

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 593 entitled “An act relating to miscellaneous
4 consumer protection provisions” respectfully reports that it has considered the
5 same and recommends that the House concur in the Senate proposal of
6 amendment with further proposal of amendment thereto as follows:

7 First: In Sec 2 by striking out “January” in both instances and inserting in
8 lieu thereof “July”

9 Second: By striking out Secs. 6a and 7 in their entireties and inserting in
10 lieu thereof Secs. 7–15 to read:

11 Sec. 7. ONE-STOP FREEZE NOTIFICATION

12 (a) The Attorney General, in consultation with industry stakeholders, shall
13 consider one or more methods to ease the burden on consumers when placing
14 or lifting a credit security freeze, including the right to place a freeze with a
15 single nationwide credit reporting agency and require that agency to initiate a
16 freeze with other agencies.

17 (b) On or before January 15, 2019, the Attorney General shall report his or
18 her findings and recommendations to the House Committee on Commerce and
19 Economic Development and the Senate Committee on Economic
20 Development, Housing and General Affairs.

21 Sec. 8. 9 V.S.A. § 41a is amended to read:

1 § 41a. LEGAL RATES

2 (a) Except as specifically provided by law, the rate of interest or the sum
3 allowed for forbearance or use of money shall be 12 percent per annum
4 computed by the actuarial method.

5 (b) The rate of interest or the sum allowed:

6 * * *

7 (10) Interest on a judgment against a debtor in default on credit card
8 debt incurred for personal, family, or household purposes shall accrue at the
9 rate of 12 percent per annum using simple interest, unless a court suspends or
10 reduces the accrual of interest pursuant to 12 V.S.A. § 2903a.

11 * * *

12 Sec. 9. 12 V.S.A. chapter 113 is amended to read:

13 CHAPTER 113. ~~JUDGMENT LIEN~~ JUDGMENTS AND JUDGMENT
14 LIENS

15 * * *

16 § 2903. DURATION AND EFFECTIVENESS

17 * * *

18 (c) ~~Interest~~ Unless a court suspends or reduces the accrual of interest
19 pursuant to section 2903a of this title, interest on a judgment lien shall accrue
20 at the rate of 12 percent per annum using simple interest.

21 (d) If a judgment lien is not satisfied within 30 days of recording, it may be

1 foreclosed and redeemed as provided in this title and V.R.C.P. Rule 80.1 of the
2 Vermont Rules of Civil Procedure. Unless the court finds that as of the date of
3 foreclosure the amount of the outstanding debt exceeds the value of the real
4 property being foreclosed, section 4531 of this title shall apply to foreclosure
5 of a judgment lien.

6 § 2903a. ACCRUAL OF POSTJUDGMENT INTEREST ON CREDIT

7 CARD DEBT; SUSPENSION; REDUCTION; REINSTATEMENT

8 (a) Upon or after entering a judgment against a debtor in default on credit
9 card debt incurred for personal, family, or household purposes, a court may
10 suspend or reduce the accrual of interest on the judgment if it finds:

11 (1) the judgment debtor's income and assets are exempt from
12 collection; or

13 (2) based on his or her current income, assets, and expenses, the
14 judgment debtor does not have more financial resources available than what is
15 reasonably necessary to support the debtor and his or her dependents.

16 (b) To request suspension or reduction of interest on a judgment, the debtor
17 shall submit to the court a motion to suspend or reduce interest that includes:

18 (1) a completed financial disclosure, on a form adopted by the Vermont
19 Judiciary; and

20 (2) any additional documentation the court prescribes.

21 (c) If the court approves the request, it:

1 § 2491b. CREDIT CARD DEBT COLLECTION; NOTICES TO

2 CONSUMER

3 (a) Notice prior to initiating action. Prior to initiating an action to obtain a
4 judgment against a credit card debtor, a debt collector shall deliver to the credit
5 card debtor:

6 (1) a claim of exemption form adopted by the Vermont Judiciary; and

7 (2) a written notice that contains:

8 (A) the amount of the debt;

9 (B) the name of the person to whom the debt is owed;

10 (C) the name of the original creditor, the last four digits of the
11 account, and the alleged date of the last payment if any;

12 (D) a statement that, if the credit card debtor indicates in writing that
13 his or her current income and assets are exempt from collection, the debt
14 collector will review the information in deciding whether and how to proceed
15 in collecting the debt.

16 (b) Time for delivering notice prior to initiating action. A debt collector
17 shall deliver the notice required in subsection (a) of this section not more than
18 90 days and not less than 30 days before initiating an action to obtain a
19 judgment against a credit card debtor.

20 (c) Notice by assignee prior to filing a motion to collect on a judgment
21 against credit card debtor. Prior to filing a motion to collect on a judgment

1 against a credit card debtor, an assignee of the judgment shall deliver to the
2 judgment debtor:

3 (1) a copy of the judgment against the credit card debtor;

4 (2) the date and parties to each assignment of the judgment;

5 (3) a claim of exemption form adopted by the Vermont Judiciary; and

6 (4) a written statement that, if the credit card debtor indicates in writing

7 that his or her current income and assets are exempt from collection, the

8 assignee will review the information in deciding whether and how to proceed

9 in collecting on the judgment.

10 (d) Time for delivering notice by assignee prior to filing a motion to collect

11 on a judgment against credit card debtor. The assignee of a judgment shall

12 deliver the notice required in subsection (c) of this section not more than 90

13 days and not less than 30 days before filing a motion to collect on the

14 judgment.

15 § 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

16 EXPIRED; LIMITATIONS

17 (a)(1) A debt collector shall not initiate a civil action to collect a debt from

18 a credit card debtor when the debt collector knows or reasonably should know

19 that the statute of limitations provided in 12 V.S.A. § 511 has expired.

