

Receivables Management Association (RMA) Redlines & Comments -- 2/20/18

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
21 finds that some or all of the debtor’s income and assets are exempt from
22 attachment or execution, in which case the rate shall be :

Comment [DR1]: RMA respectfully requests the following amendment so as to allow the exception to be set by the court based on the circumstances, which may include zero percent interest.

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1 ~~(A)~~ zero percent for any period during which all of the debtor's

2 ~~income and assets are exempt from attachment or execution; and~~

3 ~~(B)~~ set by the court in its discretion, ~~except as otherwise required by~~

4 ~~law for any period during which some, but not all, of the debtor's income and~~

5 ~~assets are exempt from attachment or execution.~~

* * *

7 Sec. 2. 9 V.S.A. § 2451a is amended to read:

8 § 2451a. DEFINITIONS

9 As used in this chapter:

10 * * *

11 (i) "Debt collector" means a person engaging or aiding directly or

12 indirectly in collecting a debt and includes a debt buyer and other creditors and

13 their agents when so acting.

14 (j) "Consumer credit" means credit offered or extended to a consumer

15 primarily for personal, family, or household purposes.

16 Sec. 3. 9 V.S.A. § 2453 is amended to read:

17 § 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER

18 PROTECTION

19 (a) Unfair methods of competition in commerce and unfair or deceptive

20 acts or practices in commerce are hereby declared unlawful.

21 (b) It is the intent of the Legislature that in construing subsection (a) of this

22 section, the courts of this State will be guided by the construction of similar

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1 terms contained in ~~Section 5(a)(1) of the Federal Trade Commission Act~~ 15
2 U.S.C. § 45(a)(1) as from time to time amended by the Federal Trade
3 Commission and the courts of the United States.

4 (c) The Attorney General shall adopt rules, when necessary and proper to
5 carry out the purposes of this chapter, relating to unfair methods of competition
6 in commerce and unfair or deceptive acts or practices in commerce. The rules
7 shall not be inconsistent with the rules, regulations, and decisions of the
8 Federal Trade Commission and the federal courts interpreting the Federal
9 Trade Commission Act.

10 (d) Violation of a rule adopted by the Attorney General is prima facie proof
11 of the commission of an unfair or deceptive act in commerce.

12 (e) The provisions of subsections (a), (c), and (d) of this section shall also
13 be applicable to real estate transactions.

14 (f) A consumer may sue for appropriate relief from a person who violates a
15 rule adopted pursuant to this section but must first provide the debt collector a
16 written notice of the consumer's intent to seek relief and the alleged violation
17 of the rule and afford the debt collector thirty days from delivery of the notice
18 to correct any violation of the rule.

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

20 § 2461. CIVIL PENALTY

21 * * *

Comment [DR2]: It is unusual to grant strict liability statutory relief based on the violation of a yet-to-be adopted regulation. RMA respectfully requests that the debt collector be afforded the opportunity to correct the alleged violation.



VLA argues this is unnecessary and that MA law is the minority-40 states do not require.

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1 (b)(1) Any consumer who contracts for goods or services in reliance upon
2 false or fraudulent representations or practices prohibited by section 2453 of
3 this title, or who sustains damages or injury as a result of any false or
4 fraudulent representations or practices prohibited by section 2453 of this title,
5 or prohibited by any rule or regulation made pursuant to section 2453 of this
6 title;

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

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

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

11 (ii) the consideration or the value of the consideration given by the
12 consumer; ~~or~~

13 (iii) \$500.00 for a first violation or \$1,000.00 for each subsequent
14 violation up to \$5,000; and

15 (C) ~~reasonable attorney's fees and may sue for~~ exemplary damages
16 not exceeding three times the value of the consideration given by the
17 consumer; and

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

19 (2) Any language, written or oral, used by a seller or solicitor, which
20 attempts to exclude or modify recovery of the penalty or reasonable attorney's
21 fees shall be unenforceable.

22 * * *

Comment [DR3]: RMA respectfully requests that a cap on the violations be inserted. If a required consumer notice is sent out with a typo, this provision could subject a debt collector to a significant penalty (even if there was no consumer harm).

Does not like the idea of a cap but would be willing to consider up to \$10,000 which is in AG Consumer Protection language

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1 Sec. 5. 9 V.S.A. chapter 63, subchapter 9 is added to read:

2 Subchapter 9. Debt Collection

3 § 2491. ENFORCEMENT

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

6 § 2491a. DEBT COLLECTION PRACTICES; PROHIBITIONS

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

8 (1) call or visit a consumer's workplace after receiving a written request
9 by the consumer or his or her employer not to do so;

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

12 (3) repeatedly call, email, text, leave messages, knock on doors, or ring
13 doorbells of the same consumer more than a total of three times per day;

14 (4) ask someone, other than a the consumer's spouse, guardian, or
15 executor, to make a payment on behalf of a consumer;

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

18 (6) speak with a consumer more than six times per week, excluding
19 communications initiated or requested by the consumer, to discuss an overdue
20 account;

21 (7) engage in violence;

22 (8) trespass;

Not agree

Comment [DR4]: RMA respectfully requests that this be in writing. This would resolve any chance of a misunderstanding associated with an oral conversation.

