

HOUSE No. 4194

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 25, 2016.

The committee on the Financial Services to whom was referred the petition (accompanied by bill, House, No. 804) of Paul Brodeur and others for legislation to protect families from adverse financial conditions caused by unreasonable debt, reports recommending that the accompanying bill (House, No. 4194) ought to pass.

For the committee,

AARON MICHLEWITZ.

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to family financial protection.

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 93J the
2 following chapter:-

3 CHAPTER 93K

4 FAMILY FINANCIAL PROTECTION ACT

5 Section 1. Title and Scope

6 (a) This Act shall be known and cited as the "Family Financial Protection Act." This Act
7 shall be liberally and remedially construed to effectuate its purpose. The purpose of the Act is to
8 protect consumers, and this Act is to be construed as a consumer protection statute for all
9 purposes.

10 (b) This Act applies to all consumer debts. The provisions of this Act shall apply to, inter
11 alia, any person who attempts to evade its applicability by any device, subterfuge, or pretense
12 whatsoever.

13 (c) Should a court decide that any provision of this Act is unconstitutional, preempted, or
14 otherwise invalid, that provision shall be severed and such decision shall not affect the validity of
15 the Act other than the part severed.

16 Section 2. Definitions

17 As used in this chapter, the following words shall, unless the context clearly indicates a
18 different meaning, have the following meanings:

19 “Consumer” means a natural person.

20 “Consumer form contract” means a contract in writing between a business and a
21 consumer involving goods or services, including, but not limited to, credit or financial services,
22 primarily for personal, family, or household purposes, which contract has been drafted by the
23 business for use with more than one consumer, unless the only other consumer is the spouse of
24 the first consumer.

25 “Consumer debt” means any obligation or alleged obligation of a consumer to pay money
26 arising out of a transaction in which the money, property, insurance, or services which are the
27 subject of the transaction are primarily for personal, family, or household purposes, whether or
28 not such obligation has been reduced to judgment.

29 “Creditor” is a person to whom a debt is owed and includes a judgment creditor and any
30 other person that obtains an execution on a debt.

31 “Debt buyer” means a person or entity that is engaged in the business of purchasing
32 delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent
33 consumer debt for collection purposes, whether it collects the debt itself or hires a third party for

34 collection or an attorney-at-law for litigation in order to collect such debt. A debt buyer is
35 considered to be a debt collector for all purposes.

36 “Debt collector” means any person who regularly collects or attempts to collect, directly
37 or indirectly, consumer debts owed or due or asserted to be owed or due another. The term does
38 not include any officer or employee of a creditor who, in the name of the creditor, collects debts
39 for such creditor, but it does include any creditor who, in the process of collecting its own debts,
40 uses any name other than its own which would indicate that a third person is collecting or
41 attempting to collect such debts. The term does include a debt buyer.

42 “Earnings” means gross compensation paid or payable for personal services, whether
43 denominated as wages, salary, commission, bonus, payment for skilled, personal or professional
44 services, or otherwise, whether earned as an employee or as an independent contractor.

45 “Execution” includes an attachment, levy, garnishment, or other disablement, freeze, or
46 seizure of property, whether pre-judgment or post-judgment, to satisfy a debt. Except for
47 purposes of § 2-112, it also includes a creditor’s exercise of a right of setoff to collect a debt. It
48 does not include self-help repossession of collateral.

49 “Exempt” means, unless otherwise specified, not subject to execution, levy, attachment,
50 garnishment, setoff, self-help, seizure, or any other form of process, court order, creditor or other
51 action for the purpose of debt collection or restitution or other equitable claim. Funds that are
52 exempt remain exempt when they are paid or transferred to the debtor, the debtor's spouse,
53 partner, beneficiary, or dependent or to an account for the benefit of the debtor, the debtor's
54 spouse, partner, beneficiary, or dependent.

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

58 “Trustee” means a trustee served pursuant to chapter 246

59 “Value” means current fair market value of accounts, goods or property less the amount
60 of any liens or security interests in the accounts, goods or property, based on the price that would
61 be paid, assuming a willing buyer and a willing seller, for accounts, goods or property of similar
62 age and condition. A debtor’s testimony as to the value of property the debtor owns or as to the
63 advertised value of property similar to that claimed as exempt shall be admissible as evidence of
64 an item’s value.

65 Section 3. Earnings Exempt

66 (a) If earnings of a defendant are attached to satisfy a judgment for collection of a
67 consumer debt, such debtor’s earnings for any week that are less than ninety times the greater of
68 the federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 of the United
69 States Code or the state minimum hourly wage provided by the Massachusetts hourly minimum
70 wage prescribed by section 1 of chapter 151 in effect at the time are exempt from such
71 attachment and not subject to garnishment. This exemption shall be adjusted pro rata for any pay
72 period longer than weekly.

