

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) Interest on a judgment against a debtor in default on credit card
15 debt incurred for personal, family, or household purposes shall accrue at the
16 rate of 12 percent per annum using simple interest, unless a court suspends or
17 reduces the accrual of interest pursuant to 12 V.S.A. § 2903a.

18 * * *

19 Sec. 2. 12 V.S.A. chapter 113 is amended to read:

20 Chapter 113: ~~Judgment Lien~~ Judgments and Judgment Liens

21 * * *

1 § 2903. DURATION AND EFFECTIVENESS

2 * * *

3 (c) ~~Interest~~ Unless a court suspends or reduces the accrual of interest
4 pursuant to section 2903a of this title, interest on a judgment lien shall accrue
5 at the rate of 12 percent per annum using simple interest.

6 (d) If a judgment lien is not satisfied within 30 days of recording, it may be
7 foreclosed and redeemed as provided in this title and V.R.C.P. 80.1. Unless the
8 court finds that as of the date of foreclosure the amount of the outstanding debt
9 exceeds the value of the real property being foreclosed, section 4531 of this
10 title shall apply to foreclosure of a judgment lien.

11 § 2903A. ACCRUAL OF POST JUDGMENT INTEREST ON CREDIT
12 CARD DEBT; SUSPENSION; REDUCTION; REINSTATEMENT

13 (a) Upon or after entering a judgment against a debtor in default on credit
14 card debt incurred for personal, family, or household purposes, a court may
15 suspend or reduce the accrual of interest on the judgment if it finds:

16 (1) the judgment debtor's income and assets are exempt from collection;

17 or

18 (2) based on his or her current income, assets, and expenses, the
19 judgment debtor does not have more financial resources available than what is
20 reasonably necessary to support the debtor and his or her dependents.

1 **(b) To request suspension or reduction of interest on a judgment, the debtor**
2 **shall submit to the court a motion to suspend or reduce interest that includes:**

3 **(1) a completed financial disclosure, on a form approved by the court;**

4 **and**

5 **(2) any additional documentation the court prescribes.**

6 **(c) If the court approves the request, it:**

7 **(1) shall provide in its order that the suspension or reduction of interest**
8 **is based on the judgment debtor’s current income, assets, and expenses; and**

9 **(2) may require the judgment debtor to periodically provide the**
10 **judgment creditor with an updated financial disclosure form.**

11 **(d) The court may revise its order upon a motion by the judgment creditor**
12 **or judgment debtor to reinstate, further reduce, or suspend the accrual of**
13 **interest based on a substantial change in the judgment debtor’s income, assets,**
14 **or expenses.**

15 * * *

16 Sec. 3. 9 V.S.A. chapter 63, subchapter 9 is added to read:

17 **Subchapter 9: Debt Collectors and Debt Collection**

18 **§ 2491. DEFINITIONS**

19 **As used in this subchapter:**

20 **(1) “Credit card debtor” means a consumer who is in default on credit**
21 **card debt incurred for personal, family, or household purposes.**

1 (2) “Debt collector” means a person who engages, or directly or
2 indirectly aids, in collecting a credit card debt incurred for personal, family, or
3 household purposes, and includes a debt buyer.

4 § 2491a. ENFORCEMENT

5 A person who violates a provision of this subchapter commits an unfair and
6 deceptive act in commerce in violation of section 2453 of this title.

7 § 2491b. CREDIT CARD DEBT COLLECTION; NOTICES TO
8 CONSUMER

9 (a) Notice prior to initiating an action to obtain a judgment against a credit
10 card debtor. Prior to initiating an action to obtain a judgment against a credit
11 card debtor, a debt collector shall deliver to the credit card debtor:

12 (1) the court’s claim of exemption form; and

13 (2) a written notice that contains:

14 (A) the amount of the debt;

15 (B) the name of the debt collector to whom the debt is owed;

16 (C) the name of the original creditor, the last four digits of the
17 account, and the alleged date of the last payment if any;

18 (D) a statement that, if the credit card debtor indicates in writing that
19 his or her current income and assets are exempt from collection, the debt
20 collector will review the information in deciding whether and how to proceed
21 in collecting the debt.

1 (b) Time for delivering notice prior to initiating an action to obtain a
2 judgment against a credit card debtor. A debt collector shall deliver the notice
3 required in subsection (a) of this section not more than 90 days, and not less
4 than 30 days, before initiating an action to obtain a judgment against a credit
5 card debtor.

6 (c) Notice prior to filing a motion to collect on a judgment against credit
7 card debtor. Prior to filing a motion to collect on a judgment against a credit
8 card debtor more than 12 months after the judgment was entered, a debt
9 collector shall deliver to the credit card debtor:

10 (1) a copy of the judgment against the credit card debtor;

11 (2) the court's claim of exemption form; and

12 (3) a written statement that, if the credit card debtor indicates in writing
13 that his or her current income and assets are exempt from collection, the debt
14 collector will review the information in deciding whether and how to proceed
15 in collecting on the judgment.

16 (d) Time for delivering notice prior to filing a motion to collect on a
17 judgment against credit card debtor. A debt collector shall deliver the notice
18 required in subsection (c) of this section not more than 90 days, and not less
19 than 30 days, before filing a motion to collect on the judgment.