20 (2) Notwithstanding any other provision of law, when the limitations

21 period provided in 12 V.S.A. § 511 expires, any subsequent payment toward,

1 written or oral affirmation of, or other activity on the debt does not revive or
2 extend the limitations period.

3 (b) After the statute of limitations provided in 12 V.S.A. § 511 has expired,
4 a debt collector may only communicate with a credit card debtor concerning
5 the debt after providing written or verbal notice that the credit card debtor has
6 the right to request that the debt collector cease all communications with the
7 credit card debtor concerning the debt and providing one of the following
8 disclosures:

9 (1) If the debt is not past the date for obsolescence set forth in the
10 federal Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

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

15 (2) If the debt is past the date for obsolescence set forth in the federal
16 Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

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

20 Sec. 11. 12 V.S.A. § 2732 is amended to read:

21 § 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

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

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

16 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

17 (a) No order approving the issuance of trustee process against earnings
18 shall be entered against a judgment debtor who was, within the two-month
19 period preceding the hearing provided in section 3169 of this title, a recipient
20 of assistance from the Vermont Department for Children and Families or the
21 Department of Vermont Health Access. The judgment debtor must establish

1 this exemption at the time of hearing.

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

3 (1) 75 percent of the debtor's weekly disposable earnings, or 30 times
4 the ~~federal~~ minimum hourly wage, whichever is greater; or

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

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

13 * * *

14 Sec. 13. 12 V.S.A. § 3173 is added to read:

15 § 3173. TRUSTEE PROCESS AGAINST JUDGMENT DEBTOR'S

16 BANK ACCOUNTS; PROCEDURE

17 (a)(1) A judgment creditor may, pursuant to this section, obtain trustee
18 process against a judgment debtor's accounts or funds in the possession of a
19 bank or other financial institution to enforce a money judgment in a civil
20 action.

21 (2) Notwithstanding section 2732 of this title or any other provision of

1 law, a judgment debtor's accounts or funds in the possession of a bank or other
2 financial institution shall not be attached, be subject to trustee process, or be
3 subject to execution by a judgment creditor unless the requirements of this
4 section are satisfied.

5 (3) Nothing in this section shall prohibit a financial institution from
6 exercising a contractual right of setoff against a judgment debtor's deposit
7 accounts with the financial institution.

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

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

17 (c)(1) Upon receipt of a motion for trustee process filed under this section
18 when a judgment is final and has not been satisfied, the Superior clerk is
19 authorized to issue one or more summonses to any trustee financial institution
20 specified by the judgment creditor that possesses accounts or funds belonging
21 to the judgment debtor.

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

5 (3) The clerk shall issue a notice of hearing concurrently with the
6 summons and shall set the matter for hearing not sooner than 30 days after
7 issuing the notice and summons.

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

13 (d)(1) The judgment creditor shall serve on the trustee financial institution
14 and the judgment debtor pursuant to Rule 4 of the Vermont Rules of Civil
15 Procedure, unless the judgment debtor files an appearance pursuant to Rule 5
16 of the Vermont Rules of Civil Procedure after the motion for trustee process is
17 filed:

18 (A) the motion for trustee process;

19 (B) the summons and notice of hearing issued by the clerk pursuant
20 to subdivisions (c)(1) and (3) of this section;

21 (C) a claim of exemptions form approved by the Court Administrator

1 that permits the judgment debtor to identify any of the debtor's funds in the
2 possession of the trustee financial institution that may be exempt from
3 execution under section 2740 of this title; and

4 (D) a disclosure form for the trustee.

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

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

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

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

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

1 (f)(1) A judgment debtor may request an expedited hearing to determine a
2 claim of exemption.

3 (2) The judgment debtor shall:

4 (A) submit the request in writing; and

5 (B) send a copy of the request to the court, to the judgment creditor,
6 and to the trustee financial institution.

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

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

11 (g) At the hearing on the motion for trustee process or motion for expedited
12 hearing, the court shall consider the disclosure form from the trustee and the
13 testimony and affidavits offered by any party, provided that an affiant is
14 available to testify in person or by telephone. The court shall issue an order
15 granting or denying the motion for trustee process, which shall:

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

18 (2) state the rate of postjudgment interest due under 9 V.S.A.
19 § 41a(b)(10);

20 (3) identify any funds of the judgment debtor in the possession of the
21 trustee financial institution that are exempt from execution under section 2740

1 of this title and order release of those funds to the judgment debtor;

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

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

7 (h) 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. 14. IMPLEMENTATION; REPORT

10 (a) On or before January 15, 2020, the Attorney General, in consultation
11 with the Judicial Branch, representatives of creditors and debtors, and national
12 nonprofit organizations representing the receivables industry, shall submit to
13 the House and Senate Committees on Judiciary, the House Committee on
14 Commerce and Economic Development, and the Senate Committee on
15 Economic Development, Housing and General Affairs a report that addresses:

16 (1) the implementation, outcomes, and effectiveness of Secs. 8–13 of
17 this act;

18 (2) whether to expand the applicability of the provisions of Secs. 8–13
19 of this act beyond credit card debt; and

20 (3) any recommendations for further legislative action related to Secs.
21 8–13 of this act.

1 (e) Sec. 3 (retainage for construction materials) and Sec. 7 (one-stop
2 notification study) shall take effect on July 1, 2018.

3 (f) Secs. 8–14 (credit card and debt collections) shall take effect on October
4 1, 2018.

5

6

7

8

9

10

11 (Committee vote: _____)

12

13

Representative _____

14

FOR THE COMMITTEE