

SENATE No. 146

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to family financial protection.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|----------------------------|--------------------------------------|
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> |
| <i>Peter V. Kocot</i> | <i>1st Hampshire</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> |
| <i>Cory Atkins</i> | <i>14th Middlesex</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> |
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>Daniel M. Donahue</i> | <i>16th Worcester</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |
| <i>James J. O'Day</i> | <i>14th Worcester</i> |
| <i>Christine P. Barber</i> | <i>34th Middlesex</i> |
| <i>Brian A. Joyce</i> | <i>Norfolk, Bristol and Plymouth</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> |
| <i>Paul McMurtry</i> | <i>11th Norfolk</i> |
| <i>Benjamin Swan</i> | <i>11th Hampden</i> |

Sal N. DiDomenico
Michelle M. DuBois

Middlesex and Suffolk
10th Plymouth

SENATE No. 146

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 146) of James B. Eldridge, Chris Walsh, Denise Provost, Jason M. Lewis and other members of the General Court for legislation relative to family financial protection. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**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) No business (including any officer, agent, employee, or representative) may
11 individually or in conjunction or cooperation with another solicit the execution of, receive, or

12 rely upon a consumer form contract, including reliance upon the contract as a basis for a suit or
13 claim, unless the person has complied with the provisions of this Act and the contract is in
14 compliance with this Act. The provisions of this Act shall apply to, inter alia, any person who
15 attempts to evade its applicability by any device, subterfuge, or pretense whatsoever.

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

19 Section 2. Definitions

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

22 “Consumer” means a natural person.

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

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

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

34 “Debt buyer” means a person or entity that is engaged in the business of purchasing
35 delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent
36 consumer debt for collection purposes, whether it collects the debt itself or hires a third party for
37 collection or an attorney-at-law for litigation in order to collect such debt. A debt buyer is
38 considered to be a debt collector for all purposes.

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

45 “Earnings” means compensation paid or payable for personal services, whether
46 denominated as wages, salary, commission, bonus, payment for skilled, personal or professional
47 services, or otherwise, whether earned as an employee or as an independent contractor, and also
48 includes alimony.

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

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

59 “Garnishable earnings” means that part of the earnings of any individual remaining after
60 the deduction from those earnings of any amounts required by law to be withheld such as taxes,
61 social security or alternative pension and Medicare withholdings, and after further deduction of
62 up to fifteen percent of the remainder for contributions for health insurance, a medical expense
63 account, a pension, or a retirement account.

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

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

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

74 Section 3. Earnings Exempt

75 (a) If earnings of a defendant are attached to satisfy a judgment for collection of a
76 consumer debt, such debtor's garnishable earnings for any week that are less than eighty times
77 the greater of the federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 of the
78 United States Code or the state minimum hourly wage provided by the Massachusetts hourly
79 minimum wage prescribed by section 1 of chapter 151 in effect at the time are exempt from such
80 attachment and not subject to garnishment. This exemption shall be adjusted pro rata for any pay
81 period other than weekly.

82 (b) If the debtor's garnishable earnings exceed the amount provided by the preceding
83 subsection, no more than 10% of the amount exempt from attachment under the preceding
84 subsection shall be subject to garnishment unless the weekly garnishable earnings of the debtor
85 exceed \$1200, in which case no more than 15% is subject to garnishment. The amount not
86 subject to garnishment is exempt from attachment.

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

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

95 (e) The provisions of this section shall not apply in any proceeding to attach wages or a
96 pension to satisfy a divorce, separate maintenance or child support order of a court of competent

97 jurisdiction, and in such actions, including an action for trustee process to enforce a support
98 order under section 36A of chapter 208, the provisions of federal law limiting the amounts which
99 may be trustee, assigned or attached in order to satisfy an alimony, maintenance or child
100 support order shall apply in lieu of said provisions of this section.

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

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

111 (h) The employer may not discipline, suspend or discharge an employee, or refuse to hire
112 any individual because of an income withholding order for a consumer debt or because of any
113 obligation such income withholding imposes against the employer. Any employer who violates
114 this section shall be liable in a civil action, action for contempt or other appropriate proceeding
115 to such employee or individual for all wages and employment benefits lost by the employee or
116 individual from the time of the unlawful discipline, suspension, refusal to hire or discharge to the
117 period of reinstatement, and an additional penalty of up to \$1,000.

118 Section 4. Limitations on Actions for Consumer Debts

119 (a) Any action for the collection of a consumer debt shall be commenced within three
120 years of the accrual of the cause, which shall be the earlier of the date of charge-off, placement
121 for collection, or 180 days after the last regular payment. This period shall apply whether the
122 claim sounds in contract, contract under seal, account stated, open account or other cause, and
123 notwithstanding the provisions of any other statute of limitations unless that statute provides for
124 a shorter limitations period. This paragraph shall apply to all claims brought after the date of
125 enactment of this Act.

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

129 (c) If a consumer debt has been charged-off or placed for collection, or there has not been
130 any payment on the debt for over 180 days, any subsequent payment toward the debt or oral or
131 written affirmation of the debt shall not extend the three-year limitations period, nor shall it bar
132 the consumer from asserting any defenses to the collection of a consumer debt. If a payment on
133 a defaulted or charged-off debt completely cures the default and pays off any delinquency, then a
134 new cause of action may accrue upon a subsequent default or charge-off.

135 (d) When the period within which an action may be commenced under this section has
136 expired, the right to collect the consumer debt is extinguished as well as the remedy. No person
137 shall attempt to collect a consumer debt after the three-year period described in paragraph (a) has
138 expired.

139 (e) If a consumer debt was created by or based upon a consumer form contract, any
140 action for collection of that consumer debt shall be based on only a claim for breach of contract

141 and not on an open account, account stated, quantum meruit or other cause of action. Regardless
142 of the cause of action asserted, a consumer may raise a defense based upon the reasonable value
143 of goods or services provided.

144 (f) Notwithstanding the provisions of section 20 of chapter 260 or of any other law, an
145 action upon a judgment or decree on a consumer debt, including any execution upon or trustee
146 process based on such judgment or decree, and all other activity to collect on the judgment must
147 be commenced within five years after the entry of the judgment or decree.

148 Section 5. No Imprisonment for Debt

149 Notwithstanding the provisions of section 18 of chapter 224 or of any other law, no
150 person or corporation shall seek a capias or other warrant for the arrest of a debtor for any action
151 or failure to act that arises or relates to a lawsuit to collect a consumer debt or a judgment arising
152 therefrom, unless such warrant relates to a violation of the Criminal Code.

153 Section 6. Interest; Attorney's Fees

154 (a) If the plaintiff is the prevailing party in any action to collect a consumer debt, whether
155 the claim sounds in contract, contract under seal, account stated, open account or other cause,
156 any interest computed pursuant to section 6C of chapter 231 or section 8 of chapter 235 shall be
157 limited to the rate of interest equal to the weekly average 1-year constant maturity Treasury
158 yield, as published by the Board of Governors of the Federal Reserve System, for the calendar
159 week preceding the date of the judgment. No other rate of interest on the judgment shall be
160 permitted, including the rate provided for in the contract.

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

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

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

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

179 (c) If the debtor is the prevailing party in any action to collect a consumer debt, the debtor
180 shall be entitled to an award of reasonable attorney's fees. The amount of the debt that the
181 creditor sought shall not be a factor in determining the reasonableness of the award. In the
182 alternative, at the debtor's election, a prevailing debtor shall be awarded the amount of attorney's

183 fees that the plaintiff would have been entitled to collect if the plaintiff had been the prevailing
184 party.