

Alan Bjerke, Esq.

February 28, 2018

House Commerce 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. You will recall that following last year's review of similar legislation, the parties were urged to meet over the summer and work on resolving differences. I participated in that process and can tell you that it was very frustrating. Legal Aid monopolized the meetings, presented constantly changing draft "concepts," refused to acknowledge clear problems with their proposals, refused to consider or even allow time for consideration of alternative proposals and then ultimately drafted what is before you now, much of which was never presented to any group meeting on the topic. My point is simply this: As Dan Richardson testified before your committee on February 8th, the proposal before you is not the result of debtor and creditor representatives working together to reach common ground. Legal Aid presented an ever changing array of proposals and not only did their proposal not incorporate stakeholder feedback concerns - - much of what is before you was never presented to stakeholders at any of the meetings.

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

Sec 1. Judgment interest cramdown

The proposal before you states that a court may suspend the accrual of post judgment interest "if the court finds, through a financial disclosure, that the debtor has an inability to pay"

Stakeholders in this process have consistently asked that the statute set forth a procedure to determine whether and when to cramdown interest and clear criteria for the court to evaluate when determining whether and how much to cramdown. We also believe that the onus should be on the debtor to invoke this provision and that it only apply prospectively. The specific language we propose is:

(10) (A) For postjudgment interest on a judgment the rate shall be 12 percent per annum using simple interest,

(B) A judgment debtor may file a motion to have the Court reduce or eliminate the accrual of interest for a subsequent period which shall not exceed one year. Any such motion shall include a complete disclosure of income and assets for all judgment debtors, submitted under oath, and a statement describing any anticipated change of circumstances for the coming year. The Court may grant a reduction of the rate of interest to accrue on the judgment for not more than one year if the Court finds that the accrual of interest would result in either a substantial hardship to the judgment debtor(s) or an unwarranted windfall to the judgment creditor.

Sec 4. Mandatory minimum penalties under the Consumer Fraud Act

9 V.S.A. §2461 Concerning establishing a minimum civil penalty

Consumers currently have the ability to seek legal relief for violation of Vermont's Consumer Fraud Act and recover:

1. Their actual damages; or the amount paid in connection with the transaction;
2. Punitive damages for up to 3 times the amount paid; and
3. Complete recovery of their attorney's fees and costs.

The Consumer Fraud Act is both very broad and very favorable for consumers. Its reach has no minimum or maximum thresholds. So, if someone refused to honor a \$5.00 coupon on a \$20 item, the aggrieved consumer could use the Act to obtain relief. Built into the existing Act is some correlation between the scale of the transaction and the compensation available under the Act. Establishing mandatory minimum penalties creates a legal framework for litigants to extort substantial sums of money from Vermont's merchants and service providers by using 5 or 6 minor infractions to threaten suit and obtain judgments for up to \$5,000 plus costs and mandatory attorney fees.

I shared with you my experience last year of a plumber who failed to show up for two appointments I had arranged with him. Applying 9 V.S.A. §2457, I sought and obtained payment from him of \$150 for my time. Has this proposal been in effect, I could have obtained \$1,500 plus attorney's fees and costs for the two missed appointments. While I would have personally benefitted substantially, even I would have to admit it would be unjust, unfair and far out of proportion to any possible harm I suffered. Legal Aid has never been able to describe a single scenario in which this proposal would more fairly compensate a consumer than the existing Act provides.

Sec 5 Adding Notice requirements

Section 2491a applies only to Credit Card debt collection. 99.9% of such collections are handled in Vermont by companies that comply with the FDCPA which provides the same initial disclosure with the exception of the sending of a financial disclosure and asking the debtor to complete and return it, which would clearly violate the FDCPA. The only creditors for whom this would apply and the FDCPA does not apply would be a small handful of Vermont Credit Unions. I believe this section should be eliminated.

Section 7 Creating further obstacles to Wage Garnishment

First and foremost, it is important to understand that if a debtor refuses to voluntarily repay a debt that they owe, the creditor has a somewhat limited number of options they can use to force a debtor to make payments involuntarily. Wage Garnishment is by far the most "civilized" and least disruptive option for the debtor. There is ample notice in advance, A court reviews the debtor's income and expenses and arrives at a periodic garnishment amount that is already limited to a maximum of 15% or 25% of earnings depending on the basis for the underlying debt. Once a Court issues a garnishment order, the debtor is on notice that his income from the job being garnished will be reduced by a specific amount, beginning on a specific date in the future. Many states have a more streamlined garnishment procedure that does not provide the degree of individualized judicial oversight. Vermont is already far more "debtor friendly" than most other

states in this regard.

Keep in mind, this provision affects far more than credit card debt. This affects your local fuel dealer, State unemployment insurance overpayment recovery, municipal government, the plumber who came out in the middle of the night to get a furnace working and other hardworking Vermont businesses whom the Debtor refuses to make a voluntary agreement to pay.

With respect to §3170(b) The minimum wage threshold on wage garnishment
The proponents of this measure argue that anyone making only the Vermont minimum wage should have at least that much income protected and available to live on. This proposal is not actually so limited. As your committee's exploration into the issues of Vermont's workforce has shown, the old model of each person working for just one employer 40 hours a week applies to a smaller and smaller proportion of Vermont's workforce. It is becoming more commonplace for Vermonters to string together 2 or more jobs to maximize their income.

What the proponents are not telling you is that the 40 times the minimum hourly wage threshold is a "per job" exemption. Someone who works 2 jobs, 20 hours per week at \$20/hr makes \$400 per job and this proposal provides a \$400 exemption for each job, even though they make \$800 (double the minimum wage) weekly. In the new economy, this example better reflects how people earn money - a part time job, supplemented by Uber fares, for example. Exempting \$400 per week from "each job" earnings will result in many debtors getting double or even triple the protected income than the proponents argue.

Section 8 Bank, stock brokerage and other Trustee Process

Since I understand that the Judiciary Committee will be more involved in reviewing this section, I will direct my comments on this section to them.

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, regardless of whether debtors would benefit or not. They have instead opted to "go it alone" and put only their proposals before this Legislature. As I did last year, I am presenting you with proposed legislation, several components of which would reduce the costs and burdens of the legal debt collection process on debtors, while others would implement more modern approaches to make the system more fair, simpler to administer and less burdensome on the Courts to process. I hope that you will take the time to consider these alternative measures in your consideration of this proposed legislation. Or better yet, make clear to the proponents of this legislation that Vermont law is best reformed when the affected parties work together, offer

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and accept compromise, and use their expertise to create a better outcome for everyone.

If I can be of any further assistance to you, please do not hesitate to contact me.

Thank you very much.

Sincerely Yours,

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