They want to say "more than once" a day and at times "known to be waking hours"

Comment [DR5]: "Repeatedly" is a subjective word. What one person considers repetitive, another person may not. RMA respectfully requests clarity so as to avoid any confusion.

Comment [DR6]: RMA respectfully requests that a consumer's guardian and executor be added to the list.

Agree with 4 and add power of attorney for financial matters

Comment [DR7]: RMA respectfully requests that communications initiated by the consumer not be included in this requirement. Otherwise, a debt collector could violate this provision by the actions of the consumer.

Will change to say "initiate contact" instead of "speak" to cover consumer initiated communications

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1 (9) call or visit a consumer at home or work after receiving legal notice
2 that the consumer has filed for bankruptcy, **except as otherwise permitted by**
3 **law:**

4 (10) impersonate others;

5 (11) discuss a consumer's account with anyone other than **a-the**
6 **consumer's** spouse, **guardian, or executor of the consumer:**

7 (12) threaten **unwarranted-unlawful** legal action; or

8 (13) leave a recorded message for a consumer that includes anything
9 other than the caller's name, contact information, and a **courteous** request that
10 the consumer return the call.

11 § 2491b. DEBT COLLECTION; NOTICE TO CONSUMER PRIOR TO
12 COMMENCING CIVIL ACTION

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

18 (1) the amount of the debt;

19 (2) the name of the **creditor entity** to whom the debt is owed;

20 (3) the name of the original creditor, the last four digits of the account,

21 and the alleged date of the last payment **if any:**

Comment [DR8]: RMA respectfully requests an exception for scenarios such as stay relief which is permitted by law.

Too broad- goes without saying according to them a motion to get a relief from a stay is legitimate court process

Comment [DR9]: RMA respectfully requests that a consumer's guardian and executor be added to the list.

agree and add POA

Comment [DR10]: "Unwarranted" is a subjective word. What one person considers unwarranted, another person may not. For that reason, RMA respectfully requests that "unwarranted" be replaced with "unlawful."

Comment [DR11]: This may violate the FDCPA – RMA is checking to confirm.

Comment [DR12]: "Courteous" is a subjective word. What one person considers courteous, another person may not. For that reason, RMA respectfully requests that the word be deleted.

(12) No but change to "take any action that cannot legally be taken or that is not intended to be taken" to keep it IAW federal law.

(13) VLA wants to leave courteous

Comment [DR13]: RMA respectfully requests this minor modification, as the debt may be owed to someone who is not the creditor.

Comment [DR14]: RMA respectfully requests this minor modification as the consumer may have had a first payment default.

**(2) Keep creditor as it is the only real party of interest that can sue in court
(3) they agree with "if any"**

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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 **in writing** within the 30-day period, the debt collector will
6 deliver verification of the debt or a copy of a judgment against the consumer;
7 and

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

12 (b) Disputed debts.

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

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

Comment [DR15]: RMA respectfully requests that this be in writing. This would resolve any chance of a misunderstanding associated with an oral conversation. It is also consistent with the FDCPA.

Agreed

Comment [DR16]: RMA respectfully requests that this be in writing. This would resolve any chance of a misunderstanding associated with an oral conversation.

Agreed

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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 § 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

6 EXPIRED; LIMITATIONS

7 (a) A debt collector may not initiate a collection action when the debt
8 collector knows or reasonably should know that the collection action is barred
9 by the limitations period as set forth in subsection (b) of this section.

10 (b) A debt collector may not commence a collection action more than 6
11 years after the date of the consumer’s last activity on the debt. This limitations
12 period applies notwithstanding any other applicable statute of limitations,
13 unless a shorter limitations period is provided under state law. Notwithstanding
14 any other provision of law, when the applicable limitations period expires, any
15 subsequent payment toward, written or oral affirmation of or other activity on,
16 such debt does not revive or extend the limitations period.

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

- 19 (1) a person shall not contact a debtor to collect the debt; and
20 (2) an agreement to make additional payments on the debt is void and
21 unenforceable against the debtor.

Comment [DR17]: RMA respectfully requests that the following language be used which is consistent similar amendments that have recently been adopted in Maine and Connecticut. This language is considered the new best practice which RMA is advocating for adoption nationwide.

They want to ensure that after the three year proposed statute of limitations has expired that a creditor cannot engage in active collecting, but argue a consumer can still pay off debt....

They do want to keep the Notwithstanding, etc. Lines 13-16

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

3 ~~(1) the creditor contacts the debtor not later than seven years after any~~
4 ~~adverse information concerning the debt is reported to a credit reporting~~
5 ~~agency;~~

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

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

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

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

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

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

15 **§ 511. CIVIL ACTION**

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

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

Comment [DR18]: RMA strongly advises against reducing the statute of limitations to three years as it will result in a significant increase in the number of lawsuits brought against consumers.

