

## **South Carolina Debt Collection Laws**

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**1) Statutes of Limitations for open accounts, written contracts, domestic and foreign judgments:**

**S.C. Code §15-3-530: Actions other than for recovery of Real Property.**

Pursuant to this statute, the statute of limitations will expire three years after the debtor's initial date of default. A second statute in South Carolina (referred to below) serves as a tolling statute in many debt collection cases.

**S.C. Code §15-3-120: Effect of new promises in writing or part payments.**

A partial payment or a written promise to pay a debt serves to toll the statute of limitations on a suit seeking collection of that debt for an additional three years.

**S.C. Code §15-3-520(a): Within Twenty Years.**

A suit for collection of a Contract that is secured by a Mortgage of Real Property is enforceable within twenty years of the date of the creation of the Contract if there is no maturity date.

**S.C. Code §15-3-600: Action for Other Relief (Foreign Judgments).**

Pursuant to the holding in [\*Abba Equipment, Inc. v. Thomason\*, 335 S.C. 477, 517 S.E.2d 235 \(S.C. Court App. 1999\)\(Rehearing denied July 24, 1999\)\(Cert. Dismissed Oct. 27, 1999\)](#). The above referenced statute begins to run when a Judgment Debtor moves to South Carolina. A Judgment Creditor has ten years from the date a Judgment Debtor moves to South Carolina to seek to have a Foreign Judgment enrolled against that Judgment Debtor.

**2) Civil Remedies for Fraudulent Checks:**

**S.C. Code §34-11-75: Civil remedy for Drawing and uttering of fraudulent checks, drafts, or other written order.**

A person who writes a fraudulent check is civilly liable for the lesser of \$500.00 or three times the amount owing on the face of the check. A jury has authority under the statute to choose to waive the fine or treble damages, if it finds that the dishonored check was due to a “recent discharge from employment, personal or family illness, or personal or family catastrophic loss.” In order to obtain treble damages, the Creditor is required to send a written demand to the debtor prior to filing suit that:

- Describes the check and the circumstances of its dishonor.
- Contains a demand for payment and notice of intent to file suit for treble damages if payment is not received within 30 days.
- Be mailed to the Defendant at their last known address by certified mail.

**3) General Garnishment:**

**S.C. Code §37-5-104: No Garnishment.**

Wage garnishment is forbidden in any action for “consumer credit sale, a consumer lease, a consumer loan, or a consumer rental-purchase agreement, regardless of where made.”

**4) Property Exemptions:**

**S.C. Code §15-41-30:**

- \$50,000.00 for a home in which the Judgment debtor resides up to \$100,000.00 if the home is a jointly owned residence.
- \$5,000.00 in one motor vehicle.

- \$4,000.00 in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for personal, family, or household use of the Judgment debtor.
- \$1,000.00 in jewelry held primarily for personal, family, or household use of the debtor or dependant of the debtor.
- For debtors not claiming a homestead exemption in real property in which they reside, \$5,000.00 in “liquid assets”. “Liquid Assets” includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.
- \$1,500.00 interest in implements, professional books, or tools of the trade for the debtor or the trade of a dependent of the debtor.
- \$5,000.00 in value of an unused exemption amount to which the debtor is entitled.

**Fully exempt from attachment:**

- Any unmatured life insurance contract owned by the debtor, other than credit life insurance contract.
- Professionally prescribed health aids for Debtor or dependent of the debtor.
- Social security benefit, unemployment compensation, local public transit benefit.
- Veteran’s benefits.
- Disability benefit.
- Alimony, support, or separate maintenance.
- Payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness disability, death, age, or length of service.
- An award under a crime victim’s compensation reparation law.
- Payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was a dependent.
- Payments from a life insurance policy that insured the life of an individual of whom the debtor was a dependant on the date of that individual’s death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
- Individual Retirement Accounts
- Pension plans that qualify under the Employee Retirement Income Security Act of 1974, as amended.

