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H.904

2

Introduced by Representative Marcotte of Coventry

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Referred to Committee on

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Date:

5

Subject: Commerce and trade; consumer protection

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Statement of purpose of bill as introduced: This bill proposes to protect

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consumers facing credit card debt and debt collection.

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An act relating to protecting consumers facing credit card debt and debt

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collection

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It is hereby enacted by the General Assembly of the State of Vermont:

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

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§ 41a. LEGAL RATES

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(a) Except as specifically provided by law, the rate of interest or the sum

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allowed for forbearance or use of money shall be 12 percent per annum

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computed by the actuarial method.

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

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* * *

18

(10) Interest on a judgment against a debtor in default on credit card

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debt incurred for personal, family, or household purposes shall accrue at the

1 rate of 12 percent per annum using simple interest, unless a court suspends or
2 reduces the accrual of interest pursuant to 12 V.S.A. § 2903a.

3 * * *

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

5 CHAPTER 113. ~~JUDGMENT LIEN~~ JUDGMENTS AND
6 JUDGMENT LIENS

7 * * *

8 § 2903. DURATION AND EFFECTIVENESS

9 * * *

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

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

19 § 2903a. ACCRUAL OF POSTJUDGMENT INTEREST ON CREDIT

20 CARD DEBT; SUSPENSION; REDUCTION; REINSTATEMENT

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

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

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

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

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

13 (2) any additional documentation the court prescribes.

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

15 (1) shall provide in its order that the suspension or reduction of interest
16 is based on the judgment debtor's current income, assets, and expenses; and

17 (2) may require the judgment debtor periodically to provide the
18 judgment creditor with an updated financial disclosure form.

19 (d) The court may revise its order upon a motion by the judgment creditor
20 or judgment debtor to reinstate, reduce further, or suspend the accrual of

1 interest based on a substantial change in the judgment debtor's income, assets,
2 or expenses.

3 * * *

4 Sec. 3. 9 V.S.A. chapter 63, subchapter 8 is added to read:

5 Subchapter 8. Debt Collectors and Debt Collection

6 § 2491. DEFINITIONS

7 As used in this subchapter:

8 (1) "Credit card debtor" means a consumer who is in default on credit
9 card debt incurred for personal, family, or household purposes.

10 (2) "Debt collector" means a person who engages, or directly or
11 indirectly aids, in collecting a credit card debt incurred for personal, family, or
12 household purposes, and includes a debt buyer.

13 § 2491a. ENFORCEMENT

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

16 § 2491b. CREDIT CARD DEBT COLLECTION; NOTICES TO

17 CONSUMER

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

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

1 (2) a written notice that contains:

2 (A) the amount of the debt;

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

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

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

10 (b) Time for delivering notice prior to initiating action. A debt collector
11 shall deliver the notice required in subsection (a) of this section not more than
12 90 days and not less than 30 days before initiating an action to obtain a
13 judgment against a credit card debtor.

14 (c) Notice by assignee prior to filing a motion to collect on a judgment
15 against credit card debtor. Prior to filing a motion to collect on a judgment
16 against a credit card debtor, an assignee of the judgment shall deliver to the
17 judgment debtor:

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

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

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

1 (4) a written statement that, if the credit card debtor indicates in writing
2 that his or her current income and assets are exempt from collection, the
3 assignee will review the information in deciding whether and how to proceed
4 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 credit card debtor. The assignee of a judgment shall
7 deliver the notice required in subsection (c) of this section not more than
8 90 days and not less than 30 days before filing a motion to collect on the
9 judgment.

10 § 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

11 EXPIRED; LIMITATIONS

12 (a)(1) A debt collector shall not initiate a civil action to collect a debt from
13 a credit card debtor when the debt collector knows or reasonably should know
14 that the statute of limitations provided in 12 V.S.A. § 511 has expired.

