Memorandum in Opposition
House Bill 482

Encore Capital Group opposes House Bill 482, as it is a well-intentioned bill that would unfortunately create a host of negative consequences for Vermont consumers – namely, a drastic spike in debt collection lawsuits against consumers. The bill would also harm Vermont businesses, both large companies like Encore Capital Group and mid-sized and smaller businesses like dentist, gyms, veterinary and doctor offices, which frequently resort to collecting on outstanding debt obligations that their customers fail to repay.

By way of background, Encore Capital Group and its subsidiaries (collectively, "Encore") is a publicly traded company that, together with its debt purchaser and debt collector subsidiaries, has provided over 60 years of service to consumers. Purchasing primarily charged-off credit card receivables, we currently own an account for over 47,000 Vermont consumers, and partner with them by offering discounted payment plans, flexible repayment terms, and charging no interest or fees on new accounts. In 2017, we forgave over $401,000 to Vermont consumers.

Unfortunately, this bill would significantly reduce the discounts Encore could provide to Vermont consumers, as it would hamper our ability to collect on valid debt obligations. This legislation would also create a sharp rise in debt collection litigation against consumers, by leaving creditors and debt purchasers with no choice but to file suit against consumers as the only means to protect their legal rights to collect on valid debt that consumers incurred but failed to repay.

The Legislation Would Completely Change the Statute of Limitations and Needlessly Create a Flood of Litigation Against Consumers

This bill would create a drastic change in the way statute of limitations is defined. In 47 states, including Vermont, the statute of limitations refers to when a legal action may be brought. HB 482 would create an unusual expansion of statute of limitations, so as to apply it to *any and all* collections activities. Contrary to what proponents of the bill have stated, under the law of Vermont and almost every other state, when the statute of limitations runs, that means that a lawsuit may not be filed; it does *not* mean that an outstanding debt disappears and is no longer collectible. Proponents of HB 482, however, have misconstrued what the statute of limitations is, and seek to entirely change the definition of statute of limitations.

The practical result of removing creditors' and debt purchasers' ability to collect after the proposed 3 year statute of limitations is that those businesses would be forced into premature litigation so as to avoid losing the ability to collect entirely after 3 years. Filing suit is a last resort for most creditors and debt purchasers, as it is an expensive collection option and a poor outcome for our consumers. Creating a 3-year window of time to file suit or otherwise completely lose all rights to

collection hampers the ability for collectors and consumers to communicate and negotiate debt repayment – it often takes years for a collector to reach a consumer and work out a payment arrangement. A new, artificial 3 year timeline also puts needless pressure on creditors and debt purchasers to file suit.

Federal regulators at the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) have publicly stated these exact concerns with proposals like this. Earlier this month, Tom Pahl, the Acting Director of the FTC's Bureau of Consumer Protection, who had previously been the CFPB's head of rulemaking for over three years at the CFPB, explained that "It is valuable for collectors to communicate with consumers. And there is value in recognizing that [when] collectors can't communicate...what is likely to follow is a lawsuit, which is in nobody's interest."[1]

A Shortened Statute Of Limitations To Collect Would Result In A Spike In Lawsuits Filed Against Consumers

Shortening the statute of limitations from 6 to 3 years would, similar to the above issue, result in less time for communicating with consumers about how to resolve their debt, and substantially more litigation. While counter-intuitive on its face, reducing the statute of limitations is *not* helpful to consumers because it creates an accelerated clock for debt collectors to file a lawsuit. Shortening the statute of limitations from 6 to 3 years will give creditors and debt purchasers – and our consumers – half as much time to try to resolve the account outside of the litigation process. Ultimately, this proposed change will serve to harm many Vermont consumers who would face debt collection litigation. Under the current 6 year statute of limitations, many of those same consumers would never face a lawsuit because they would have had an additional 3 years to work with their creditors to resolve their outstanding debt obligations.

HB 482 Would Result in Less Affordable Credit Available to Vermont Consumers

A host of academic research over the past several years looking at regulation of the collections industry has revealed that legislation creating barriers to the valid collection of delinquent debt results in a restriction of the flow of affordable credit offered to consumers. The reason is that, should debt buyers and collectors be less able to recover delinquent debt owed in Vermont, less delinquent debt will be purchased from the banks that issue the debt in the first place. With higher losses on delinquent

[1] *FTC Bureau Chief: Lack of Debt Collection Rule A "Missed Opportunity,"* located at http://www.accountsrecovery.net/2018/02/09/ftc-bureau-chief-lack-debt-collection-rule-missed-opportunity/ (published Feb. 9, 2018).

debt that cannot be recovered through selling the debt, banks will be less willing to offer credit in Vermont and will likely charge higher interest rates, especially to consumers with lower credit scores.

As demonstrated by a 2013 and 2015 Philadelphia Federal Reserve research study, placing more restrictions on the collection of validly owed debt only causes the availability of credit to decrease while increasing the cost of credit.[2] That study found that each additional restriction on debt collection activity decreases credit card recovery rates by nine percent. This lower recovery rate, in turn, results in a reduction in new extensions of credit and more expensive credit products. A study from the Mercatus Center at George Mason University on the law and economics of consumer debt collection demonstrated similar unintended consequences for consumers. Due to increased costs and decreased availability of credit, low income consumers will be forced to turn to alternative lending products – such as payday loans, title loans or short term installment loans – at a much higher cost.[3] Similarly, a report from researchers at the Harvard Kennedy School of Government found that a 250% surge in credit-card related restrictions by regulators since 2007 contributed to a 50% drop in annual credit originations to lower-risk-score Americans.[4] Most recently, a New York Federal Reserve Bank Staff Report concluded, "We find consistent evidence that restricting collection activities leads to a decrease in access to credit and a deterioration in indicators of financial health, with effects concentrated primarily among borrowers with the lowest credit scores."[5]

Given the above, when creating new restrictions that impair the ability of collectors and consumers to communicate about outstanding debt obligations, it is extremely important to consider the larger economic impact to the cost and availability of credit to consumers in the state who need credit the most.

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Thank you for your attention on this important matter. Please feel free to contact me directly at

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[2] See Fedaseyeu, Viktar, Debt Collection Agencies and the Supply of Consumer Credit (Working Paper No. 15-23). Federal Reserve Bank of Philadelphia, June 19, 2015. Available at https://www.philadelphiafed.org/research-and-data/publications/working-papers/2015/

[3] Todd Zywicki. September 2015. *The Law and Economics of Consumer Debt Collection and Its Regulation*. Mercatus Center, George Mason University. Available at: http://mercatus.org/publication/law-and-economics-consumer-debt-collection-and-its-regulation

[4] Marshall Lux and Robert Green, *Out of Reach: Regressive Trends in Credit Card Access,* Harvard Kennedy School of Government (April 2016).

[5] Julia Fonseca, Katherine Strair, and Basit Zafar, *Access to Credit and Financial Health: Evaluating the Impact of Debt Collection,* Federal Reserve Bank of New York Staff Reports, no. 814 (May 2017).

858-309-6923 for any further information.

Sincerely,

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