

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) For prejudgment interest on a debt the rate shall be:~~

15 ~~(A) the rate provided in the contract between the creditor and the~~

16 ~~debtor; or~~

17 ~~(B) if not provided in the contract, 12 percent per annum using~~

18 ~~simple interest.~~

19 ~~(11) For postjudgment interest on a debt the rate shall be 12 percent per~~

20 ~~annum using simple interest, except for any period during which the court~~

1 ~~finds that some or all of the debtor's income and assets are exempt from~~
2 ~~attachment or execution, in which case the rate shall be:~~

3 ~~(A) zero percent for any period during which all of the debtor's~~
4 ~~income and assets are exempt from attachment or execution; and~~

5 ~~(B) set by the court in its discretion for any period during which~~
6 ~~some, but not all, of the debtor's income and assets are exempt from~~
7 ~~attachment or execution.~~

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

11 ~~(B) A court may suspend the accrual of interest on a judgment~~
12 ~~against a debtor in default if the court finds, through a financial disclosure, that~~
13 ~~the debtor has an inability to pay.~~

14 ~~(C) This subdivision (10) shall not apply in an action to foreclose a~~
15 ~~mortgage at any time prior to entry of a deficiency judgment.~~

16 * * *

17 Sec. 2. 12 V.S.A. § 2903(c) is amended to read:

18 ~~(c) Interest~~ Unless a court suspends the accrual of interest pursuant to 9
19 ~~V.S.A. § 41a(b)(10), interest~~ on a judgment lien shall accrue at the rate of 12
20 ~~percent per annum using simple interest.~~

21 Sec. 3. 9 V.S.A. § 2451a is amended to read:

1 § 2451a. DEFINITIONS

2 As used in this chapter:

3 * * *

4 (i) “Debt collector” means a person engaging or aiding directly or
5 indirectly in collecting a debt and includes a debt buyer and other creditors and
6 their agents when so acting.

7 (j) “Consumer credit” means credit offered or extended to a consumer
8 primarily for personal, family, or household purposes.

9 Sec. 4. 9 V.S.A. § 2461 is amended to read:

10 § 2461. CIVIL PENALTY

11 * * *

12 (b)(1) Any consumer who contracts for goods or services in reliance upon
13 false or fraudulent representations or practices prohibited by section 2453 of
14 this title, or who sustains damages or injury as a result of any false or
15 fraudulent representations or practices prohibited by section 2453 of this title,
16 or prohibited by any rule or regulation made pursuant to section 2453 of this
17 title;

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

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

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

1 § 2491a. DEBT COLLECTION PRACTICES; PROHIBITIONS

2 (a) When attempting to collect a debt a debt collector shall not:

3 (1) call or visit a consumer's workplace after a request by the consumer
4 or his or her employer not to do so;

5 (2) use profanity or any language to abuse, ridicule, or degrade a
6 consumer;

7 (3) repeatedly call, leave messages, knock on doors, or ring doorbells;

8 (4) ask someone, other than a spouse, to make a payment on behalf of a
9 consumer;

10 (5) obtain payment through a consumer's bank, credit card, or other
11 account without authorization;

12 (6) speak with a consumer more than six times per week to discuss an
13 overdue account;

14 (7) engage in violence;

15 (8) trespass;

16 (9) call or visit a consumer at home or work after receiving legal notice
17 that the consumer has filed for bankruptcy;

18 (10) impersonate others;

19 (11) discuss a consumer's account with anyone other than a spouse of the
20 consumer;

21 (12) threaten unwarranted legal action; or

1 ~~(13) leave a recorded message for a consumer that includes anything~~
2 ~~other than the caller's name, contact information, and a courteous request that~~
3 ~~the consumer return the call.~~

4 § 2491a. CREDIT CARD DEBT COLLECTION; NOTICE TO CONSUMER
5 PRIOR TO COMMENCING CIVIL ACTION

6 (a) Definition. As used in this section, "credit card debt" means debt based
7 on credit, which is the right to incur debt and defer its payment, that was
8 extended through any card, plate, or other single credit device that may be used
9 from time to time to obtain credit.

10 (b) Notice of debt. Not more than 120 days and not less than 60 days
11 before filing a civil action or motion brought more than 12 months after
12 judgment to collect a debt based on consumer credit or filing a postjudgment
13 motion to collect a judgment against the judgment debtor that is more than 12
14 months after the judgment for such debt credit card debt, a debt collector shall
15 send to the consumer the court's claim of exemption form and a written notice
16 that contains:

- 17 (1) the amount of the debt;
- 18 (2) the name of the creditor debt collector to whom the debt is owed;
- 19 (3) the name of the original creditor, the last four digits of the account,
- 20 and the alleged date of the last payment if any;

1 ~~(4) a statement that, unless the consumer disputes the validity of the debt~~
2 ~~or any portion thereof not later than 30 days after having received the notice,~~
3 ~~the debt collector will deem the debt valid;~~

