

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 should be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 Sec. 1. 9 V.S.A. chapter 105 is amended to read:

8 Chapter 105: Credit Cards

9 Subchapter 1: Definitions; Liability; Fraud; Illegal Possession

10 § 4041. DEFINITIONS

11 * * *

12 Subchapter 2: Fair Credit Card Debt Collection

13 § 4051. REQUIREMENTS PRIOR TO FILING A COURT ACTION TO

14 COLLECT CREDIT CARD DEBT

15 (a) At least 30 days, and not more than 90 days, prior to filing an action to
16 collect credit card debt, the credit card debt collector shall send to the
17 prospective defendant a mailing that includes:

18 (1) The following information:

19 (A) The name of the credit card debt collector.

20 (B) The name of the creditor, if different from the credit card debt
21 collector.

1 (C) The last four digits of the original credit card account number.

2 (D) The date of default.

3 (E) The balance at the time of default.

4 (F) The current balance due.

5 (G) The statement:

6 “If you notify us in writing within thirty days that you dispute this
7 debt, or any part of this debt, before we file a case in court, we will mail to you
8 the credit card agreement, or some other written evidence of the original debt
9 that contains your signature. If we do not have written evidence of the original
10 debt with your signature, we will mail a copy of the last credit card statement
11 generated when the credit card was used for a purchase, or, some other form of
12 documentation so that you can confirm that this is your debt. We will also
13 mail to you an assignment or other writing establishing that we have the right
14 to collect this debt from you.”

15 (2) A “Declaration of Inability to Pay” form that includes:

16 (A) The statement:

17 If a creditor or credit card debt collector receives a money judgment
18 against you in court, State and federal law may prevent an order requiring
19 payment of the debt if any of the following apply to you:

20 1. You receive need-based cash assistance or health benefits.

1 2. You receive income from the Social Security Administration,
2 Veteran’s Administration, Unemployment Insurance, or Worker’s
3 Compensation.

4 3. Your weekly income is less than the hourly Vermont minimum
5 wage times 40 hours.

6 4. After you pay the reasonable expenses to maintain food, shelter
7 and medical care for yourself and your dependents, you have no money left to
8 pay this debt.

9 Fill out the Declaration of Inability to Pay form below as soon as
10 possible and return it in the enclosed envelope. **If you need help filing out**
11 **this form, call Vermont Law Help at 1-800-889-2047 or go to**
12 **VermontLawHelp.org.**

13 (B) A form requiring the prospective defendant to indicate whether
14 he or she:

15 (i) receives need-based income or health benefits from the State of
16 Vermont;

17 (ii) receives income from the Social Security Administration,
18 Veteran’s Administration, Unemployment Insurance, or Worker’s
19 Compensation.

20 (iii) earns income that is less than the hourly Vermont minimum
21 wage times 40 hours;

1 (iv) after paying reasonable expenses to maintain food, shelter and
2 medical care for himself or herself, and his or her dependents, has no money
3 left to pay the debt; and

4 (v) has any individual ownership interest in real estate, the value
5 of the real estate according to the municipality in which it is located, and the
6 unpaid balance of any loan on the real estate.

7 (C) A date and signature line, above which appears the statement:

8 “By signing this form, I swear or affirm that the information on this
9 form is true.”

10 (b) If the prospective defendant responds to the notice required by
11 subdivision (a)(1) of this section, or otherwise disputes a credit card debt in
12 writing, the credit card debt collector shall cease to call or write the
13 prospective defendant or engage in any other efforts to collect the debt until the
14 debt collector delivers the mailing required in subdivision (a)(1) of this section.

15 § 4052. COURT PROCESS; COURT ACTION TO COLLECT CREDIT

16 CARD DEBT; REQUIREMENTS

17 In an action to collect credit card debt:

18 (1) In its complaint the plaintiff shall:

19 (A) certify that it sent the mailing and the Declaration of Inability to
20 Pay form to the defendant pursuant to section 4051 of this title; and

1 (B) include a copy of the signed Declaration of Inability to Pay form,
2 or certify that the plaintiff has not received the Declaration.

3 (2) The plaintiff shall include with service of its summons and
4 complaint a copy of the Declaration form, unless already included in the
5 complaint, and pre-addressed, postage-paid envelopes for the court and the
6 plaintiff.

7 (3) Whether the defendant answers the complaint, the court shall send
8 the defendant notice of the date and time of trial, at which the defendant shall
9 have the right to appear, answer, and assert any defense.

10 (4) A court shall not construe a prospective defendant's failure to
11 respond to the notice required by subdivision 4051(a)(1) of this title, or to
12 otherwise dispute a credit card debt, as an admission of liability for the debt.

13 (5) The plaintiff has the burden to prove at trial that the defendant owes
14 the debt, the amount of the debt, and that the plaintiff has the legal authority to
15 collect the debt.

16 (6) If the court issues a judgment for the plaintiff:

17 (A) The plaintiff shall provide the court at the time of the trial with at
18 least one calculation, similar to a credit card minimum payment warning, that:

19 (i) quantifies the amount of the debt;

20 (ii) quantifies how much simple interest would annually accrue
21 after the judgment at a rate of 12 percent per year;

1 (iii) quantifies the monthly payment necessary to pay off the debt
2 and the interest in 96 months; and

3 (iv) quantifies, if paid at that rate, the total amount paid over the
4 96-month period.

