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House Judiciary Committee
State House
Montpelier, Vermont

Re: H.482 - Debt Collection proposed legislation

Dear Friends,

Thank you very much for the opportunity to comment on the draft legislation proposal put forward by Vermont Legal Aid. I am an attorney admitted in Vermont since 1994. For the last 20 years, I have focused my practice in the areas of commercial and consumer debt collection, where I have represented both creditors and debtors. I have also served three terms in this legislature back in the 1990's. I believe it is important that the legislature hear from and listen to people in with actual experience in Vermont. I believe that when the legislature listens to such people, the resulting product of your work is of a higher quality and less likely to cause unintended negative consequences.

With respect to the specific proposal before you, I would note the following:

Sec 2. Judgment interest cramdown

Creditors do not oppose the establishment of a procedure for the cramdown of post judgment interest so long as it:

1. Clearly defined procedure that is invoked by the judgment debtor(s);
2. Applies prospectively only, for up to one year in advance;
3. Requires the judgment debtor to fully and completely disclose their income and assets, as well as any anticipated change in circumstances anticipated in the next year (pending inheritances, etc.);
4. Requires the debtor to make payments to the extent they are able;
5. Gives the creditor the ability to examine and investigate if the statements made by the debtor are truthful and complete; and,
6. Clear and specific criteria and guidelines for the Court to apply in making its determination.

The proposal before you does not include these important safeguards, and therefore, I ask that this section be removed. I have drafted and circulated the attached proposal which incorporates the above criteria. It closely tracks the driver's license restoration bill you recently enacted (Act 147, 2016). If you wish to provide for the ability of a court to reduce or suspend the accrual of post judgment interest, the attached proposal is a more fair, thorough and balanced approach.

Sec. 6. Trustee Process Against Bank Accounts

In general, after negotiations with Vermont Legal Aid and other stakeholders, I am in support of the proposal before you with three exceptions:

In Section §3173(f), a debtor may request an expedited hearing on the bank attachment which is to be held within 3 days of the request. But the Trustee's disclosure is not required to be filed until 10 days after the service on the bank. A hearing on the bank attachment without the bank's

disclosure cannot resolve anything. The better practice, incorporated in earlier drafts but since removed, is to require that the debtor obtain the disclosure from their bank and file it with the request for the expedited hearing.

The resolution of this issue would be to add subsection (C) to §3173(f)(2) to read:

(C) Include a sworn copy of the Trustee's Disclosure if one has not already been filed with the Court.

In Section §3173(g)(2), the Legal Aid proposal calls for the Court to consider the post judgment interest cramdown in section 1 of this bill. Post judgment trustee process against bank accounts is a procedure used more often in the commercial than the consumer practice. Since the interest cramdown only affects only personal consumer credit card debt and requires its own motion and procedure, it should not be part of this separate, unrelated process.

Finally, it should be made clear that the bank account exemption set forth in 12 V.S.A. §2740(15), (\$700) cannot be stacked with the general wildcard exemption set forth in 12 V.S.A. §2740(7). Allowing the wildcard exemption of \$7,400 to be stacked in this process would yield an exemption of \$8,100, which is clearly not the intent of this process.

12 V.S.A. §2704(7) reads as follows:

(7) the debtor's aggregate interest in any property, not to exceed \$400.00 in value, plus up to \$7,000.00 of any unused amount of the exemptions provided under subdivisions (1), (2), (4), (5) and (6) of this section;

The resolution of this issue would be to add subsection (i) to §3173 to read:

(i) The provisions of 12 V.S.A. §2740(7) shall not apply to proceedings under this chapter.

In Conclusion

As some others have told you, and as you have begun to examine and learn about this area of law you have no doubt discovered, Vermont's debt collection laws are somewhat antiquated, don't conform well with how modern society operates and would significantly benefit from a comprehensive review and revamping. I and many of the others you will hear from on this proposal have met many times over the last several years to see where agreement could be reached to modernize Vermont's debt collection laws in order for them to work better for debtors, creditors and the Courts. Unfortunately, the representatives of Vermont Legal Aid who are the proponents of this proposed legislation refused to consider any compromises or modifications that would assist creditors or the Courts in reducing costs, labor or any inefficiencies, even where debtors would benefit. They have instead opted to "go it alone" and put only their proposals before this Legislature. I believe that Vermont law is best reformed when the affected parties work together, offer and accept compromise, and use their expertise to create a better outcome for everyone. For sections 1-3, & 5, I suggest that this legislature remove those sections until the stakeholders can come together and present a uniform set of reforms that will improve the system for everyone.

