

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 482 entitled “An act relating to consumer protection”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

7 Sec. 1. 9 V.S.A. § 41a is amended to read:

8 § 41a. LEGAL RATES

9 (a) Except as specifically provided by law, the rate of interest or the sum
10 allowed for forbearance or use of money shall be 12 percent per annum
11 computed by the actuarial method.

12 (b) The rate of interest or the sum allowed:

13 * * *

14 (10)(A) Subject to subdivisions (B) and (C) of this subdivision (10),
15 interest on a judgment against a debtor in default shall accrue at the rate of 12
16 percent per annum using simple interest.

17 (B) A court may suspend the accrual of interest on a judgment
18 against a debtor in default if the court finds, through a financial disclosure, that
19 the debtor has an inability to pay on a debt incurred primarily for personal,
20 family, or household purposes pursuant to 12 V.S.A. § 2903a.

1 judgment, or a continuation hearing after the judgment, or upon motion of the
2 judgment creditor or judgment debtor.

3 (b) The court's findings shall be based on testimony and shall not consider
4 a request to suspend or reduce the statutory rate of interest until a completed
5 financial disclosure form provided approved by the court prior to or at the time
6 of granting judgment, or is filed with the motion to suspend, reduce, or
7 reinstate post judgment interest, and any other information required by the
8 court.

9 (c) The court shall issue an order to suspend or reduce the accrual of post
10 judgment interest if it finds that the judgment debtor's income and assets are
11 exempt from collection and that the judgment debtor's available income and
12 assets are not greater than those that are reasonably necessary for the support
13 of the debtor and any dependents of the debtor.

14 (d) The court's order shall provide:

15 (1) the date on which accrual of post judgment interest will be fully or
16 partially reinstated; and

17 (2) that the suspension or reduction of the accrual of interest is based on
18 the judgment debtor's current income and assets, and if during the period
19 specified in the order the judgment debtor's income or assets increase, the
20 judgment debtor shall provide the judgment creditor with an updated financial
21 form within 30 days of the increase.

1 or prohibited by any rule or regulation made pursuant to section 2453 of this
2 title;

3 (A) may sue for appropriate equitable relief ~~and~~;

4 (B) may sue and recover from the seller, solicitor, or other violator
5 the greatest of:

6 (i) the amount of his or her damages, ~~or~~;

7 (ii) the consideration or the value of the consideration given by the
8 consumer; or

9 (iii) \$500.00 for a first violation or \$1,000.00 for each additional
10 violation;

11 (C) ~~reasonable attorney's fees and~~ may sue for exemplary damages
12 not exceeding three times the value of the consideration given by the
13 consumer; and

14 (D) if the consumer prevails, shall recover reasonable attorney's fees.

15 (2) Any language, written or oral, used by a seller or solicitor, which
16 attempts to exclude or modify recovery of the penalty or reasonable attorney's
17 fees shall be unenforceable.

18 * * *

19 Sec. 5. 9 V.S.A. chapter 63, subchapter 9 is added to read:

20 Subchapter 9: Debt Collectors and Debt Collection

21 § 2491. ENFORCEMENT

1 (a) A person who violates a provision of this subchapter commits an unfair
2 and deceptive act in commerce in violation of section 2453 of this title.

3 (b) This subchapter does not apply to a commercial loan or a debt secured
4 by a home mortgage real property.

5 (c) Nothing in this subchapter shall prohibit a financial institution from
6 exercising a contractual right of setoff against a post-judgment debtor’s deposit
7 accounts with the financial institution.

8 § 2491a. CREDIT CARD DEBT COLLECTION; NOTICE TO CONSUMER
9 PRIOR TO COMMENCING CIVIL ACTION

10 (a) Definition. As used in this section, “credit card debt” means debt based
11 on credit, which is the right to incur debt and defer its payment, that was
12 extended through any card, plate, or other single credit device that may be used
13 from time to time to obtain credit. For purposes of this section, “credit card
14 debt” only includes debt incurred primarily for personal, family, or household
15 purposes.”