20 § 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

21 EXPIRED; LIMITATIONS

1 (a)(1) A debt collector shall not initiate an action to collect debt from a
2 credit card debtor when the debt collector knows or reasonably should know
3 that the applicable statute of limitations has expired.

4 (2) Notwithstanding any other provision of law, when the applicable
5 limitations period expires, any subsequent payment toward, written or oral
6 affirmation of, or other activity on, the debt does not revive or extend the
7 limitations period.

8 (b)(1) After the statute of limitations to initiate an action to collect debt
9 from a credit card debtor has expired, a debt collector may only communicate
10 with a credit card debtor concerning the debt after providing written or verbal
11 notice that the credit card debtor has the right to request that the debt collector
12 cease all communications with the credit card debtor concerning the debt and
13 providing one of the following disclosures:

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

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

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

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

4 Sec. 4. 12 V.S.A. § 2732 is amended to read:

5 § 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

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

20 Sec. 5. 12 V.S.A. § 3170 is amended to read:

21 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

1 (a) No order approving the issuance of trustee process against earnings
2 shall be entered against a judgment debtor who was, within the two-month
3 period preceding the hearing provided in section 3169 of this title, a recipient
4 of assistance from the Vermont Department for Children and Families or the
5 Department of Vermont Health Access. The judgment debtor must establish
6 this exemption at the time of hearing.

7 (b) The earnings of a judgment debtor shall be exempt as follows:

8 (1) 75 percent of the debtor's weekly disposable earnings, or 30 times
9 the ~~federal~~ minimum hourly wage, whichever is greater; or

10 (2) if the judgment debt arose from a consumer credit transaction, as that
11 term is defined by 15 U.S.C. § 1602 and implementing regulations of the
12 Federal Reserve Board, 85 percent of the debtor's weekly disposable earnings,
13 or 40 times the ~~federal~~ minimum hourly wage, whichever is greater; or

14 (3) if the court finds that the weekly expenses reasonably incurred by
15 the debtor for his or her maintenance and that of dependents exceed the
16 amounts exempted by subdivisions (1) and (2) of this subsection, such greater
17 amount of earnings as the court shall order.

18 * * *

19 Sec. 6. 12 V.S.A. § 3173 is added to read:

20 § 3173. TRUSTEE PROCESS AGAINST POST JUDGMENT DEBTOR'S

21 BANK ACCOUNTS; PROCEDURE

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

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

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

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

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

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

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

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

13 (4) A summons issued pursuant to this subsection shall contain
14 instructions to the trustee financial institution directing it not to freeze any
15 funds of the judgment debtor that, based on deposit or other information kept
16 by the trustee financial institution, are protected under 31 C.F.R. part 212 or
17 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 after the motion for trustee process is
5 filed:

6 (A) the motion for trustee process;

7 (B) the summons and notice of hearing issued by the clerk pursuant
8 to subdivisions (c)(1) and (3) of this section;

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

13 (D) a disclosure form for the trustee.

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

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

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

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

10 (3) shall return the disclosure form to the court and to the parties within
11 10 days.

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

14 (2) The judgment debtor shall:

15 (A) submit the request in writing; and

16 (B) send a copy of the request to the court, to the judgment creditor,
17 and to the trustee financial institution.

18 (3) The trustee financial institution shall provide the court and the
19 judgment creditor with a copy of the disclosure form not later than one
20 business day before the expedited hearing date.

1 (4) The court shall give notice to the parties and hold the hearing within
2 three business days after the judgment debtor makes the request.

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

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

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

12 (2) state the rate of post-judgment interest due under 9 V.S.A.
13 § 41a(b)(10);

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

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

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

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

3 Sec. 7. IMPLEMENTATION; REPORT

4 (a) On or before January 15, 2020, the Attorney General, in consultation
5 with the Judicial Branch, and representatives of creditors and debtors, shall
6 submit to the House and Senate Committees on Judiciary, the House
7 Committee on Commerce and Economic Development, and the Senate
8 Committee on Economic Development, Housing and General Affairs, a report
9 that addresses:

10 (1) the implementation, outcomes, and effectiveness of this act;

11 (2) whether to expand the applicability of the provisions of this act
12 beyond credit card debt; and

13 (3) any recommendations for further legislative action.

1 **(b) On or before January 15, 2019, the Attorney General, in consultation**
2 **with the Judicial Branch, and representatives of creditors and debtors, shall**
3 **submit to the House and Senate Committees on Judiciary, the House**
4 **Committee on Commerce and Economic Development, and the Senate**
5 **Committee on Economic Development, Housing and General Affairs, a report**
6 **that addresses the potential costs and benefits of requiring a court to acquire**
7 **and review a debtor’s credit report when considering a request to reduce or**
8 **suspend the accrual of post judgment interest, who should be responsible for**
9 **producing the credit report, and how to ensure consumer privacy if a credit**
10 **report is used for those purposes in a court action.**

11 Sec. 8. EFFECTIVE DATES

12 This act shall take effect on October 1, 2018.

13 and that after passage the title of the bill be amended to read: “An act
14 relating to consumer protection, credit card debt, and trustee process”

15 (Committee vote: _____)

16 _____

17 Representative _____

18 FOR THE COMMITTEE