

## COMMENTS CONCERNING H.482

- Thank you for the opportunity to testify
- Just over a year ago when H.482 failed to make it into the final consumer protection bill passed by the legislature, I understood the directive from this committee was to go and resolve the issues and bring back a bill the parties could live with
- That did not happen, so here we are today ready to state why we like or dislike the strike all language of H.482
- This proposal rewrites the debt collection statutes for all debt, it significantly expands the protections given to consumer debtors and makes things more difficult for the creditor.
- And the question is why
- The proponents will share stories about Vermonters being negatively impacted by debt collectors, unfortunate circumstances the borrowers now find themselves in
- We get it bad things happen to good people, that is why my members take a proactive approach to try and work with the borrower,
- Our concern is rewriting debt collection statutes for all debt and sweeping in all players, some of whom are already regulated
- Does it warrant legislating to the lowest common denominator
- I believe the testimony from legal aid was close to 500 cases over now I understand a nine-year period. The AG's office commenting about an average of between 1,000 and 1,400 calls per year to the consumer assistance center and in 2017, 46 unverified complaints dealt with collection agencies, the statement was banks are not the problem
- So in response to this bill, here are some comments from my membership
- Overall, it is quite frustrating to try to collect debt in Vermont due to the additional timing and legal requirements. It drives up the cost to creditors and we have considered offering a higher rate schedule in Vt. than we do in NH to cover those costs. Another concern is the time it takes the courts to render decisions on these matters. It would appear that Vt. Does not have the resources to funnel all collection issues through the court systems and therefore cases drag on.
- If this bill becomes law we would need our legal, compliance and business divisions to conduct a gap analysis and maintain separate procedures for VT.
- This draft appears to widely apply to all consumer debt including real estate secured debts. Our initial concern was that albeit the original draft was more geared towards credit cards it now seems to have left the door wide open to include all personal debt secured and unsecured.
- We are concerned about the impact this bill could have on mortgages and the foreclosure process. VT already has a substantial foreclosure process in place including meditation. Any bill adding to the timeframes associated with foreclosures is a big problem
- H.482 creates a conflict between state and federal regulations, we see no reason for that when it comes to the banking industry
- Since 2010, 22,000 pages of new or amended regulations at the federal level including Fair Debt Collections Practice Act, Real Estate Settlement Procedures Act: includes – Home ownership Counseling, Early Intervention, Continuity of Contact, Loss Mitigation,

2015, 2017 changes; Fair Credit Reporting Act; Servicemembers Civil Relief Act (SCRA) requires notice of rights under SCRA to delinquent borrowers, and restricts repossession and foreclosure while covered borrowers are on active duty; Military Lending Act; Regulation Z (Truth in Lending Act)

- When you measure the new regulations, they equal 7.3 feet
- Do you really think our regulated industry, which is routinely examined needs yet another bill telling us what we can and cannot do to collect debt owed to the bank
- So how do I respond today, provide a clear exemption for the banking industry as defined under Title 8, be surgical in your approach and go after the so called bad guys
- If not, the following is a page by page review of the bill and requests for changes

#### Page 1 & 2: Legal rates

1. Is pre-judgement the time between court filing and judgement, clarify;
2. Does this section have any impact on other legal rates in this chapter and their application;
3. Responsibility of the debtor to prove income is exempt, provide evidence to substantiate their claim;
4. What if circumstances of the debtor changes, can the creditor go back to the court and ask for a review, what happens to the rate;
5. What happens when someone comes out of default, what is the rate, original contract amount, or 12%, or some post judgement amount;
6. (11)(A)(B) speak to the “any period during which”, what does that mean, needs to be defined;
7. Lines 5 – 7 (b)(11)(B) is of concern because virtually everyone has some exemptions. The result will be any post-judgment interest rate can be challenged, do not agree.
8. (11)(B) discretion by the court will create inconsistency in these cases, will depend on the judge, we suggest choosing a rate between 6-8% in statute

#### Page 2:

1. We are very concerned with the expansion of the term debt collector. Section 2451a (i) is broad enough to include bank personnel and attorneys working for the bank;
2. Taken from the Fair Debt Collection Practices Act, the term debt collector means: any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. **The term does not include --**