5 (B) The plaintiff may provide the court at the time of the trial one or
6 more additional calculations, using one or more lower interest rates acceptable
7 to the plaintiff, to illustrate different acceptable payments, terms, or rates.

8 (7) The court may issue an order that requires the defendant to make one
9 or more payments on the judgment, subject to the following:

10 (A) The court shall determine whether the defendant's income is
11 exempt from collection, and if exempt:

12 (i) The court shall provide in its order that no post-judgment
13 interest accrues as long as the defendant's income remains exempt from
14 collection.

15 (ii) The court may approve a payment plan only if it finds:

16 (I) the defendant consents to the plan; and

17 (II) the defendant is able to comply with the plan and meet the
18 minimum necessary expenses for his or her cost of living, and that of any
19 dependents.

20 (B) If the defendant's income is not exempt from collection:

1 (i) The court shall consider the information the plaintiff submits
2 pursuant to subdivision (6) of this section, the defendant’s income, and
3 whether the plaintiff is willing to reduce or waive interest.

4 (ii) The court shall not require the defendant to make any payment
5 unless the amount of the payment exceeds the accruing interest and reduces the
6 judgment principal.

7 § 4053. POST-JUDGMENT COLLECTION ACTION

8 (a) At least 30 days, and not more than 90 days, prior to filing a motion for
9 financial disclosure or for wage assignment, the plaintiff shall send to the
10 defendant a mailing that includes:

11 (1) a letter stating its intent to file in court to enforce the judgment and
12 the following information:

13 (A) the name of the debt collector;

14 (B) the name of the creditor, if different from the debt collector;

15 (C) the last four digits of the original credit card account number;

16 (D) the date of judgment;

17 (E) the amount of the judgment;

18 (F) the amount of post-judgment interest claimed as of the date of the
19 letter;

20 (G) the total of all payments made on the judgment; and

21 (H) the amount of the judgment due as of the date of the letter.

1 (2) the “Declaration of Inability to Pay” form described in section 4051
2 of this title; and

3 (3) a request that the defendant complete the form in thirty days and
4 return it in the postage-paid, self-addressed envelope.

5 (b) If the plaintiff receives the Declaration of Inability to Pay form from the
6 defendant, the plaintiff shall include the form with its post judgment filing with
7 the court.

8 § 4054. STATUTE OF LIMITATIONS; CONTACT FOLLOWING
9 EXPIRATION

10 (a) Notwithstanding 12 V.S.A. § 511, a plaintiff shall not commence an
11 action to collect credit card debt after three years from the date the cause of
12 action accrues.

13 (b) A person shall not contact a debtor concerning the collection of a credit
14 card debt after the statute of limitations for filing an action to collect the debt
15 has expired.

16 § 4055. ACTION TO RENEW A JUDGMENT

17 Notwithstanding 12 V.S.A. § 506, a court shall not allow an action on a
18 judgment or to renew or revive a judgment concerning credit card debt, unless
19 the plaintiff demonstrates that:

20 (1) he or she has taken steps to collect the debt since a court rendered
21 the judgment; and

1 Health Access. The judgment debtor must establish this exemption at the time
2 of hearing.

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

4 (1) seventy-five percent of the debtor's weekly disposable earnings, or 30
5 times the ~~federal~~ minimum hourly wage, whichever is greater; or

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

10 * * *

11 Sec. 4. 12 V.S.A. § 2903 is amended to read:

12 § 2903. DURATION AND EFFECTIVENESS

13 (a) A judgment lien shall be effective for eight years from the issuance of a
14 final judgment on which it is based except that an action to foreclose the
15 judgment lien during the eight-year period shall extend the period until the
16 termination of the foreclosure suit if a copy of the complaint is filed in the land
17 records on or before eight years from the issuance of the final judgment.

18 (b) A judgment which is renewed or revived pursuant to section 506 of this
19 title shall constitute a lien on real property for eight years from the issuance of
20 the renewed or revived judgment if recorded in accordance with this chapter.

21 The renewed or revived judgment shall relate back to the date on which the

1 original lien was first recorded if a copy of the complaint to renew the
2 judgment was recorded in the land records where the property lies within eight
3 years after the rendition of the judgment, and the renewed or revived judgment
4 is subsequently recorded in accordance with this chapter.

5 (c) Interest on a judgment lien shall accrue at the rate of 12 percent per
6 annum; provided that, if a court finds that a defendant's income is exempt from
7 collection, the court shall suspend the accrual of interest.

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

13 Sec. 5. IMPLEMENTATION; EFFECTIVE DATES

14 (a) This act shall take effect on July 1, 2017.

15 (b) 9 V.S.A. § 4054 (statute of limitations) applies to causes of action that
16 accrue on or after July 1, 2017.

17
18
19
20
21 (Committee vote: _____)

1

2

Representative _____

3

FOR THE COMMITTEE