**5) Debt collection licensing, bonding, and other regulations:**

As of the writing of this paper there are no licensing or bonding requirements for debt collectors doing business in South Carolina unless they have an office in South Carolina and are not a South Carolina Corporation, in which circumstance they are required to register as a foreign

corporation doing business in South Carolina. [S.C. Code §33-15-101](#). There is pending legislation in the South Carolina General Assembly, H 3383~37-12-10 et seq., that if adopted will require licensing of Debt Collectors and Continuing Professional Education for licensed debt collectors. *As of the date of the writing of this article this bill has not been adopted as law.*

6) **Laws relating to debt collection practices:**

**Unfair Trade Practices Act (Consumer and Commercial Collections):**

**S.C. Code §39-5-10, et. seq.: South Carolina Unfair Trade Practices Act (“UTPA”).**

Unfair and deceptive practices, including those used by debt collectors, are covered by this act. The actions that are considered “Unfair or Deceptive” are unspecified. However, they must be acts that “affect the public interest” and that are “capable of repetition.” Failure to allege the acts affect the public interest or to show how the acts affect public interest will result in dismissal of this claim. Willful violations of the UTPA can give rise to treble damages for those violations.

**The South Carolina Consumer Protection Code (“SCCPC”) [§37-1-100, et. seq.](#) (Consumer Collections)**

**S.C. Code §37-2-202: Exclusions.**

The South Carolina Consumer Protection Code does not apply to loans given to Government or Government agencies; loans “made for primarily agricultural purposes;” loans “on behalf of students pursuant to a government supported educational loan program;” and loans made by a federally chartered credit union.

**S.C. Code §37-2-412: Notice of Assignment.**

The Consumer is authorized to pay the original Creditor until the buyer notifies the Debtor of the purchase of a given debt by a third party. Upon request from the Debtor, a buyer must provide the Debtor with “reasonable proof that the assignment has been made, and unless he does so the buyer or lessee may pay [original Creditor].”

**S.C. Code §37-2-413(1): Attorney’s Fees.**

Attorney’s fees may not exceed “15 percent of the unpaid debt after default and referral to an attorney not a salaried employee of the [Creditor].” Attorney’s fees provisions must be included in the body of the Contract sued upon.

**S.C. Code §37-5-108: Unconscionability; inducement by unconscionable conduct.**

In this section the general rules for debt collection by *any* Creditor, third-party or first-party Creditor, in South Carolina are set forth. Any action that would be a violation of the Fair Debt Collection Practices Act (FDCPA) would apply to *any* Creditor seeking to collect debts in South Carolina. This includes:

- Contacting any party other than the Debtor without the Debtor's express permission.
- Contacting the Debtor after the Creditor has notice that the Debtor has retained legal counsel.
- Contacting the Debtor at odd hours (generally the hours between 8:00 AM and 9:00 PM are considered acceptable, unless the debtor has given actual notice that those hours are not acceptable)
- Attempting to contact the Debtor repeatedly within a twenty-four hour period with the intent to harass the Debtor.
- Communicating with the Debtor by post card or publishing a list, to anyone other than a Credit Reporting Agency, of people allegedly unwilling to pay a debt.
- Additionally, pursuant to this portion of the SCCPC debtors must file a complaint 30 days prior to filing a suit against a Creditor alleging violations of the SCCPC.
- Threatening to take any action against the Debtor that is not legal in South Carolina. This would include wage garnishment because, as is shown above, wage garnishment is forbidden by State Law in consumer debt collection cases.
- Etc... (the list of potential offenses in the SCCPC is not exhaustive.)

**S.C. Code §37-5-110: Notice of Consumer's Right To Cure.**

Under the SCCPC, any Creditor not exempt from the terms of this statute must provide Debtors with notice of their default and their right to cure their default *at least* twenty days prior to the acceleration of any consumer debt due in one or more installment payments. This applies to secured and unsecured loans. If the loan is secured, the notice of Right To Cure must be sent at least twenty days prior to the self-help repossession of the collateral. Repossession without sending the Debtor a Notice of Right to Cure or repossession after sending a Notice of Right to Cure that gives a Debtor less than twenty days to cure their default will give rise to a cause of action for "Conversion."

**S.C. Code §37-5-111: Cure of Default.**

If a debtor cures their default and the debt is for a revolving consumer loan (Credit Card), the Creditor must re-notice the Defendant's default, if more than twelve months pass after the Defendant cures their default on their loan. Loans for a single lump sum amount do not require

additional Notices of Right to Cure Default after the initial Notice of Right To Cure has been provided.

**S.C. Code §37-10-105: Violations; Civil Actions [Statute of Limitations].**

Creditors who violate the SCCPC are subject to suits for actual damages and attorney's fees. The Statute of limitations is three years from the date of the alleged violation of the act.

