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H.482

Representatives Sullivan of Dorset and McCoy of Poultney move to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 41a is amended to read:

§ 41a. LEGAL RATES

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

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

\* \* \*

(10) Interest on a judgment against a consumer credit card debtor, as defined in 12 V.S.A. § 2903a(a)(1), shall accrue at the rate of 12 percent per annum using simple interest unless a court suspends or reduces the accrual of interest pursuant to 12 V.S.A. § 2903a.

\* \* \*

Sec. 2. 12 V.S.A. chapter 113 is amended to read:

CHAPTER 113. ~~JUDGMENT LIEN~~ JUDGMENTS AND JUDGMENT

LIENS

\* \* \*

§ 2903. DURATION AND EFFECTIVENESS

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

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

§ 2903a. ACCRUAL OF POSTJUDGMENT INTEREST ON CREDIT

CARD DEBT; SUSPENSION; REDUCTION; REINSTATEMENT

(a) As used in this section:

(1)(A) “Consumer credit card debtor” means a person who is in default on an unsecured consumer credit card debt and whose gross annual household income does not exceed 80 percent of the applicable county median income, as determined by the Department of Housing and Urban Development.

(B) “Consumer credit card debtor” does not include a business entity, partnership, association, or limited liability company; an owner, member, officer, or authorized agent of a business entity, partnership, association, or limited liability company; or a self-employed person.

1           (2) “Consumer debt collection business” means an entity or person who  
2           in the regular course of its or their business engages or assists in the collection  
3           of defaulted unsecured consumer credit card debt.

4           (b) Upon or after entering a judgment against a consumer credit card  
5           debtor, a court may suspend or reduce the accrual of interest on the judgment if  
6           it finds:

7           (1) the consumer credit card debtor’s income and assets are exempt from  
8           collection; or

9           (2) the consumer credit card debtor does not have financial resources  
10           sufficient reasonably to support the debtor and his or her dependents.

11           (c) To request suspension or reduction of interest on a judgment, the  
12           consumer credit card debtor shall submit to the court a motion to suspend or  
13           reduce interest that includes:

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

16           (2) any additional documentation the court prescribes.

17           (d) If the court approves the request, it:

18           (1) shall provide in its order that the suspension or reduction of interest  
19           is based on the consumer credit card debtor’s current income, assets, and  
20           expenses; and



1           (B) “Consumer credit card debtor” does not include a business entity,  
2           partnership, association, or limited liability company; an owner, member,  
3           officer, or authorized agent of a business entity, partnership, association, or  
4           limited liability company; or a self-employed person.

5           (2) “Consumer debt collection business” means an entity or person who  
6           in the regular course of its or their business engages or assists in the collection  
7           of defaulted unsecured consumer credit card debt.

8           § 2491a. ENFORCEMENT

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

11          § 2491b. CREDIT CARD DEBT COLLECTION; NOTICES TO

12                   CONSUMER

13          (a) Notice prior to initiating an action to obtain a judgment against a  
14          consumer credit card debtor. Prior to initiating an action in the courts of this  
15          State to obtain a judgment against a consumer credit card debtor, a consumer  
16          debt collection business shall deliver to the consumer credit card debtor:

17                   (1) a claim of exemption from adopted by the Vermont Judiciary; and

18                   (2) a written notice that contains:

19                           (A) the amount of the debt;

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

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

3           (D) a statement that, if the consumer credit card debtor indicates in  
4           writing that his or her current income and assets are exempt from collection,  
5           the consumer debt collection business will review the information in deciding  
6           whether and how to proceed in collecting the debt.

7           (b) Time for delivering notice prior to initiating an action to obtain a  
8           judgment against a consumer credit card debtor. A consumer debt collection  
9           business shall deliver the notice required in subsection (a) of this section not  
10           more than 90 days and not less than 30 days before initiating an action  
11           pursuant to Vermont law to obtain a judgment against a consumer credit card  
12           debtor.

13           (c) Notice by assignee prior to filing a motion to collect on a judgment  
14           against consumer credit card debtor. Prior to filing a motion to collect on a  
15           judgment obtained in the courts of this State against a consumer credit card  
16           debtor, an assignee of the judgment shall deliver to the judgment debtor:

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

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

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

1           (4) a written statement that, if the consumer credit card debtor indicates  
2           in writing that his or her current income and assets are exempt from collection,  
3           the assignee will review the information in deciding whether and how to  
4           proceed in collecting on the judgment.