15 (2) Notwithstanding any other provision of law, when the limitations
16 period provided in 12 V.S.A. § 511 expires, any subsequent payment toward,
17 written or oral affirmation of, or other activity on the debt does not revive or
18 extend the limitations period.

19 (b) After the statute of limitations provided in 12 V.S.A. § 511 has expired,
20 a debt collector may only communicate with a credit card debtor concerning
21 the debt after providing written or verbal notice that the credit card debtor has

1 the right to request that the debt collector cease all communications with the
2 credit card debtor concerning the debt and providing one of the following
3 disclosures:

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

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

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

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

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

16 § 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

17 On request of the judgment creditor, the clerk of the court granting
18 judgment shall issue ~~to the officer holding the execution~~ a summons as trustee
19 to a third person having in his or her hands goods, effects, or credits, other than
20 earnings, of the debtor that have not previously been attached on trustee
21 process in connection with the action. The summons shall be in such form as

1 the Supreme Court may by rule provide for a summons to a trustee in
2 connection with the commencement of an action and shall state the date and
3 amount of the judgment. The summons shall be served by the officer upon the
4 trustee in like manner and with the same effect as mesne process. A copy of
5 the summons shall be served upon the judgment debtor with the officer's
6 endorsement thereon of the date of service upon the trustee. After service of
7 the summons, proceedings shall be had as provided by law and by rule
8 promulgated by the Supreme Court for trustee process in connection with the
9 commencement of an action.

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

11 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

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

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

19 (1) 75 percent of the debtor's weekly disposable earnings; or 30 times
20 the ~~federal~~ minimum hourly wage, whichever is greater; or

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

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

9 * * *

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

11 § 3173. TRUSTEE PROCESS AGAINST JUDGMENT DEBTOR'S

12 BANK ACCOUNTS; PROCEDURE

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

17 (2) Notwithstanding section 2732 of this title or any other provision of
18 law, a judgment debtor's accounts or funds in the possession of a bank or other
19 financial institution shall not be attached, be subject to trustee process, or be
20 subject to execution by a judgment creditor unless the requirements of this
21 section are satisfied.

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

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

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

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

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

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

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

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

14 (A) the motion for trustee process;

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

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

21 (D) a disclosure form for the trustee.

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

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

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

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

16 (3) shall return the disclosure form to the court and to the parties within
17 10 days.

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

20 (2) The judgment debtor shall:

21 (A) submit the request in writing; and

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

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

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

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

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

14 (2) state the rate of postjudgment interest due under 9 V.S.A.
15 § 41a(b)(10);

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

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

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

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

5 Sec. 7. IMPLEMENTATION; REPORT

6 (a) On or before January 15, 2021, the Attorney General, in consultation
7 with the Judicial Branch, representatives of creditors and debtors, and national
8 nonprofit organizations representing the receivables industry, shall submit to
9 the House and Senate Committees on Judiciary, the House Committee on
10 Commerce and Economic Development, and the Senate Committee on
11 Economic Development, Housing and General Affairs a report that addresses:

12 (1) the implementation, outcomes, and effectiveness of of this act;

13 (2) whether to expand the applicability of the provisions of this act
14 beyond credit card debt; and

15 (3) any recommendations for further legislative action related to this act.

16 (b) On or before January 15, 2021, the Attorney General, in consultation
17 with the Judicial Branch and representatives of creditors and debtors, shall
18 submit to the House and Senate Committees on Judiciary, the House
19 Committee on Commerce and Economic Development, and the Senate
20 Committee on Economic Development, Housing and General Affairs a report
21 that addresses the potential costs and benefits of requiring a court to acquire

1 and review a debtor's credit report when considering a request to reduce or
2 suspend the accrual of postjudgment interest, who should be responsible for
3 producing the credit report, and how to ensure consumer privacy if a credit
4 report is used for those purposes in a court action.

5 Sec. 8. EFFECTIVE DATE

6 This act shall take effect on October 1, 2020.