

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

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

3 (A) zero percent for any period during which all of the debtor’s
4 income and assets are exempt from attachment or execution; and

5 (B) set by the court in its discretion for any period during which
6 some, but not all, of the debtor’s income and assets are exempt from
7 attachment or execution.

8 * * *

9 Sec. 2. 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 (j) “Consumer credit” means credit offered or extended to a consumer
17 primarily for personal, family, or household purposes.

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

2 § 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER
3 PROTECTION

4 (a) Unfair methods of competition in commerce and unfair or deceptive
5 acts or practices in commerce are hereby declared unlawful.

6 (b) It is the intent of the Legislature that in construing subsection (a) of this
7 section, the courts of this State will be guided by the construction of similar
8 terms contained in ~~Section 5(a)(1) of the Federal Trade Commission Act 15~~
9 U.S.C. § 45(a)(1) as from time to time amended by the Federal Trade
10 Commission and the courts of the United States.

11 (c) The Attorney General shall adopt rules, when necessary and proper to
12 carry out the purposes of this chapter, relating to unfair methods of competition
13 in commerce and unfair or deceptive acts or practices in commerce. The rules
14 shall not be inconsistent with the rules, regulations, and decisions of the
15 Federal Trade Commission and the federal courts interpreting the Federal
16 Trade Commission Act.

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

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

1 (f) A consumer may sue for appropriate relief from a person who violates a
2 rule adopted pursuant to this section.

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

4 § 2461. CIVIL PENALTY

5 * * *

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

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

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

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

16 (ii) the consideration or the value of the consideration given by the
17 consumer; ~~;~~ or

18 (iii) \$500.00 for a first violation or \$1,000.00 for each subsequent
19 violation; and

1 ~~(C) reasonable attorney’s fees and~~ may sue for exemplary damages
2 not exceeding three times the value of the consideration given by the
3 consumer; and

4 (D) if the consumer prevails, shall recover reasonable attorney’s fees.

5 (2) Any language, written or oral, used by a seller or solicitor, which
6 attempts to exclude or modify recovery of the penalty or reasonable attorney’s
7 fees shall be unenforceable.

8 * * *

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

10 Subchapter 9. Debt Collection

11 § 2491. ENFORCEMENT

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

14 § 2491a. DEBT COLLECTION PRACTICES; PROHIBITIONS

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

16 (1) call or visit a consumer’s workplace after a request by the consumer
17 or his or her employer not to do so;

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

20 (3) repeatedly call, leave messages, knock on doors, or ring doorbells;

1 (4) ask someone, other than a spouse, to make a payment on behalf of a
2 consumer;

3 (5) obtain payment through a consumer’s bank, credit card, or other
4 account without authorization;

5 (6) speak with a consumer more than six times per week to discuss an
6 overdue account;

7 (7) engage in violence;

8 (8) trespass;

9 (9) call or visit a consumer at home or work after receiving legal notice
10 that the consumer has filed for bankruptcy;

11 (10) impersonate others;

12 (11) discuss a consumer’s account with anyone other than a spouse of
13 the consumer;

14 (12) threaten unwarranted legal action; or

15 (13) leave a recorded message for a consumer that includes anything
16 other than the caller’s name, contact information, and a courteous request that
17 the consumer return the call.

18 § 2491b. DEBT COLLECTION; NOTICE TO CONSUMER PRIOR TO

19 COMMENCING CIVIL ACTION

20 (a) Notice of debt. Not more than 120 days and not less than 60 days
21 before filing a civil action to collect a debt based on consumer credit or filing a

1 postjudgment motion to collect a judgment against the judgment debtor that is
2 more than 12 months after the judgment for such debt, a debt collector shall
3 send to the consumer a written notice that contains:

4 (1) the amount of the debt;

5 (2) the name of the creditor to whom the debt is owed;

6 (3) the name of the original creditor, the last four digits of the account,
7 and the alleged date of the last payment;

8 (4) a statement that, unless the consumer disputes the validity of the debt
9 or any portion thereof not later than 30 days after having received the notice,
10 the debt collector will deem the debt valid;

11 (5) a statement that, if the consumer disputes the validity of the debt or
12 any portion thereof within the 30-day period, the debt collector will deliver
13 verification of the debt or a copy of a judgment against the consumer; and

14 (6) a statement that, if the consumer indicates on the attached form that
15 the consumer's current income and assets are exempt from collection, the debt
16 collector will review the information in deciding whether and how to proceed
17 in collecting the debt.

18 (b) Disputed debts.

19 (1) If a consumer disputes the validity of a debt pursuant to subdivision
20 (a)(5) of this section or requests the name and address of the original creditor,
21 the debt collector shall cease collecting the debt until he or she delivers to the

1 consumer verification of the debt or a copy of a judgment against the
2 consumer, or the name and address of the original creditor and a copy of such
3 verification or judgment, as applicable.

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

7 (B) Any collection activity and communications during the 30-day
8 period shall not overshadow or be inconsistent with the disclosure of the
9 consumer’s right to dispute the debt or request the name and address of the
10 original creditor.

11 § 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

12 EXPIRED; LIMITATIONS

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

15 (1) a person shall not contact a debtor to collect the debt; and

16 (2) an agreement to make additional payments on the debt is void and
17 unenforceable against the debtor.

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

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

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

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

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

8 (C) the debtor has the right to request that the creditor cease all
9 communications with the debtor concerning the debt; and

10 (3) the creditor initiates contact not more than once per year, not
11 including follow-up contacts by the creditor.

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

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

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

1 judgment creditor's attorney shall prepare a summons on a form provided by
2 the court, a disclosure form for the trustee, and a claim of exemption form for
3 the judgment debtor.

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

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

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

1 (A) the motion for trustee process;

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

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

8 (D) the notice of hearing.

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

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

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

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

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

9 (3) within seven days return the disclosure form to the court and the
10 parties.

11 (g) A judgment debtor may request an expedited hearing to determine a
12 claim of exemption. The court shall hold the hearing within three days after
13 the judgment debtor makes the request.

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

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

20 (2) state the amount of postjudgment interest due under 9 V.S.A.
21 § 41a(b)(11);

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.

14
15

16 (Committee vote: _____)

17 _____

18 Representative _____

19 FOR THE COMMITTEE