4 ~~(5) a statement that, if the consumer disputes the validity of the debt or~~
5 ~~any portion thereof within the 30 day period, the debt collector will deliver~~
6 ~~verification of the debt or a copy of a judgment against the consumer; and~~

7 ~~(6)(4) a statement that, if the consumer indicates on the attached form in~~
8 ~~writing that the consumer's current income and assets are exempt from~~
9 ~~collection, the debt collector will review the information in deciding whether~~
10 ~~and how to proceed in collecting the debt.~~

11 ~~(b) Disputed debts:~~

12 ~~(1) If a consumer disputes the validity of a debt pursuant to subdivision~~
13 ~~(a)(5) of this section or requests the name and address of the original creditor,~~
14 ~~the debt collector shall cease collecting the debt until he or she delivers to the~~
15 ~~consumer verification of the debt or a copy of a judgment against the~~
16 ~~consumer, or the name and address of the original creditor and a copy of such~~
17 ~~verification or judgment, as applicable.~~

18 ~~(2)(A) Except as otherwise provided in subdivision (1) of this~~
19 ~~subsection, a debt collector may continue collecting a debt during the 30 day~~
20 ~~period for disputing the debt consistent with subsection (a) of this section.~~

1 ~~(B) Any collection activity and communications during the 30 day~~
2 ~~period shall not overshadow or be inconsistent with the disclosure of the~~
3 ~~consumer's right to dispute the debt or request the name and address of the~~
4 ~~original creditor.~~

5 § 2491b. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

6 EXPIRED; LIMITATIONS

7 ~~(a) Except as otherwise provided in subsection (b) of this section, after the~~
8 ~~statute of limitations to bring an action to collect a debt has expired:~~

9 ~~(1) a person shall not contact a debtor to collect the debt; and~~

10 ~~(2) an agreement to make additional payments on the debt is void and~~
11 ~~unenforceable against the debtor.~~

12 ~~(b) A creditor may only contact a debtor concerning a debt after the statute~~
13 ~~of limitations to bring an action to collect the debt has expired if:~~

14 ~~(1) the creditor contacts the debtor not later than seven years after any~~
15 ~~adverse information concerning the debt is reported to a credit reporting~~

16 ~~agency;~~

17 ~~(2) the initial contact provides, in bold print and in a font size that is at~~
18 ~~least two sizes larger than the predominant font used in the notice, that:~~

19 ~~(A) the debtor has no obligation to pay the debt;~~

20 ~~(B) the creditor can no longer sue to enforce the debt; and~~

1 ~~(C) the debtor has the right to request that the creditor cease all~~
2 ~~communications with the debtor concerning the debt; and~~

3 ~~(3) the creditor initiates contact not more than once per year, not~~
4 ~~including follow-up contacts by the creditor.~~

5
6 (a) A debt collector may not initiate a collection action when the debt
7 collector knows or reasonably should know that the collection action is barred
8 by the limitations period set forth in 12 V.S.A. § 511.

9 (b)(1) A debt collector may not commence a collection action more than
10 five years after the date of the consumer's last payment on the debt.

11 (2) This limitations period applies notwithstanding any other applicable
12 statutes of limitations, unless a shorter limitations period is provided under
13 Vermont law.

14 (3) Notwithstanding any other provision of law, when the applicable
15 limitations period expires, any subsequent payment toward, written or oral
16 affirmation of, or other activity on, such debt does not revive or extend the
17 limitations period.

18 (c)(1) After the statute of limitations to bring an action to collect a debt has
19 expired, a debt collector may only contact a debtor concerning a debt after
20 notice.

1 (2) The notice shall state that the debtor has the right to request that the
2 debt collector cease all communications with the debtor concerning the debt
3 and shall include one of the following written provisions:

4 (A) If the debt is not past the date for obsolescence set forth in the
5 federal Fair Credit Reporting Act, 15 U.S.C. § 1581c(a):

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

10 (B) If the debt is past the date for obsolescence set forth in the federal
11 Fair Credit Reporting Act, 15 U.S.C. § 1581c(a):

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

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

16 § 511. CIVIL ACTION

17 (a) A civil action, except one brought upon the judgment or decree of a
18 court of record of the United States or of this or some other state, and except as
19 otherwise provided, shall be commenced within six years after the cause of
20 action accrues and not thereafter.

1 ~~(b)(1)~~ Notwithstanding subsection (a) of this section, an **original** action to
2 collect credit card debt shall be commenced within **three five** years after the
3 cause of action accrues and not thereafter.

4 ~~(2) A motion for default judgment in an action to collect credit card debt~~
5 ~~shall include a certification that the complaint was filed within the time~~
6 ~~specified in subdivision (1) of this subsection (b).~~

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

9 § 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

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

1 promulgated by the Supreme Court for trustee process in connection with the
2 commencement of an action.

3 Sec. 8. 12 V.S.A. § 3170 is amended to read:

4 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

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

11 judgment debtor shall be considered to be a recipient of assistance if the debtor
12 is a member of an eligible family whose requirements, income, and resources
13 have been considered a unit for programs authorized by those departments.

