

**SENATE . . . . . No. 2230**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court**  
**(2015-2016)**  
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SENATE, Thursday, April 21, 2016

The committee on Financial Services to whom was referred the 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,- reports the accompanying bill (Senate, No. 2230).

For the committee,  
James B. Eldridge



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  
181 attorney's fees in some specific percentage, such provision and obligation shall be valid and  
182 enforceable up to but not in excess of fifteen percent (15%) of the amount of the debt excluding  
183 attorney's fees and collection costs.

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

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