Sincerely Yours,

Alan Bjerke

Amendment to Section 1 of H.482

Sec. 1. 12 V.S.A. §2910 is added to read:

§2910 Post-Judgment Suspension of Interest on a Judgment

(a) A judgment debtor on a judgment arising from default on a credit card debt on which all judgment debtors are natural persons may request that the court reduce or suspend the future accrual of interest on a judgment which has become final by filing a post-judgment motion which at a minimum, sets forth the following:

(1) That the income of all judgment debtors for the two month period prior to the filing of the motion is less than 150% of the federal poverty line;

(2) Includes a comprehensive financial disclosure of assets, income and living expenses for each judgment debtor on a form provided by the court;

(3) Includes a statement whether or not any judgment debtor anticipates any substantial change in assets, income, or expenses within the subsequent twelve months, and if so, describes such anticipated change in detail; and,

(4) Includes a statement detailing all amounts of money or property valued over \$500 due and owing to each judgment debtor, including at a minimum, the identity and location of the person or entity who owes the judgment debtor the money or property, the amount or value of the property alleged to be due, the basis for the claim that the money or property is due, and the name of the judgment debtor to whom the obligation is due.

(b) If a judgment debtor has filed a motion under this section which has satisfied the requirements and criteria of subsection (a) of this section, and determined that all judgment creditors in the judgment sought to be affected have been given notice of the motion pursuant to Court Rules, the Court shall set a hearing on the motion not less than 30 days after the notice of hearing is issued.

(c) Notwithstanding the provisions of 9 V.S.A. §2480e, a judgment creditor who has received a motion submitted under this section shall be authorized to obtain the credit report of each judgment debtor on the judgment sought to be affected.

(d) At a hearing held pursuant to this section, the judgment debtor shall have the burden to establish:

- (1) That the income of all judgment debtors for the two month period prior to the filing of the motion is less than 150% of the federal poverty line;
- (2) That no judgment debtor on the judgment sought to be affected has the income or assets available to satisfy the judgment without incurring substantial hardship; and,
- (3) That each judgment debtor has made payment toward the judgment sought to be affected in an amount which reflects the amount of their income and assets, less reasonable living expenses and asset requirements, or that the reasonable expenses and asset requirements exceed the available income and assets of such judgment debtor.

(e) Following the hearing to be held pursuant to this section, if the evidence presented at the hearing so establishes, the Court shall issue findings, referencing the evidence upon which each finding is based, as follows:

- (1) That the income of all judgment debtors for the two month period prior to the filing of the motion is less than 150% of the federal poverty line;
- (2) That no judgment debtor on the judgment to be affected has the income or assets available to satisfy the judgment without incurring substantial hardship;
- (3) That each judgment debtor has made payment toward the judgment sought to be affected in an amount which reflects the amount of their income and assets, less reasonable living expenses and asset requirements, or that the reasonable expenses and asset requirements exceed the available income and assets of such judgment debtor.
- (4) That the accrual of post judgment interest at the rate established by law presents an unfair and undue burden on all judgment debtors; and
- (5) That the accrual of post judgment interest at the rate established law constitutes unjust enrichment for the judgment creditor(s).

(f) Upon affirmative findings of all of the requirements of the preceding subsection (e), the Court may suspend the future accrual of some or all post-judgment interest on the judgment sought to

be affected for a period not to exceed 12 months following the date of the Court's findings and order. The amount of interest suspended shall be the minimum amount necessary to prevent the accrual of interest to be an unfair and undue burden on the judgment debtor(s).

(g) In the event the court declines to suspend any part of the accrual of post-judgment interest and finds that a request submitted under this section was made in bad faith or that any statement made by a judgment debtor in connection with the proceeding was false or misleading, the Court shall award the judgment creditor(s) the amount of their costs and a reasonable attorney fee for defending the motion.

(h) A judgment creditor may move to set aside the order suspending any or all post-judgment interest accrual upon a showing of a real, significant and unanticipated change in circumstances of any judgment debtor which would result in a judgment debtor having a reduction of expenses or more income or assets available to satisfy the judgment against them.