5           (d) Time for delivering notice by assignee prior to filing a motion to collect  
6           on a judgment against consumer credit card debtor. The assignee of a  
7           judgment shall deliver the notice required in subsection (c) of this section not  
8           more than 90 days and not less than 30 days before filing a motion to collect  
9           on the judgment pursuant to Vermont law.

10           § 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

11                   EXPIRED; LIMITATIONS

12           (a) A consumer debt collection business shall not initiate an action to  
13           collect debt from a consumer credit card debtor when the consumer debt  
14           collection business knows or reasonably should know that the applicable  
15           statute of limitations has expired.

1        (b) After the statute of limitations to initiate an action to collect debt from a  
2        consumer credit card debtor has expired, a consumer debt collection business  
3        may only communicate with a consumer credit card debtor concerning the debt  
4        after providing written or verbal notice that the consumer credit card debtor  
5        has the right to request that the consumer debt collection business cease all  
6        communications with the consumer credit card debtor concerning the debt and  
7        providing one of the following disclosures:

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

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

20        § 2491d. LIMITATION OF SCOPE



1        This subchapter shall not apply to, or affect the substantive rights and  
2        obligations of parties in, federal bankruptcy proceedings, actions brought by  
3        any court-ordered receiver, arbitration proceedings, or actions initiated in  
4        courts outside of this State.

5        Sec. 4. 12 V.S.A. § 2732 is amended to read:

6        § 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

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

21       Sec. 5. 12 V.S.A. § 3170 is amended to read:

1 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

2 (a) No order approving the issuance of trustee process against earnings  
3 shall be entered against a judgment debtor who was, within the two-month  
4 period preceding the hearing provided in section 3169 of this title, a recipient  
5 of assistance from the Vermont Department for Children and Families or the  
6 Department of Vermont Health Access. The judgment debtor must establish  
7 this exemption at the time of hearing.

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

9 (1) 75 percent of the debtor's weekly disposable earnings; or 30 times  
10 the ~~federal~~ minimum hourly wage, whichever is greater; or

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

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

19 \* \* \*

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

21 § 3173. TRUSTEE PROCESS AGAINST JUDGMENT DEBTOR'S

1                   BANK ACCOUNTS; PROCEDURE

2                   (a)(1) A judgment creditor may, pursuant to this section, obtain trustee  
3                   process against a judgment debtor’s accounts or funds in the possession of a  
4                   bank or other financial institution to enforce a money judgment in a civil  
5                   action.

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

11                  (3) Nothing in this section shall prohibit a financial institution from  
12                  exercising a contractual right of setoff against a judgment debtor’s deposit  
13                  accounts with the financial institution.

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

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

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

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

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

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

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

6               (A) the motion for trustee process;

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

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

13               (D) a disclosure form for the trustee.

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

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

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

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

10            (3) shall return the disclosure form to the court and to the parties within  
11       10 days.

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

14            (2) The judgment debtor shall:

15                (A) submit the request in writing; and

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

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

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

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

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

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

10           (3) identify any funds of the judgment debtor in the possession of the  
11           trustee financial institution that are exempt from execution under section 2740  
12           of this title and order release of those funds to the judgment debtor;

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

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

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

20        Sec. 7. IMPLEMENTATION; REPORT

21           On or before January 15, 2020, the Attorney General, in consultation with

1 the Judicial Branch, representatives of creditors and debtors, and national  
2 nonprofit organizations representing the receivables industry, shall submit to  
3 the House and Senate Committees on Judiciary, the House Committee on  
4 Commerce and Economic Development, and the Senate Committee on  
5 Economic Development, Housing and General Affairs a report that:

6 (1) addresses the implementation and outcomes of this act; and

7 (2) specifies the number of cases affected by this act involving low  
8 income Vermonters.

9 Sec. 8. EFFECTIVE DATE

10 This act shall take effect on October 1, 2018.

11 and that after passage the title of the bill be amended to read: “An act  
12 relating to consumer protection, credit card debt, and trustee process”