

SENATE No. 2713

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

SENATE, March 25, 2024.

The committee on Senate Ways and Means to whom was referred the Senate Bill relative to fairness in debt collection (Senate, No. 2638), - reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2713).

For the committee,
Michael J. Rodrigues

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**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to fairness in debt collection.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 93L the
2 following chapter:-

3 CHAPTER 93M.

4 DEBT COLLECTION FAIRNESS ACT.

5 Section 1. As used in this chapter, the following words shall have the following meanings
6 unless the context clearly requires otherwise:

7 “Charge-off”, a declaration by a creditor that a delinquent consumer loan, consumer
8 credit account or other consumer debt has been removed from a creditor’s books as an asset and
9 treated as a loss or expense.

10 “Consumer”, a natural person.

11 “Consumer form contract”, a contract in writing between a business and a consumer
12 involving goods or services, including, but not limited to, credit or financial services, primarily

13 for personal, family or household purposes, that has been drafted by the business for use with
14 more than 1 consumer, unless the only other consumer is the spouse of the first consumer.

15 “Consumer debt”, an obligation or alleged obligation of a consumer to pay money arising
16 out of a transaction in which the money, property, insurance or services that are the subject of the
17 transaction are primarily for personal, family or household purposes, whether or not the
18 obligation has been reduced to judgment; provided, however, that “consumer debt” shall not
19 include a common expense or charge levied under chapters 183A or 183B, an obligation or
20 alleged obligation to pay common expenses or charges levied pursuant to a covenant or
21 agreement running with the land or a residential mortgage loan.

22 “Creditor”, a person or entity to whom a debt is owed, including a judgment creditor and
23 any other person or entity that obtains an execution on a debt; provided, however, that “creditor”
24 shall not include an organization of unit owners as defined in section 1 of chapter 183A, a time-
25 share association under chapter 183B or a homeowner association or entity to whom debt is
26 owed pursuant to a covenant or agreement running with the land.

27 “Debt buyer”, a person or entity that is engaged in the business of purchasing delinquent
28 or charged-off consumer loans, consumer credit accounts or other delinquent consumer debt for
29 collection purposes, whether the person or entity collects the debt itself or hires a third party for
30 collection or an attorney for litigation in order to collect the debt.

31 “Debt collector”, a person or entity that uses an instrumentality of interstate commerce or
32 the mails in any business the principal purpose of which is the collection of a debt, or who
33 regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to
34 be owed or due another.

35 “Earnings”, gross compensation paid or payable for personal services, whether
36 denominated as wages, salary, commission, bonus, payment for skilled, personal or professional
37 services or otherwise, and whether earned as an employee or independent contractor.

38 “Execution”, an attachment, levy, garnishment or other disablement, freeze or seizure of
39 property, whether pre-judgment or post-judgment, to satisfy a debt or a creditor’s exercise of a
40 right of setoff to collect a debt; provided, however, that "execution" shall not include self-help
41 repossession of collateral.

42 “Exempt”, not subject to execution, levy, attachment, garnishment, setoff, self-help,
43 disablement, freeze, seizure or other form of process, court order, creditor or other action for
44 debt collection or restitution or other equitable claim unless otherwise specified.

45 “Garnishment”, a legal or equitable procedure through which the earnings, property or
46 funds of a person are required by a court of competent jurisdiction to be withheld by another
47 entity for payment of a debt to a creditor.

48 “Residential mortgage loan” a loan primarily for personal, family, or household use that
49 is secured by a mortgage, deed of trust or other equivalent consensual security interest on a
50 dwelling as defined in 15 U.S.C. section 1602(w) or residential real estate upon which is
51 constructed or intended to be constructed a dwelling as so defined.

52 “Trustee”, a trustee served pursuant to chapter 246.

53 Section 2. (a) Notwithstanding section 34 of chapter 235, if a consumer’s earnings are
54 attached to satisfy a judgment for collection of a consumer debt, wages equal to the greater of 90
55 per cent of the debtor's gross weekly wages or 65 times the greater of the federal minimum

56 hourly wage under 29 U.S.C. section 206(a)(1) or the state minimum hourly wage under section
57 1 of chapter 151 in effect at the time shall be exempt from the attachment and not subject to
58 garnishment. This exemption shall be adjusted pro rata for a pay period that is more than weekly.

59 (b) Notwithstanding subsection (a), a consumer debtor subject to a judgement for
60 collection of a consumer debt may seek to exempt additional wages from attachment by filing a
61 form making a claim of undue financial hardship with the court. Such form shall be prepared by
62 the court to allow a consumer debtor to readily identify the basis for the consumer debtor's
63 request for an additional exemption under this subsection. Upon the filing of the financial
64 hardship form, the court shall hold a hearing as soon as practicable to determine the total amount
65 that shall be exempted from the judgment debtors' wages.