16 (b) Notice of debt. Not more than 120 days and not less than 60 days
17 before filing a civil action or motion brought more than 12 months after
18 judgment to collect credit card debt, a debt collector shall send to the consumer
19 the court’s claim of exemption form and a written notice that contains:

20 (1) the amount of the debt;

21 (2) the name of the debt collector to whom the debt is owed;

1 (3) the name of the original creditor, the last four digits of the account,
2 and the alleged date of the last payment if any;

3 (4) a statement that, if the consumer indicates in writing that the
4 consumer’s current income and assets are exempt from collection, the debt
5 collector will review the information in deciding whether and how to proceed
6 in collecting the debt.

7 § 2491b. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

8 EXPIRED; LIMITATIONS

9 ~~(a) A debt collector may not initiate a collection action when the debt~~
10 ~~collector knows or reasonably should know that the collection action is barred~~
11 ~~by the limitations period set forth in 12 V.S.A. § 511.~~

12 ~~(b)(a)(1) A debt collector shall not commence a collection action more than~~
13 ~~five years after the cause of action accrues, initiate a collection lawsuit,~~
14 ~~arbitration, or other legal proceeding when the debt collector knows or~~
15 ~~reasonably should know that the applicable statute of limitations in 9A V.S.A.~~
16 ~~§ 2-725 or in 12 V.S.A. §§ 508 or 511 has expired.~~

17 ~~(2) This limitations period applies notwithstanding any other applicable~~
18 ~~statutes of limitations, unless a shorter limitations period is provided under~~
19 ~~Vermont law.~~

20 (2) Notwithstanding any other provision of law, when the applicable
21 limitations period expires, any subsequent payment toward, written or oral

1 affirmation of, or other activity on, such debt does not revive or extend the
2 limitations period.

3 (b)(1) After the statute of limitations to bring an action to collect a debt has
4 expired, a debt collector may only ~~contact~~ communicate with a debtor
5 concerning a debt after providing written or verbal notice that

6 (2) ~~The notice shall state that~~ the debtor has the right to request that the
7 debt collector cease all communications with the debtor concerning the debt
8 and providing one of the following written disclosures:

9 (A) If the debt is not past the date for obsolescence set forth in the
10 federal Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

11 “The law limits how long you can be sued on a debt. Because of the
12 age of your debt, we cannot sue you for it. However, if you do not pay the
13 debt, [creditor or debt collector name] may [continue to] report it to the credit
14 reporting agencies as unpaid for as long as the law permits this reporting.”

15 (B) If the debt is past the date for obsolescence set forth in the federal
16 Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

17 “The law limits how long you can be sued on a debt. Because of the
18 age of your debt, [creditor or debt collector name] cannot sue you for it and
19 will not report it to any credit reporting agency.”

20 § 2491c. ACTION AGAINST DEBT COLLECTOR; RECOVERY

1 (a) In an action brought by an individual consumer to recover damages
2 from a debt collector under the Vermont Consumer Protection Act, the court
3 may award damages to the consumer pursuant to section 2461 of this title,
4 provided that total damages awarded pursuant to subdivision 2461(b)(1)(B)(iii)
5 of this title shall not exceed \$5,000.

6 (b) In a class action suit to recover damages from a debt collector:

7 (1) The court may award damages to each named plaintiff pursuant to
8 section 2461 of this title, provided that the total damages awarded to each
9 named plaintiff pursuant to subdivision 2461(b)(1)(B)(iii) of this title shall not
10 exceed \$5,000.

11 (2) Subject to subdivision (3) of this subsection, the court may award to
12 the remaining members of the class a pro rata share of damages in an amount
13 specified by the court.

14 (3) The total damages awarded in the class action suit to all plaintiffs
15 under State and federal law shall not exceed the lesser of:

16 (A) \$500,000.00; and

17 (B) one percent of the net worth of the debt collector.