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

We want to see these exemptions included in the definition of debt collector, so as to mirror the FDCPA;

Page 4:

1. Strike lines 1 & 2 given the ability to sue already exists under (A) and (B) on lines 12 & 13;
2. Section 2461 gives a consumer greater rights of financial recovery, but the consumer protection act most often concerns the sale of goods and services. Given the broad scope of this legislation, consumer loan transactions are now being capture;
3. We do not agree with the language on lines 18 & 19. Why is an individual entitled to an amount greater than perhaps their loss, plus the other items listed in this section? If a person suffers a \$100 loss, this states they are entitled to a minimum of \$500, why is that fair?
4. How do we provide protection from frivolous law suits
5. Define what a violation is, per overall relationship, per prohibited act?

## Page 5

1. Several of the suggested edits address the fact that, as currently written, a creditor would violate the proposed act by simply answering inbound calls originated by the consumer. Notably, the CFPB's Servicing Rules require multiple attempts at live contact on a primary residence mortgage delinquency; a prohibition on multiple calls would conflict with the Bureau's early intervention rules.
2. Ask the committee to take into consideration you look at this from the lens of the creditor when the debtor does not respond
3. Line 16 include the word "written" request
4. Line 20 (3) add the words "except if requested by the consumer" repeatedly call "the same telephone number", leave messages, knock on doors, or ring doorbells "more than once per day"
5. Line 20 don't be surprised when the debtor doesn't respond, so have to call repeatedly. Talked to a bank who said if she is out of the office will swing by house knock ring bell. Why is that unreasonable if the debtor is not responsive
6. What is meant by repeatedly call, needs to be defined: per day, week, month, etc
7. Bank process is to typically call and leave a message asking for a return call on day 1 and give day 2 for the debtor to respond and call again on day 3. Is that considered repeatedly calling?
8. Lines 18-19 while we do not have a problem with the proposal, there is a concern ridicule or degrade is very broad and subject to interpretation

## Page 6

1. Line 1 suggests someone, other than a spouse, to make a payment. If the spouse or someone else isn't on the loan; this a privacy violation. However cosigners would be obligated to pay.
2. Lines 3-4 Can't obtain payment through an account, etc. Bank contracts have a right to offset clause which allows payment to be taken out of the account when the debtor does not respond to calls or letters. For example notes and mortgages. This language would not allow that to happen. Remove from the bill
3. Lines 5-6 (6) speak with a consumer more than six times per week to discuss an overdue account, add the language "unless a call was initiated by the consumer" which should not be part of the six. Banks work with our borrowers so much that it's a dialogue about how we can help and sometimes that is more than 6 touch points in week. The customer may have called us 5 times and we called them back 5 times. If a customer calls us to arrange a workout and we have already talked to him or her 6 times do we say call back next week we aren't allowed to discuss?
4. Line 7 fine
5. Lines 8-10 Trespass and visit consumer home after bankruptcy- both sections tie our hands from protecting our collateral. We are required to do inspections at 90 days to make sure the home is occupied. How do we secure our collateral if we aren't allowed to go to the property? Borrower vacates the property we maintain it if we aren't allowed to

- do that, neighbors and towns will be jumping up and down for abandoned properties being unmaintained.
6. Line 8 trespass needs to be removed, giving the bank the ability to visit the debtor or inspect the property in the case of a foreclosure. Also repossession of property, example vehicle
  7. Lines 9-10 concerns about conflict with federal bankruptcy provisions regarding contact. Instead sight the federal statute that prevents contact
  8. Lines 9-10 add the language “unless authorized by the consumer or his or her attorney
  9. Line 12 would discuss with cosigner on a loan, legal counsel, others in the bank. Debtor could authorized in writing to speak with someone else
  10. Lines 15-17 Relative to recorded messages, does this apply equally to cell phones and traditional land lines? Our sense is that typically cell phones are unique to a person whereas land lines are unique to a household. WE would hope for more leeway to provide details on a cell phone.
  11. Lines 15-17 needs to include leaving the bank name when attempting to collect as there is an ongoing relationship and vested interest for the consumer to know the bank is calling as opposed to a debt collection agency
  12. Given the increase in phone scams, concern debtor will not call back period
  13. Lines 20-21 This would change the notice for the start of foreclosure from 30 to 60 days. Banks send the notice on their demand letters but it has a 30 day response time. If we have to send this notice on accounts before we start litigation these loans will be seriously past due before we can send them to an attorney
  14. Mortgages, home equity loans, second mortgages need to be exempt from the bill
  15. Already have in a statute a process dealing with foreclosures and mediation in foreclosure, any language that adds to that process is a big problem
  16. Lawyer’s comment: further delay in confirmation of foreclosure sales will be devastating to the mortgage industry. I have waited four months or more for confirmation order in cases where no one has objected and the property, which has been sold to a third party, deteriorates or becomes occupied by squatters. I don’t believe that application of the proposed legislation to routine post-judgment foreclosure motions is necessary or appropriate.
  17. Why are we also capped at 120 days, we are being locked in to this 60 day window, why

