Inc. v. Barnhardt Manufacturing Co., Inc.](#), 608 So.2d 358 (Ala. 1992), the Alabama Supreme Court described the open account cause of action as follows:

“[I]n order to establish an open account there must be an account based upon running or concurrent dealings, the dealings must not have been closed, settled or stated, and some term of the contract must remain to be settled between the parties, or the agreement must contemplate further transactions between the parties.”
Rose Manor, 608 So.2d at 360 (quoting 1 C.J.S. *Account, Action On*, § 3 at 606-07 (1985)).

Court Jurisdiction

The *Small Claims Court* has exclusive jurisdiction over cases in which the amount in controversy, exclusive of interest or costs, does not exceed \$3,000.00. There are no jury trials available in Small Claims Court. Also, there is no discovery and very limited motion practice. The Small Claims Court has its own rules, which in some instances differ from the Alabama Rules of Civil Procedure and the Alabama Rules of Evidence. In general, the rules of procedure and of evidence are relaxed in Small Claims Court. A corporation may appear in small claims court with or without an attorney.

The *District Court* has concurrent jurisdiction with the *Circuit Court* for cases involving more than \$3,000.00 but not more than \$10,000.00, exclusive of interest and costs. The Alabama Rules of Evidence and the Alabama Rules of Civil Procedure apply to District Court actions, although some procedural rules are modified for District Court. No jury trials are available in District Court, and discovery is limited. Parties may appeal a judgment from Small Claims Court or from District Court to the Circuit Court for a trial *de novo*. In District Court, a corporation can only appear through an attorney.

Circuit Court is the general jurisdiction trial court. It has exclusive jurisdiction over claims involving more than \$10,000.00, and it shares concurrent jurisdiction with the District Court over claims involving more

than \$3,000.00 but not more than \$10,000.00. The full range of discovery is permitted in Circuit Court and jury trials are available.

Filing Fees & Other Costs

Court costs vary greatly by county and change often. While it is difficult to provide an accurate fee schedule, the following ranges should give the reader a general idea of the fees charged by various courts in Alabama. For *small claims* cases involving up to \$1,500.00, most filing fees range from \$61.00 to \$78.00. For small claims cases involving more than \$1,500.00, most filing fees range from \$135.00 to \$156.00. The *District Court* filing fees generally range from \$256.00 to \$302.00. The *Circuit Court* filing fee for cases in which the amount in controversy does not exceed \$50,000.00 usually range from \$260.00 to \$426.00. If the case involves more than \$50,000.00, then the filing fee can be as low as \$358.00 and as high as \$526.00. The fees for appealing a case to Circuit Court for a trial de novo range from \$258.00 to \$426.00. If the appeal includes a *jury demand*, there is an additional \$100.00 fee.

The cost of *service of process* is not included in the above-quoted fees. The *County Sheriff or Constable* generally charges between \$10.00 and \$20.00 for service. If the suit names *multiple defendants*, then most counties will charge between \$10 and \$20 for each additional defendant. There is also an additional fee of \$50.00 for the filing of a *motion for judgment*, whether it is a motion to dismiss, a motion for summary judgment, or a motion for default judgment. However, no such fee exists in small claims cases. The filing fee for a *garnishment* or an execution is generally \$30.00, which does not include a fee for service of process.

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

©The National List of Attorneys, January 2013