18 Sec. 6. 12 V.S.A. § 511 is amended to read:

19 § 511. CIVIL ACTION

20 (a) A civil action, except one brought upon the judgment or decree of a
21 court of record of the United States or of this or some other state, and except as

1 otherwise provided, shall be commenced within six years after the cause of
2 action accrues and not thereafter.

3 (b) Notwithstanding subsection (a) of this section, an action to collect
4 credit card debt shall be commenced within five years after the cause of action
5 accrues and not thereafter.

6 Sec. 7. 12 V.S.A. § 2732 is amended to read:

7 § 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

8 On request of the judgment creditor, the clerk of the court granting
9 judgment shall issue ~~to the officer holding the execution~~ a summons as trustee
10 to a third person having in his or her hands goods, effects, or credits, other than
11 earnings, of the debtor that have not previously been attached on trustee
12 process in connection with the action. The summons shall be in such form as
13 the Supreme Court may by rule provide for a summons to a trustee in
14 connection with the commencement of an action and shall state the date and
15 amount of the judgment. The summons shall be served by the officer upon the
16 trustee in like manner and with the same effect as mesne process. A copy of
17 the summons shall be served upon the judgment debtor with the officer's
18 endorsement thereon of the date of service upon the trustee. After service of
19 the summons, proceedings shall be had as provided by law and by rule
20 promulgated by the Supreme Court for trustee process in connection with the
21 commencement of an action.

1 Sec. 9. 12 V.S.A. § 3173 is added to read:

2 § 3173. TRUSTEE PROCESS AGAINST POSTJUDGMENT DEBTOR’S

3 BANK ACCOUNTS; PROCEDURE

4 (a)(1) A judgment creditor may, pursuant to this section, obtain trustee
5 process against a judgment debtor’s accounts or funds in the possession of a
6 bank or other financial institution to enforce a money judgment in a civil
7 action.

8 (2) Notwithstanding section 2732 of this title or any other provision of
9 law, a post-judgment debtor’s accounts or funds in the possession of a bank or
10 other financial institution shall not be attached, be subject to trustee process, or
11 be subject to execution by a post-judgment creditor unless the requirements of
12 this section are satisfied.

13 (3) Nothing in this section shall prohibit a financial institution from
14 exercising a contractual right of setoff against a post-judgment debtor’s deposit
15 accounts with the financial institution.

16 (b)(1) A judgment creditor may file an ex parte motion for trustee process
17 against a judgment debtor’s accounts or funds in the possession of a bank or
18 other financial institution describing in detail the grounds for the motion, the
19 amount alleged to be unpaid, including estimated costs anticipated to be
20 expended for court fees and service on parties in connection with the trustee
21 process procedure.

1 (2) The judgment creditor shall prepare a summons and a disclosure for
2 the trustee, and a claim of exemption for the judgment debtor, on forms
3 provided by the court.

4 (c)(1) Upon receipt of a motion for trustee process filed under this section
5 when a judgment is final and has not been satisfied, the superior clerk is
6 authorized to issue one or more summonses to any trustee financial institution
7 specified by the judgment creditor that possesses accounts or funds belonging
8 to the judgment debtor.

9 (2) If the judgment creditor requests issuance of more than one
10 summons, the judgment creditor shall specify, and the clerk shall include in the
11 summons, which financial institution shall not freeze the amounts exempted by
12 subdivision 2740(15) of this title.

13 (3) The clerk shall issue a notice of hearing concurrently with the
14 summons, and shall set the matter for hearing not sooner than 30 days after
15 issuing the notice and summons.

16 (4) A summons issued pursuant to this subsection shall contain
17 instructions to the trustee financial institution directing it not to freeze any
18 funds of the judgment debtor that, based on deposit or other information kept
19 by the trustee financial institution, are protected under 31 C.F.R. part 212 or
20 exempt under section 2740(15) of this title.