Page 7:

1. Beginning at the bottom of page 6 line 21 remove “or filing a postjudgement..... after the judgement for such debt” on line 2. Retain the remaining language on line 2 and 3.
2. We take the position once a judgement is obtained, a debtor should not be allowed to question its validity;
3. Lines 4 & 5 fine;
4. Lines 8-13 swamp (4) and (5)
5. (4) strike lines 11 and 12 and a portion of 13 so the only remaining language is “verification of debt”, rational is why not deliver verification up front at the time of notice;

6. (5) keep all language on lines 8-10
7. Line 14, what attached form, are we talking about the claim of exemption form, provided by who, does the creditor develop the form, is it a court approved form
8. Lines 19 remove "if" replace with "in the event"
9. Lines 19-20 keep language up to "(a)(5) of this section", remove the rest of line 20-21
10. How is this noticed deliver, banks send certified mail and regular mail so that if the debtor does not sign for the certified mail, we can show that the regular first-class mailing was not returned thereby "proving service". Trying to avoid the claims the debtor never got the notice

Page 8:

1. Remove lines 1-3, rational you have already provided the verification and the name and address of the original creditor
2. Remove line 4 and the word subsection on line 5. Complete the sentence started on page 7 line 20 (a)(5) of this section, a debt collector page 8 line 5
3. Line 7 (B) becomes (2)
4. Line 9-10 remove "or request...original creditor. This has already been provided in the notice
5. Section 2491c(a)(1) is a significant departure from current industry practice where debt beyond the SOL is still collectable, but no litigation can be brought. A simple disclosure that the debt is now beyond the SOL sent any time after the SOL has expired would be sufficient to protect consumers-it could be in the form set forth on P. 9 (2)
6. Historically, it has been a defendant's (or debtor's) burden to know about and raise the statute of limitations.
7. Lines 13-17 indicate that after the statute of limitations an agreement is void, is that an agreement enter into before the SOL expires, or an agreement after the SOL? If the parties enter into an agreement even after SOL why should it be void and unenforceable

Page 9:

1. Add (1) a civil action has been filed to collect the debt
2. Line 1 renumber (1) to (2)
3. Line 4 renumber (2) to (3), what is meant by initial contact, presume after the statute of limitations has expired
4. Line 6 remove
5. Line 7 reletter (B) to (A)
6. Line 8 reletter (C) to (B)
7. Line 11 "follow-up" does this relate to if the debtor responds
8. Lines 18-20 shorten the timeframe for collecting credit card debt
9. It is still not clear why we need to shorten the timeframe, lack of remembering or having documents regarding the debt is no excuse for forgiveness
10. Keep in mind from the time the debt goes delinquent trying to collect, corresponding with debtor

Page 10

1. Expands the exemption to include the Department of VT Health Access
2. This includes Medicaid recipients as well as anyone receiving assistance on VT Health Connect
3. This seems to indicate all funds in the account would be exempt
4. Line 16, even though it is existing statute, what is meant by 75% weekly disposable earnings, needs to be

Continue with summons to trustee document shared with the Judiciary Committee.

1. Line 13 - 15: Exemption text quoted from FTC definition of “Debt Collector” in Fair Debt Collection Practices Act <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-debt-collection-practices-act-text#803>