66 (c) If more than 1 order of attachment for a consumer debt is served on a trustee with
67 respect to the same consumer, the order of attachment served the earliest shall take priority. If an
68 order of attachment with greater priority consumes the entirety of the earnings that is available
69 for garnishment under the preceding subsections, the consumer's earnings shall not be garnished
70 pursuant to the order of attachment with lower priority.

71 (d) The protections for earnings under this section apply to consumers whose physical
72 place of employment is in the commonwealth; provided, however, that such protections shall
73 continue to apply even if such consumer's employer has corporate offices or other places of
74 business located outside the commonwealth.

75 (e) This section shall not apply in a proceeding to attach earnings or a pension to satisfy a
76 divorce, separate maintenance or child support order of a court of competent jurisdiction and, in
77 such a proceeding, including an action for trustee process to enforce a support order under

78 section 36A of chapter 208, federal law limiting the amounts that may be trustee, assigned or
79 attached in order to satisfy an alimony, maintenance or child support order shall apply.

80 (f) Except as otherwise permitted by law, an amount held by a trustee for a defendant in a
81 pension, as defined in section 28 of chapter 246, shall be reserved in the hands of the trustee and
82 shall be exempt from attachment to satisfy a judgment for collection of a consumer debt.

83 (g) An employer shall not take adverse employment action against an employee or refuse
84 to hire an individual because of 1 or more garnishments for consumer debts or because of
85 obligations that any garnishments impose against the employer. An employer who violates this
86 section shall be liable in a civil action, action for contempt or other appropriate proceeding to the
87 employee or individual for the wages and employment benefits lost by the employee or
88 individual from the time of the adverse employment action or refusal to hire to the period of
89 reinstatement and an additional penalty of not more than \$1,000.

90 (h) Income from child support payments shall be exempt from collection under this
91 chapter.

92 Section 3. (a) Notwithstanding section 2 of chapter 260, an action for the collection of a
93 consumer debt shall be commenced not more than 5 years after the cause of action accrues.
94 Notwithstanding any applicable statute of limitations of the commonwealth or other jurisdiction,
95 said limitations period shall apply to a claim for a consumer debt, whether the claim sounds in
96 contract, account stated, open account, contract or instrument under seal or other basis.

97 (b) Notwithstanding section 14 of chapter 260, a payment on a consumer debt that is
98 made before or after the limitations period under subsection (a) has expired shall not revive or

99 extend the limitations period or bar the consumer from asserting a defense to the collection of a
100 consumer debt.

101 (c) No creditor, debt buyer or debt collector shall bring a suit or initiate an arbitration or
102 other legal proceeding to collect a consumer debt if the applicable limitations period under
103 subsection (a) has expired.

104 (d) A waiver by a consumer of a protection or right under this section shall be void and
105 unenforceable.

106 (e) Notwithstanding section 20 of chapter 260 or any other general or special law to the
107 contrary, an action for the collection of a consumer debt arising from a judgment or decree,
108 including an execution upon or trustee process based on said judgment or decree and other
109 activity to collect on the judgment, shall be commenced not more than 10 years after the entry of
110 said judgment or decree. If such an action has commenced within 10 years, said judgment or
111 decree may be renewed one time for 10 years. A judgment or decree shall not be revived or
112 renewed after the limitations period under this subsection has expired.

113 Section 4. (a) A plaintiff who has obtained a judgment on a claim for the collection of a
114 consumer debt shall provide written notice to the consumer debtor not less than 30 days prior to
115 a supplementary process in a civil action for the examination of said consumer debtor pursuant to
116 section 14 of chapter 224 or a payment review hearing in a small claims action pursuant to
117 Uniform Small Claims Rule 7(i). Such notice shall inform the consumer debtor of the
118 opportunity to submit a financial affidavit in a form prescribed by the court and signed under the
119 penalties of perjury. If the consumer debtor indicates through the financial affidavit that all
120 income and assets are exempt from collection and files the affidavit as prescribed by the court,

121 the court shall acknowledge receipt and inform both parties that the supplementary process or
122 payment review hearing shall not occur. Upon filing of said affidavit, no further supplementary
123 proceedings or payment review hearings shall be scheduled unless the judgment creditor presents
124 evidence of the judgment debtor's non-exempt assets or income and the court determines that
125 there is a reasonable basis to believe that there are non-exempt assets or income warranting the
126 scheduling of a new supplementary process or payment review hearing.