Not agreeing to change the statute of limitations here for credit cards

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

4 Sec. 7. 12 V.S.A. § 3170 is amended to read:

5 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

6 (a) No order approving the issuance of trustee process against earnings
7 shall be entered against a judgment debtor who was, within the two-month
8 period preceding the hearing provided in section 3169 of this title, a recipient
9 of assistance from the Vermont Department for Children and Families or the
10 Department of Vermont Health Access. The judgment debtor must establish
11 this exemption at the time of hearing. For purposes of this subsection, a
12 judgment debtor shall be considered to be a recipient of assistance if the debtor
13 is a member of an eligible family whose requirements, income, and resources
14 have been considered a unit for programs authorized by those departments.

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

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

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

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

5 * * *

6 Sec. 8. 12 V.S.A. § 3173 is added to read:

7 § 3173. TRUSTEE PROCESS AGAINST POSTJUDGMENT DEBTOR'S

8 BANK ACCOUNTS; PROCEDURE

9 (a) A judgment creditor may, pursuant to this section, obtain trustee
10 process against a judgment debtor's accounts or funds in the possession of a
11 bank or other financial institution to enforce a money judgment in a civil
12 action. Notwithstanding sections 3063 or 3080 of this title or any other
13 provision of law, a postjudgment debtor's accounts or funds in the possession
14 of a bank or other financial institution shall not be attached, be subject to
15 trustee process, or be subject to execution by a postjudgment creditor unless
16 the requirements of this section are satisfied.

17 (b) A judgment creditor's attorney may file a motion for trustee process
18 against a judgment debtor's accounts or funds in the possession of a bank or
19 other financial institution describing in detail the grounds for the motion, the
20 amount alleged to be unpaid, and whether the judgment debtor has claimed the
21 exemption in subdivision 2740(15) of this title in the last 30 days. The
22 judgment creditor's attorney shall prepare a summons on a form provided by

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1 the court, a disclosure form for the trustee, and a claim of exemption form for
2 the judgment debtor.

3 (c)(1) Upon receipt of a motion for trustee process filed under this section
4 when a judgment has not been satisfied, the superior clerk is authorized to
5 issue a writ of execution and one or more summonses to any trustee financial
6 institution specified by the judgment creditor that possesses accounts or funds
7 belonging to the judgment debtor. If the judgment creditor requests issuance
8 of more than one summons, the judgment creditor shall specify which financial
9 institution shall not freeze the amounts exempted by subdivision 2740(15) of
10 this title. The clerk shall set the matter for hearing within 14 days and shall
11 issue a notice of hearing concurrently with the writ of execution and the
12 summons.

13 (2) A writ of execution or summons issued pursuant to this subsection
14 shall contain instructions to the trustee financial institution directing it not to
15 freeze any funds of the judgment debtor that appear, based on deposit or other
16 information kept by the trustee financial institution, to be exempt from
17 execution under section 2740 of this title.

18 (d)(1) The judgment creditor shall serve on the trustee financial institution
19 and the judgment debtor pursuant to Rule 4 of the Vermont Rules of Civil
20 Procedure:

21 (A) the motion for trustee process;

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

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

7 (D) the notice of hearing.

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.

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

19 (f) Upon receipt of a writ of execution served pursuant to subsection (d) of
20 this section, a trustee financial institution shall, based on deposit or other
21 information kept by the institution:

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1 (1) not freeze any funds of the judgment debtor's in its possession that
2 appear to be exempt from execution under section 2740 of this title;

3 (2) freeze any funds up to the amount owed as provided in the writ of
4 execution that do not appear to be exempt from execution under section 2740
5 of this title; and

6 (3) within seven days return the disclosure form to the court and the
7 parties.

8 (g) A judgment debtor may request **in writing** an expedited hearing to
9 determine a claim of exemption. The court shall hold the hearing within three
10 days after the judgment debtor makes the request. **A copy of the judgment**
11 **debtor's request must be served upon the judgment creditor at least one**
12 **business day prior to the court's hearing.**

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

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

19 (2) state the amount of postjudgment interest due under 9 V.S.A.
20 § 41a(b)(11);

Comment [DR19]: RMA respectfully requests that such a request of the court be made in writing and that the creditor be informed about such request.

agree to "in writing"

wish to change to 3 business days for hearing. Said notice would come from court not debtor

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1 (3) identify any funds of the judgment debtor's in the possession of the
2 trustee financial institution that are exempt from execution under section 2740
3 of this title;

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

7 (5) identify the amount of funds in the possession of the trustee financial
8 institution that are judgment non-exempt funds that are to be released to the
9 judgment creditor.

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

12 **Sec. 9. EFFECTIVE DATE**

13 This act shall take effect on ~~July 1, 2018~~ January 1, 2019.

14
15
16 (Committee vote: _____)

17 _____

18 Representative _____

19 FOR THE COMMITTEE

Comment [DR20]: The industry needs a reasonable period of time to adjust their operations to conform to the new law. There will be companies from across the nation that will first have to be informed of the change and then to adopt internal policies and procedures to ensure operational compliance. RMA respectfully requests that the date be changed to January 1, 2019.

Not willing to budge here