73 (b) If the debtor’s earnings exceed the amount provided by the preceding subsection, no
74 more than 10% of such excess earnings shall be subject to garnishment.

75 (c) If more than one order of attachment for a consumer debt is served on a trustee with
76 respect to the same debtor, the order of attachment served earliest shall take priority. If an order
77 of attachment with greater priority consumes the entirety of the income that is available for
78 garnishment under the preceding subsections, then no part of the debtor's earnings shall be
79 garnished pursuant to the order of attachment with lower priority.

80 (d) The protections for earnings set forth in this section apply to all debtors whose
81 physical place of employment is in Massachusetts, notwithstanding that the debtor's employer
82 may have corporate offices or other places of business located outside this state.

83 (e) The provisions of this section shall not apply in any proceeding to attach earnings or a
84 pension to satisfy a divorce, separate maintenance or child support order of a court of competent
85 jurisdiction, and in such actions, including an action for trustee process to enforce a support
86 order under section 36A of chapter 208, the provisions of federal law limiting the amounts which
87 may be trustee, assigned or attached in order to satisfy an alimony, maintenance or child
88 support order shall apply in lieu of said provisions of this section.

89 (f) Except as otherwise permitted by law, amounts held by a trustee for a defendant in a
90 pension, as that term is defined in section 28 of chapter 246 shall be reserved in the hands of the
91 trustee and shall be exempt from attachment to satisfy a judgment for collection of a consumer
92 debt.

93 (g) Section 28 of chapter 246 shall be amended by adding the following paragraph at the
94 end thereof: "The provisions of this section shall not apply in any proceeding to attach earnings
95 or a pension to satisfy a judgment for collection of a consumer debt, as those terms are defined in
96 the [codification of the Family Financial Protection Act] and in such actions the provisions of the

97 [codification of the Family Financial Protection Act] shall apply in lieu of said provisions of this
98 section.”

99 (h) The employer may not take adverse action against an employee, or refuse to hire any
100 individual because of a garnishment for a consumer debt or because of any obligation such
101 garnishment imposes against the employer. Any employer who violates this section shall be
102 liable in a civil action, action for contempt or other appropriate proceeding to such employee or
103 individual for all wages and employment benefits lost by the employee or individual from the
104 time of the unlawful discipline, suspension, refusal to hire or discharge to the period of
105 reinstatement, and an additional penalty of up to \$1,000.

106 Section 4. Limitations on Actions for Consumer Debts

107 (a) Any action for the collection of a consumer debt shall be commenced within four
108 years of the accrual of the cause of action, which shall be the earlier of the date of charge-off,
109 placement for collection, or 180 days after the last regular payment to the original creditor. This
110 limitations period shall apply to all consumer debt whether the claim sounds in contract, account
111 stated, open account or other cause, and notwithstanding any other applicable statute of
112 limitations unless a shorter limitations period is provided under the laws of the Commonwealth.
113 This time period also applies to all claims for a consumer debt based on contracts or instruments
114 under seal.

115 (b) Notwithstanding any other provision of law, any payment after the date of charge-off,
116 placement for collection, or 180 days after the last regular payment to the original creditor, or
117 any written or oral affirmation of the debt or other activity on the debt does not revive or extend
118 the limitations period, nor shall it bar the consumer from asserting any defenses to the collection

119 of a consumer debt. If a payment on a defaulted or charged-off debt completely cures the default
120 and pays off any delinquency, then a new cause of action may accrue upon a subsequent default
121 or charge-off.

122 (c) No person shall bring suit or initiate an arbitration or other legal proceeding to collect
123 a consumer debt if the applicable limitations period on the consumer debt in Section 4(a) has
124 expired.

125 (d) Any waiver by any consumer of any protection provided by or any right of the
126 consumer under this section is void, and may not be enforced by any Federal or State court or
127 any other person.

128 (e) When the period within which an action may be commenced under this section has
129 expired, the right to collect the consumer debt is extinguished as well as the remedy. No person
130 shall attempt to collect a consumer debt after the four-year period described in paragraph (a) has
131 expired, except that nothing in this Act shall prohibit a creditor or debt collector from accepting a
132 voluntary payment initiated by a debtor after the four-year period described in paragraph (a) has
133 expired. Such voluntary payment will not revive or extend the limitations period. Any unpaid
134 portion of the consumer debt shall remain extinguished with all collection prohibited.

135 (f) If a consumer debt was created by or based upon a consumer form contract, any action
136 for collection of that consumer debt shall be based on only a claim for breach of contract and not
137 on an open account, account stated, quantum meruit, or other cause of action and shall not allege
138 that this is an instrument or contract under seal. Regardless of the cause of action asserted, a
139 consumer may raise a defense based upon the reasonable value of goods or services provided.