1 (d)(1) The judgment creditor shall serve on the trustee financial institution
2 and the judgment debtor pursuant to Rule 4 of the Vermont Rules of Civil
3 Procedure, unless the judgment debtor files an appearance pursuant to Rule 5
4 of the Vermont Rules of Civil Procedure:

5 (A) the motion for trustee process;

6 (B) the summons and notice of hearing issued by the clerk pursuant
7 to subdivision (c)(1) of this section;

8 (C) a claim of exemptions form approved by the Court Administrator
9 that permits the judgment debtor to identify any of the debtor's funds in the
10 possession of the trustee financial institution that may be exempt from
11 execution under section 2740 of this title; and

12 (D) a disclosure form for the trustee.

13 (2) If the judgment creditor does not provide proof of service on the
14 judgment debtor by the time of the hearing and the judgment debtor does not
15 appear at the hearing, the court shall issue an order denying the motion for
16 trustee process and directing the trustee financial institution to release all of the
17 judgment debtor's held funds to the judgment debtor, unless the hearing is
18 continued for good cause.

19 (e) Upon receipt of a summons served pursuant to subsection (d) of this
20 section, a trustee financial institution, based on the instructions contained in the
21 summons and deposit or other information kept by the institution:

1 (1) shall not freeze any funds in its possession belonging to the
2 judgment debtor that are protected under 31 C.F.R. part 212 or that are exempt
3 under section 2740(15) of this title;

4 (2) shall freeze any funds up to the amount owed as provided in the
5 summons to trustee that are not protected under 31 C.F.R. part 212 and that are
6 not exempt under section 2740(15) of this title; and

7 (3) shall return the disclosure form to the court and to the parties within
8 10 days.

9 (g)(1) A judgment debtor may request an expedited hearing to determine a
10 claim of exemption.

11 (2) The judgment debtor shall:

12 (A) submit the request in writing;

13 (B) send a copy of the request to the court, to the judgment creditor,
14 and to the trustee financial institution; and

15 (C) ensure that the court and the judgment creditor have a copy of the
16 disclosure of the trustee financial institution not later than one business day
17 before the expedited hearing date.

18 (3) The court shall give notice to the parties and hold the hearing within
19 three business days after the judgment debtor makes the request.

20 (4) If the judgment debtor requests an expedited hearing, he or she is
21 deemed to have entered an appearance and waived any further service.

1 (h) At the hearing on the motion for trustee process or motion for expedited
2 hearing, the court shall consider the disclosure form from the trustee and the
3 testimony and affidavits offered by any party, provided that an affiant is
4 available to testify in person or by telephone. The court shall issue an order
5 granting or denying the motion for trustee process, which shall:

6 (1) state the amount of the judgment unpaid, including costs incurred
7 since filing the motion;

8 (2) state the rate of post-judgment interest due under 9 V.S.A.
9 § 41a(b)(11);

10 (3) identify any funds of the judgment debtor's in the possession of the
11 trustee financial institution that are exempt from execution under section 2740
12 of this title and order release of those funds to the judgment debtor;

13 (4) review any proposed settlement between the judgment creditor and
14 the judgment debtor and make a finding as to whether any waiver of
15 exemptions was knowing; and

16 (5) identify the amount of funds in the possession of the trustee financial
17 institution that shall be released to the judgment creditor.

18 (i) A trustee financial institution shall not be subject to criminal or civil
19 liability for any actions taken in reliance upon the provisions of this section.

20 Sec. 10. EFFECTIVE DATE

21 (a) This section, Secs. 1–4, and Secs. 5–8 shall take effect on July 1, 2018.

1 (b) In Sec. 6, 12 V.S.A. § 511(b)(1) (statute of limitations) applies to
2 causes of actions that accrue on or after July 1, 2018.

3 (c) Secs. 5 and 9 shall take effect on October 1, 2018.

4

5 (Committee vote: _____)

6

7

Representative _____

8

FOR THE COMMITTEE