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S.74

Introduced by Senators Balint, Campion and Clarkson

Referred to Committee on

Date:

Subject: Commerce and trade; consumer protection

Statement of purpose of bill as introduced: This bill proposes to address issues relating to fair debt collection and other consumer protection laws.

An act relating to fair debt collection and consumer protection

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

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 debtor in default on credit card debt incurred for personal, family, or household purposes 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.

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

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

* * *

§ 2903. DURATION AND EFFECTIVENESS

* * *

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

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

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

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

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

10 (2) any additional documentation the court prescribes.

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

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

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

16 (d) The court may revise its order upon a motion by the judgment creditor
17 or judgment debtor to reinstate, reduce further, or suspend the accrual of
18 interest based on a substantial change in the judgment debtor's income, assets,
19 or expenses.

20 * * *

1 Sec. 3. 9 V.S.A. chapter 63, subchapter 11 is added to read:

2 Subchapter 9. Debt Collectors and Debt Collection

3 § 2491. DEFINITIONS

4 As used in this subchapter:

5 (1) “Credit card debtor” means a consumer who is in default on credit
6 card debt incurred for personal, family, or household purposes.

7 (2) “Debt collector” means a person who engages, or directly or
8 indirectly aids, in collecting a credit card debt incurred for personal, family, or
9 household purposes, and includes a debt buyer.

10 § 2491a. ENFORCEMENT

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

13 § 2491b. CREDIT CARD DEBT COLLECTION; NOTICES TO

14 CONSUMER

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

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

19 (2) a written notice that contains:

20 (A) the amount of the debt;

21 (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 credit card debtor indicates in writing that
4 his or her current income and assets are exempt from collection, the debt
5 collector will review the information in deciding whether and how to proceed
6 in collecting the debt.

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

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

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

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

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

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

1 (d) Time for delivering notice by assignee prior to filing a motion to collect
2 on a judgment against credit card debtor. The assignee of a judgment shall
3 deliver the notice required in subsection (c) of this section not more than 90
4 days and not less than 30 days before filing a motion to collect on the
5 judgment.

6 § 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS

7 EXPIRED; LIMITATIONS

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

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

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

21 (1) If the debt is not past the date for obsolescence set forth in the

1 federal Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

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

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

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

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

12 § 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

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

1 the summons shall be served upon the judgment debtor with the officer's
2 endorsement thereon of the date of service upon the trustee. After service of
3 the summons, proceedings shall be had as provided by law and by rule
4 promulgated by the Supreme Court for trustee process in connection with the
5 commencement of an action.

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

7 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

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

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

15 (1) 75 percent of the debtor's weekly disposable earnings; or 30 times
16 the ~~federal~~ minimum hourly wage, whichever is greater; or

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

21 (3) if the court finds that the weekly expenses reasonably incurred by

1 the debtor for his or her maintenance and that of dependents exceed the
2 amounts exempted by subdivisions (1) and (2) of this subsection, such greater
3 amount of earnings as the court shall order.

4 * * *

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

6 § 3173. TRUSTEE PROCESS AGAINST JUDGMENT DEBTOR'S

7 BANK ACCOUNTS; PROCEDURE

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

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

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

20 (b)(1) A judgment creditor may file an ex parte motion for trustee process
21 against a judgment debtor's accounts or funds in the possession of a bank or

1 other financial institution describing in detail the grounds for the motion, the
2 amount alleged to be unpaid, including estimated costs anticipated to be
3 expended for court fees and service on parties in connection with the trustee
4 process procedure.

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

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

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

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

20 (4) A summons issued pursuant to this subsection shall contain
21 instructions to the trustee financial institution directing it not to freeze any

1 funds of the judgment debtor that, based on deposit or other information kept
2 by the trustee financial institution, are protected under 31 C.F.R. part 212 or
3 exempt under subdivision 2740(15) of this title.

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

9 (A) the motion for trustee process;

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

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

16 (D) a disclosure form for the trustee.

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

1 continued for good cause.

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

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

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

11 (3) shall return the disclosure form to the court and to the parties within
12 10 days.

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

15 (2) The judgment debtor shall:

16 (A) submit the request in writing; and

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

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

21 (4) If the judgment debtor requests an expedited hearing, he or she is

1 deemed to have entered an appearance and waived any further service.

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

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

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

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

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

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

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

1 Sec. 7. IMPLEMENTATION; REPORT

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

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

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

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

12 (b) On or before January 15, 2020, the Attorney General, in consultation
13 with the Judicial Branch and representatives of creditors and debtors, shall
14 submit to the House and Senate Committees on Judiciary, the House
15 Committee on Commerce and Economic Development, and the Senate
16 Committee on Economic Development, Housing and General Affairs a report
17 that addresses the potential costs and benefits of requiring a court to acquire
18 and review a debtor's credit report when considering a request to reduce or
19 suspend the accrual of postjudgment interest, who should be responsible for
20 producing the credit report, and how to ensure consumer privacy if a credit
21 report is used for those purposes in a court action.

1 Sec. 8. EFFECTIVE DATE

2 This act shall take effect on October 1, 2019.