140 (g) Notwithstanding the provisions of section 20 of chapter 260 or of any other law, an
141 action upon a judgment or decree on a consumer debt, including any execution upon or trustee
142 process based on such judgment or decree, and all other activity to collect on the judgment must
143 be commenced within five years after the entry of the judgment or decree. No judgment whose
144 enforcement has been barred by the running of this limitations period may be revived or renewed
145 by any means.

146 (h) The provisions of Section 4 shall not apply to any consumer debt for which the cause
147 of action accrued prior to the date of enactment of this Act, except that the provisions of Section
148 4(b) shall apply to payments made after the effective date of this Act.

149 (i) Nothing in this Act shall prohibit creditors, debt collectors, or debt byers from entering
150 into repayment agreements that shall be legally binding on the consumer beyond the applicable
151 limitations period on the consumer debt in Section 4(a) so long as the repayment agreement is in
152 writing, signed by both parties, and based on new consideration.

153 Section 5. No Imprisonment for Debt

154 In any supplementary proceeding in a civil action for the examination of a debtor arising
155 from a Consumer Debt, the Defendant shall be given notice of the opportunity to submit within
156 thirty days a financial affidavit, in a form the court shall specify, signed under the penalties of
157 perjury. If it appears from the affidavit that all of a Defendant's income and assets are exempt
158 from court-ordered payment, the Defendant may submit the financial affidavit in lieu of
159 appearing in court. No capias or other warrant for the arrest of a debtor shall be issued pursuant
160 to section 18 of chapter 224, unless it appears from any such affidavit that is submitted that the
161 Defendant possesses income or assets that are not exempt from a court-ordered payment. It shall

162 be the obligation of the Plaintiff to serve the notice required by this section upon the Defendant
163 by any form of mail addressed to the Defendant and requiring a signed receipt, or in hand. If the
164 Defendant fails to submit a signed financial affidavit, no capias or other warrant for the arrest of
165 a debtor shall be issued pursuant to section 18 of chapter 224, unless the Plaintiff submits proof
166 of service that the notice required by this section was served, either by signed return receipt or by
167 a sworn return of service.

168 Section 6. Interest; Attorney's Fees

169 (a) If the plaintiff is the prevailing party in any action to collect a consumer debt, any
170 interest computed pursuant to section 6C of chapter 231 or section 8 of chapter 235 shall be
171 limited to the rate of interest equal to the weekly average 1-year constant maturity Treasury
172 yield, but no less than 2% per annum nor greater than 5% per annum, as published by the Board
173 of Governors of the Federal Reserve System, for the calendar week preceding the date of the
174 judgment. No other rate of interest on the judgment shall be permitted, including the rate
175 provided for in the contract.

176 (b) If the plaintiff is the prevailing party in any action to collect a consumer debt, the
177 plaintiff shall be entitled to collect attorney's fees only if the contract or other document
178 evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney's fees,
179 and subject to the following provisions:

180 (1) If the contract or other document evidencing indebtedness provides for attorney's fees
181 in some specific percentage, such provision and obligation shall be valid and enforceable up to
182 but not in excess of fifteen percent (15%) of the amount of the debt excluding attorney's fees and
183 collection costs.

184 (2) If a contract or other document evidencing indebtedness provides for the payment of
185 reasonable attorney's fees by the debtor, without specifying any specific percentage, such
186 provision shall be construed to mean the lesser of fifteen percent (15%) of the amount of the
187 debt, excluding attorney's fees and collection costs, or the amount of attorney's fees calculated
188 by a reasonable rate for such cases multiplied by the amount of time reasonably expended to
189 obtain the judgment.

190 (3) The documentation setting forth a party's obligation to pay attorney's fees shall be
191 provided to the court before a court may enforce those provisions. Such documentation must
192 include any materials that applicable court rules required the plaintiff to file together with the
193 complaint.

194 (c) If the debtor is the prevailing party in any action to collect a consumer debt, the debtor
195 shall be entitled to an award of reasonable attorney's fees, unless the case is voluntarily
196 dismissed pursuant to Mass. R. Civ. P. 41(a)(1)(i) or a stipulation of dismissal explicitly provides
197 otherwise. The amount of the debt that the creditor sought shall not be a factor in determining
198 the reasonableness of the award. In the alternative, at the debtor's election, a prevailing debtor
199 shall be awarded the amount of attorney's fees that the plaintiff would have been entitled to
200 collect if the plaintiff had been the prevailing party.

201 Section 7. Violation of Chapter 93A

202 (a) A violation of any provision of this act shall also be a violation of chapter 93A.

203 (b) Any portion of a contract, including a consumer form contract, that violates this Act is
204 void.