

# Creditors to be Covered by New FDCPA w/ 10x Damages Available?: HEROES Act Seeks to Make Massive Changes to Consumer Protection Laws– Here’s What You Need to Know

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Well its a new week so there’s a new Coronavirus bill floating around–this time a House-drafted bill that affords \$3 trillion in relief to consumers and businesses impacted by COVID 19. (A trillion here, a trillion there–sooner or later it starts to add up.)

This thing is massive–1815 pages total–and I’ll admit I merely skimmed part of it. But I dug into the key components and there is much to report. If you want [to read the rest of it you can find it here.](#) Also a one-page summary of the HEROES Act can be seen [here](#). A more detailed, 90-page summary can be seen [here](#). A summary of the HEROES Act’s provisions for state, territorial and local governments can be seen [here](#). Enjoy!

This thing could be a really big deal if it passes in its current form. (It has not yet passed the House and is expected to be voted on this Friday.) There are a large number of changes to FCRA–the team will cover that shortly–but one *really* big proposed change is an amendment to the Fair Debt Collection Practices act: a new Section 812A would be added entitled “**Restrictions on collections of consumer debt during a national disaster or emergency.**” And yeah, it sounds like just what it is.

So here’s the lead– **creditors would be subject to the FDCPA’s emergency restrictions and would be barred from collecting on their own debts.** We all know that typically the FDCPA only applies to third-party debt collectors or folks that buy debt or delinquent accounts. Well under HEROES *everyone* that is owed or collects on consumer debt is covered–unless the debt arose post emergency (I feel like there’s an irony to that, but I digress.)

And **the restrictions are pretty broad.** Under HEROES during a “covered period”–more on that in a second– creditors and collectors cannot repossess or foreclose on any personal property (mortgages are dealt with separately) or garnish wages or other income. What’s more, folks can’t threaten to take any such action either.

Importantly, however, **HEROES–like CARES–does NOT purport to prevent the use of an autodialer, or the making of manual calls, to collect a debt (or for any other purpose for that**

**matter.)** Rather the restriction is solely on the *content* of communications with debtors– [gees, where has that come up recently?](#) So you can make phone calls to debtors–HEROES makes it clear that nothing “prohibit[s] a consumer from voluntarily paying, in whole or in part, a debt”– you just can’t say certain (not entirely clear what) things on those call. Got it. [Feels very Constitutional.](#) (Call us if you need help on that one and you will.)

And in one really fun section HEROES makes a violation of new (proposed) section 812A super expensive– “each dollar figure in [the FDCPA’s private right of action] **section shall be deemed to be 10 times the dollar figure specified.**” Eesh. So instead of \$1,000.00 in statutory damages you’re looking at \$10k–per violation. Fun.

*Plus* the cause of action against the collector (again includes creditors) is tolled pending the duration of the emergency.

Oh, and did I mentioned that **arbitration clauses cannot be enforced with respect to such claims?** No? Here’s what HEROES says: “Notwithstanding any other provision of law, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a dispute brought under this section, including a dispute as to the applicability of this section, which shall be determined under Federal law.”

So all-in-all, if HEROES passes everyone will be barred by the FDCPA from collecting on consumer debt across the nation during the “**covered period**”–**which is from the date of enactment to a date 120 days after the COVID-19 pandemic ends**–and a violation will result in ten times the normal statutory penalty. And no arbitration allowed.

Got it? Good. But that’s just one of numerous consumer-protection re-writes the (proposed) statute contains. More to come.

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