**7) Debt collection fees and costs:**

**Filing Fee Costs:**

- \$150.00 to file suit in all South Carolina Counties.
- \$25.00 for all motions and orders.

**Process-serving options and costs (varies):**

- Sheriff: \$15.00-\$25.00 for a single person.
- Process Servers: \$45.00-\$65.00 for a single person.

**Debtor's Examinations- Supplemental Proceedings:**

Prior to conducting a debtor's examination in South Carolina the Judgment Creditor must attempt a Writ of Execution with the Sheriff for the County in which the debtor resides. There is a \$25.00 fee for that Writ, and the Writ must be certified by the Clerk of Court for the County in which the Debtor resides, prior to sending the execution to the Sheriff.

After the Execution is returned *nulla bona*, the creditor may seek a supplemental proceedings or debtor's examination. This is done by petitioning for a rule to show cause and order of reference with the Administrative Judge for the County in which the Debtor resides. There is a \$25.00 fee for this petition. If this is a county that has a Master-In-Equity, there is a \$25.00 fee for scheduling the debtor's examination. If there is no Master-In-Equity for that County, a Special Referee will need to be appointed. The fees for Special Referees will vary depending upon who agrees to accept that appointment. The Rule to Show Cause will need to be served by the Sheriff for the county in which the debtor resides. The standard process service fees will apply.

**8) State Attorney General Actions:**

As of the date of writing of this article we are unaware of any actions brought against debt collectors in South Carolina by the State Attorney General's office.

**9) South Carolina Case law on Debt Collection:**

- *Foster v. Ford Motor Credit Company*, 302 S.C. 450, 395 S.E.2d 440 (1990): Failure to properly send a Notice of Right to Cure to a Debtor prior to repossessing a piece of collateral can give rise to a cause of action for conversion against the Creditor. Additionally, the South Carolina Supreme Court held that businesses whose principle purpose is the enforcement of security interests are subject to the Fair Debt Collection Practices Act (FDCPA).
- *Abba Equipment, Inc. v. Thomason*, 335 S.C. 477, 517 S.E.2d 235 (S.C. Court App. 1999)(Rehearing denied July 24, 1999)(Cert. Dismissed Oct. 27, 1999): Statute of limitations for enforcement of foreign judgments.
- *Roberts v. LaConey*, 375 S.C. 97, 650 S.E.2d 474 (2007): A non-attorney may not appear in court to enforce a debt that is not their own, even when only seeking to enforce post-judgment remedies on a judgment. A non-attorney appearing in court seeking to enforce post judgment remedies on a judgment debt that is not their own is engaging in the unauthorized practice of law.
- *Daniel and Butler v. Vanderbilt Mortgage and Finance, Inc.*, 137 B.R. 884 (Dist. SC 1992): Debt collection practices are covered by the South Carolina Unfair Trade Practices Act.
- *Craig v. Andrew Aaron & Associates, Inc.*, 947 F. Supp. 208 (Dist. SC 1994): In addition to showing an unfair or deceptive practice, a party claiming a cause of action under the Unfair Trade Practices Act must show the action, by repetition, can affect the Public Interest. Failure to do so means failure of the cause of action under the Unfair Trade Practices Act.
- *Huggins v. Citibank, N.A.*, 355 S.C. 329, 585 S.E.2d 275 (2003): South Carolina does not recognize a cause of action for negligent enablement of imposter fraud.

**10) Significant Ethics Opinions on Debt Collections:**

- *In Re Zenner*, 348 S.C. 499, 560 S.E.2d 406 (2002): In this case a South Carolina attorney was hired by a collection company to serve as their attorney for collections in South Carolina. It held that an attorney must have control over his employees and the manner in which they act to collect on debts. That allowing a third party, the debt collection company in this case, to hire and fire without the attorney's permission was a violation of the attorney's ethical duties and facilitated the unauthorized practice of law by the debt collection company.

- *In Re DuBre*, 376 S.C. 158, S.E.2d 343 (2007)(*rehearing denied* 2008): A South Carolina attorney was hired by an out-of-state law firm to simplify complaints and discovery requests and to recruit clients for the out-of-state law firm. No one at the out- of-state law firm was licensed to practice law in South Carolina. The South Carolina Supreme Court held that the Attorney's actions in this case were assisting in the unauthorized practice of law.

*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.*

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