

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)~~ 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 (B) A court may suspend the accrual of interest on a judgment
19 against a debtor in default on a debt incurred primarily for personal, family, or
20 household purposes pursuant to 12 V.S.A. § 2903a.

1 order to suspend, reduce, or reinstate the accrual of interest on the judgment at
2 the time of the judgment, ~~or a continuation hearing after the judgment,~~ or upon
3 motion of the judgment creditor or judgment debtor.

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

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

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

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

18 (2) that the suspension or reduction of the accrual of interest is based on
19 the judgment debtor's current income and assets, and if during the period
20 specified in the order the judgment debtor's income or assets increase, the

1 judgment debtor shall provide the judgment creditor with an updated financial
2 form within 30 days of the increase.

3 (e) The court’s order may require that the judgment debtor periodically
4 provide the judgment creditor with an updated financial disclosure form.

5 (f) In the case of foreclosure of a mortgage by judicial sale,
6 notwithstanding the process created by this section, a court shall not delay
7 issuing an order confirming the sale pursuant to 12 V.S.A. § 4954(a).

8 * * *

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

10 § 2451a. DEFINITIONS

11 As used in this chapter:

12 * * *

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

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

17 § 2461. CIVIL PENALTY

18 * * *

19 (b)(1) Any consumer who contracts for goods or services in reliance upon
20 false or fraudulent representations or practices prohibited by section 2453 of
21 this title, or who sustains damages or injury as a result of any false or

1 ~~fraudulent representations or practices prohibited by section 2453 of this title,~~
2 ~~or prohibited by any rule or regulation made pursuant to section 2453 of this~~
3 ~~title;~~

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

5 ~~(B) may sue and recover from the seller, solicitor, or other violator~~

6 ~~the greatest of:~~

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

8 ~~(ii) the consideration or the value of the consideration given by the~~

9 ~~consumer; or~~

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

11 ~~violation;~~

12 ~~(C) reasonable attorney's fees and may sue for exemplary damages~~

13 ~~not exceeding three times the value of the consideration given by the~~

14 ~~consumer; and~~

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

16 ~~(2) Any language, written or oral, used by a seller or solicitor, which~~

17 ~~attempts to exclude or modify recovery of the penalty or reasonable attorney's~~

18 ~~fees shall be unenforceable.~~

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 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
7 deposit accounts with the financial institution. [Necessary?]

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 incurred for personal, family, or household
19 purposes, a debt collector shall send to the consumer the court's claim of
20 exemption form and a written notice that contains:

21 (1) the amount of the debt;

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

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

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

8 § 2491b. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

9 EXPIRED; LIMITATIONS

10 (a)(1) A debt collector shall not initiate a collection lawsuit, arbitration, or
11 other legal proceeding to collect credit card debt incurred for personal, family,
12 or household purposes when the debt collector knows or reasonably should
13 know that the applicable statute of limitations in 9A V.S.A. § 2-725 or in 12
14 V.S.A. §§ 508 or 511 has expired.

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

19 (b)(1) After the statute of limitations to bring an action to collect credit
20 card debt incurred for personal, family, or household purposes has expired, a
21 debt collector may only communicate with a debtor concerning the debt after

1 providing written or verbal notice that the debtor has the right to request that
2 the debt collector cease all communications with the debtor concerning the
3 debt and providing one of the following disclosures:

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. § 1681c(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. § 1681c(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 § 2491c. CLASS ACTION AGAINST DEBT COLLECTOR; RECOVERY

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

21 (b) In a class action suit to recover damages from a debt collector [?]

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

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

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

10 ~~(1) \$500,000.00; and~~

11 ~~(2) one percent of the net worth of the debt collector.~~

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

13 ~~§ 511. CIVIL ACTION~~

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

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

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

2 § 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

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

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

18 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

19 (a) No order approving the issuance of trustee process against earnings
20 shall be entered against a judgment debtor who was, within the two-month
21 period preceding the hearing provided in section 3169 of this title, a recipient

1 of assistance from the Vermont Department for Children and Families or the
2 Department of Vermont Health Access. The judgment debtor must establish
3 this exemption at the time of hearing.

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

5 (1) 75 percent of the debtor's weekly disposable earnings, or 30 times
6 the ~~federal~~ minimum hourly wage, whichever is greater; or

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

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

15 * * *

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

17 § 3173. TRUSTEE PROCESS AGAINST POSTJUDGMENT DEBTOR'S

18 BANK ACCOUNTS; PROCEDURE

19 (a)(1) A judgment creditor may, pursuant to this section, obtain trustee
20 process against a judgment debtor's accounts or funds in the possession of a

1 bank or other financial institution to enforce a money judgment in a civil
2 action.

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

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

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

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

20 (c)(1) Upon receipt of a motion for trustee process filed under this section
21 when a judgment is final and has not been satisfied, the superior clerk is

1 authorized to issue one or more summonses to any trustee financial institution
2 specified by the judgment creditor that possesses accounts or funds belonging
3 to the judgment debtor.

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

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

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

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

20 (A) the motion for trustee process;

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

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

7 (D) a disclosure form for the trustee.

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

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

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

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

4 (3) shall return the disclosure form to the court and to the parties within
5 10 days.

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

8 (2) The judgment debtor shall:

9 (A) submit the request in writing;

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

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

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

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

19 (h) At the hearing on the motion for trustee process or motion for expedited
20 hearing, the court shall consider the disclosure form from the trustee and the
21 testimony and affidavits offered by any party, provided that an affiant is

1 available to testify in person or by telephone. The court shall issue an order
2 granting or denying the motion for trustee process, which shall:

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

5 (2) state the rate of post-judgment interest due under 9 V.S.A.
6 § 41a(b)(10);

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

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

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

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

17 Sec. 10. EFFECTIVE DATE

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

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

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

1

2 (Committee vote: _____)

3

4

Representative _____

5

FOR THE COMMITTEE