127 (b) Notwithstanding sections 18 and 20 of chapter 224 or any other applicable law, rule,
128 or regulation to the contrary, no *capias* or other warrant to compel the attendance of an alleged
129 consumer debtor shall be issued for failure of the alleged consumer debtor to appear at a
130 supplementary process in a civil action for an examination pursuant to section 14 of chapter 224
131 or a payment review hearing in a small claims action pursuant to Uniform Small Claims Rule
132 7(i). If the alleged consumer debtor fails to appear, the court shall schedule a show cause hearing
133 to determine whether a *capias* or other warrant to compel the attendance of the alleged consumer
134 debtor should be issued. No *capias* or other warrant shall be issued to compel the attendance of
135 the alleged consumer debtor at a show cause hearing without evidence that notice of the said
136 hearing was served on the consumer either by signed return receipt or by a sworn return of
137 service.

138 (c) Notwithstanding sections 18 and 20 of chapter 224 or any other applicable law, rule or
139 regulation to the contrary, an alleged consumer debtor that is compelled to attend pursuant to a
140 *capias* or other warrant shall be brought before the court the same day. The consumer shall be
141 given the opportunity to complete the financial affidavit described in subsection (a). The *capias*
142 or other warrant shall be satisfied by the consumer's appearance in court or completion of the
143 financial affidavit indicating that all forms of income and assets are exempt.

144 (d) Notwithstanding sections 18 and 20 of chapter 224 or any other applicable law, rule
145 or regulation to the contrary, no person shall be imprisoned or jailed for failure to pay a
146 consumer debt, nor shall a person be imprisoned or jailed for contempt of or failure to comply
147 with a court order to pay a consumer debt in part or in full.

148 Section 5. (a) Except as provided in subsection (b), if a plaintiff prevails in an action to
149 collect a consumer debt, interest computed pursuant to section 6C of chapter 231 or section 8
150 chapter 235 shall be limited to a fixed rate of interest of 12 per cent per annum.

151 (b) For actions to collect a consumer debt, judgments entered on or after January 1, 2025,
152 or where an application for renewal of judgment is filed on or after January 1, 2025, interest shall
153 be limited to a fixed rate of 3 per cent per annum. Nothing in this subsection shall be construed
154 to require any interest which accrued at a higher interest rate prior to January 1, 2025, to be re-
155 calculated or reduced to the new 3 per cent rate. Judgments issued prior to January 1, 2025, with
156 an interest rate other than 3 per cent per annum shall not be required to be amended or reissued
157 by the courts.

158 (c) If the plaintiff prevails in an action to collect a consumer debt, the plaintiff may
159 collect attorney's fees only if the contract or other document evidencing the indebtedness sets
160 forth an obligation of the consumer debtor to pay attorney's fees; provided, however, that if the
161 contract or other document evidencing indebtedness provides for attorney's fees in some specific
162 percentage, the provision and obligation shall be valid and enforceable for not more than 15 per
163 cent of the amount of the debt excluding attorney's fees and collection costs; provided further
164 that if a contract or other document evidencing indebtedness provides for the payment of
165 reasonable attorney's fees by the consumer debtor, without specifying a specific percentage, the

166 provision shall be construed to mean the lesser of 15 per cent of the amount of the debt,
167 excluding attorney's fees and collection costs, or the amount of attorney's fees calculated by a
168 reasonable rate for such cases multiplied by the amount of time reasonably expended to obtain
169 the judgment; provided further, that the documentation setting forth a party's obligation to pay
170 attorney's fees shall be provided to the court before a court may enforce those provisions; and
171 provided further, that such documentation shall not include materials that the plaintiff has
172 already filed together with the complaint in compliance with applicable court rules.

173 Section 6. (a) A violation of sections 2 to 5, inclusive, shall constitute a violation of
174 chapter 93A.

175 (b) Any portion of a contract, including a consumer form contract, that violates sections 2
176 to 5, inclusive, shall be void and unenforceable.

177 SECTION 2. Section 28 of chapter 246 of the General Laws, as appearing in the 2022
178 Official Edition, is hereby amended by adding the following paragraph:- This section shall not
179 apply in a proceeding to attach earnings or a pension to satisfy a judgment for collection of a
180 consumer debt as defined in section 1 of chapter 93M, and in such an action, said chapter 93M
181 shall apply.

182 SECTION 3. Section 3 of chapter 93M of the General Laws shall not apply to a
183 consumer debt for which the cause of action accrued before January 1, 2025; provided, however,
184 that subsection (b) of said section 3 of said chapter 93M shall apply to payments made after the
185 effective date of this act; provided, further, that subsection (b) of section 6 of chapter 93M shall
186 not apply to a contract, including a consumer form contract that is in effect before January 1,
187 2025.

SECTION 4. This act shall take effect on January 1, 2025.