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

15 (1) 75 percent of the debtor's weekly disposable earnings, or 30 times
16 the ~~federal~~ minimum hourly wage, whichever is greater; or

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

1 (b)(1) A judgment creditor's attorney may file a motion for trustee process
2 against a judgment debtor's accounts or funds in the possession of a bank or
3 other financial institution describing in detail the grounds for the motion, the
4 amount alleged to be unpaid, including estimated costs anticipated to be
5 expended for court fees and service on parties in connection with the trustee
6 process procedure and whether the judgment debtor has claimed the exemption
7 in subdivision 2740(15) of this title in the last 30 days.

8 (2) The judgment creditor's attorney shall prepare a summons and a
9 disclosure for the trustee, and a claim of exemption for the judgment debtor, on
10 forms provided by the court, a disclosure form for the trustee, and a claim of
11 exemption form for the judgment debtor.

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

17 (2) If the judgment creditor requests issuance of more than one
18 summons, the judgment creditor shall specify which financial institution shall
19 not freeze the amounts exempted by subdivision 2740(15) of this title.

1 (3) The clerk shall set the matter for hearing within 14 21 days and shall
2 issue a notice of hearing concurrently with ~~the writ of execution and the~~
3 summons.

4 (4) A ~~writ of execution or~~ summons issued pursuant to this subsection
5 shall contain instructions to the trustee financial institution directing it not to
6 freeze any funds of the judgment debtor that ~~appear,~~ based on deposit or other
7 information kept by the trustee financial institution, ~~to be~~ ~~are~~ exempt from
8 execution under 31 C.F.R. § 212 or section 2740(15) of this title.

9 (d)(1) The judgment creditor shall serve on the trustee financial institution
10 and the judgment debtor ~~pursuant to Rule 4 of the Vermont Rules of Civil~~
11 Procedure:

12 (A) the motion for trustee process;

13 (B) the summons, ~~writ of execution,~~ and notice of hearing issued by
14 the clerk pursuant to subdivision (c)(1) of this section;

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

19 (D) ~~the notice of hearing~~ a disclosure form for the trustee.

20 (2) If the judgment creditor does not provide proof of service on the
21 judgment debtor by the time of the hearing and the judgment debtor does not

1 appear at the hearing, the court shall issue an order denying the motion for
2 trustee process and directing the trustee financial institution to release all of the
3 judgment debtor's held funds to the judgment debtor, unless the hearing is
4 continued for good cause.

5 (e) The judgment creditor shall, concurrently with service to the trustee
6 financial institution of the documents required by subdivision (d)(1) of this
7 section, serve an additional copy of those document inside a blank mailing
8 envelope with first class postage affixed. The trustee financial institution shall
9 within two days send the envelope to the judgment debtor at the last known
10 address the institution has for the debtor.

11 (e) Upon receipt of a writ of execution summons served pursuant to
12 subsection (d) of this section, a trustee financial institution shall, based on
13 deposit or other information kept by the institution:

14 (1) not freeze any funds of the judgment debtor's in its possession that
15 appear to be in 31 C.F.R. § 212 and are exempt from execution under section
16 2740(15) of this title;

17 (2) freeze any funds up to the amount owed as provided in the writ of
18 execution summons to trustee that do not appear to be in 31 C.F.R. § 212 and
19 are not exempt from execution under section 2740(15) of this title; and

20 (3) within seven 10 days return the disclosure form to the court and the
21 parties.

1 (g)(1) A judgment debtor may request in writing an expedited hearing to
2 determine a claim of exemption. The court shall give notice to the parties and
3 hold the hearing within three business days after the judgment debtor makes
4 the request.

5 (2) If the judgment debtor requests an expedited hearing, the action shall
6 not be dismissed for lack of service pursuant to subdivision (d)(2) of this
7 section.

8 (h) At the hearing on the motion for trustee process or motion for expedited
9 hearing, the court shall consider the testimony, affidavits, and the disclosure
10 form offered by any party and the trustee financial institution. The court shall
11 make findings regarding the amount of interest on the judgment pursuant to 9
12 V.S.A. § 41a(b)(11), and shall issue an order granting or denying the motion
13 for trustee process, which If the motion is granted the order shall:

14 (1) state the amount of the judgment unpaid;

15 (2) state the amount rate of post-judgment interest due under 9 V.S.A.
16 § 41a(b)(11);

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

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

4 (5) identify the amount of funds in the possession of the trustee financial
5 institution that ~~are judgment non-exempt funds that are to~~ shall be released to
6 the judgment creditor.

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

9 Sec. 10. EFFECTIVE DATE

10 This act shall take effect on July 1, 2018.

11 (a) This section and Secs. 1-4 and 6-8 shall take effect on July 1, 2018.

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

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

15

16 (Committee vote: _____)

17

18

Representative _____

19

FOR THE COMMITTEE