

# HOUSE . . . . . No. 4694

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, May 7, 2020.

The committee on Financial Services to whom was referred the petition (accompanied by bill, House, No. 919) of Paul Brodeur and others relative to the collection of consumer debt, reports recommending that the accompanying bill (House, No. 4694) ought to pass.

For the committee,

JAMES M. MURPHY.

# HOUSE . . . . . No. 4694

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-First General Court  
(2019-2020)  
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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 93K the  
2       following chapter:-

3       CHAPTER 93L.

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 chapter 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. A “residential mortgage loan”  
22 shall mean any loan primarily for personal, family, or household use that is secured by a  
23 mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined  
24 in 15 U.S.C. section 1602(w) or residential real estate upon which is constructed or intended to  
25 be constructed a dwelling as so defined.

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

31 “Debt buyer”, a person or entity that is engaged in the business of purchasing delinquent  
32 or charged-off consumer loans or consumer credit accounts or other delinquent consumer debt

for collection purposes, whether it collects the debt itself or hires a third-party for collection or an attorney for litigation in order to collect the debt.

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

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

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

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

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

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

Section 2. (a) Notwithstanding section 34 of chapter 235, if earnings of a consumer are attached to satisfy a judgment for collection of a consumer debt, that consumer's earnings for a week that are less than 70 times the greater of the federal minimum hourly wage under 29 U.S.C. section 206(a)(1) or the state minimum hourly wage under section 1 of chapter 151 in effect at the time shall be exempt from the attachment and not subject to garnishment. This exemption shall be adjusted pro rata for a pay period that is more than weekly.

(b) If the consumer's earnings exceed the amount that is exempt under subsection (a), not more than 10 per cent of the excess earnings shall be subject to garnishment.

(c) Notwithstanding subsection (a) and (b), a judgment debtor may seek to exempt additional wages from attachment by making a claim of undue financial hardship by filing a form with the court. Such form shall be prepared by the court to allow a judgment debtor to easily identify the basis for the judgment debtor's request for an additional exemption. Upon the filing of the financial hardship form, the court shall hold a hearing as soon as practicable to determine the total amount that shall be exempted from the judgment debtors wages.

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

(e) The protections for earnings under this section apply to consumers whose physical place of employment is in the commonwealth, notwithstanding that the consumer's employer may have corporate offices or other places of business located outside the commonwealth.

(f) This section shall not apply in a proceeding to attach earnings or a pension to satisfy a divorce, separate maintenance or child support order of a court of competent jurisdiction and in such a proceeding, including an action for trustee process to enforce a support order under section 36A of chapter 208, federal law limiting the amounts that may be trustee, assigned or attached in order to satisfy an alimony, maintenance or child support order shall apply.

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

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

(i) Income from child support payments shall be exempt from collection.

Section 3. (a) Notwithstanding section 2 of chapter 260, an action for the collection of a consumer debt shall be commenced only within four years after the cause of action accrues. This limitations period shall apply to a consumer debt, whether the claim sounds in contract, account stated, open account or other cause, and notwithstanding another applicable statute of limitations, unless a shorter limitations period is applicable. This time period also applies to a claim for a consumer debt based on a contract or instrument under seal.

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98           (b) Nothing in this chapter shall prohibit a creditor, debt buyer, or debt collector from  
99   entering into a repayment agreement that shall be legally binding on the consumer beyond the  
100   applicable limitations period on the consumer debt in subsection (a) so long as the repayment  
101   agreement is in writing, signed by both parties and based on new consideration and does not  
102   require the consumer to make payments from exempt income.

103           (c) Notwithstanding section 14 of chapter 260, a payment on a consumer debt after the  
104   limitations period in subsection (a) has run shall not revive or extend the limitations period or bar  
105   the consumer from asserting a defense to the collection of a consumer debt.

106           (d) No creditor, debt buyer, or debt collector shall bring a suit or initiate an arbitration or  
107   other legal proceeding to collect a consumer debt if the applicable limitations period on the  
108   consumer debt in subsection (a) has expired.

109           (e) A waiver by a consumer of a protection or right under this section is void and shall  
110   not be enforced.

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112           (f) Notwithstanding section 20 of chapter 260 or any other general or special law to the  
113   contrary, an action upon a judgment or decree on a consumer debt, including an execution upon  
114   or trustee process based on the judgment or decree and other activity to collect on the judgment,  
115   shall be commenced within 10 years after the entry of the judgment or decree. A judgment  
116   whose enforcement has been barred by the running of this limitations period shall not be revived  
117   or renewed.

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119           Section 4. (a) For matters arising from a consumer debt, a plaintiff who has obtained a  
120 judgment shall provide written notice to a consumer at least 30 days prior to a supplementary  
121 proceeding in a civil action for the examination of a consumer pursuant to section 14 of chapter  
122 224 or a payment review hearing in a small claims action pursuant to Uniform Small Claims  
123 Rule 7(i). The notice shall inform the consumer of the opportunity to submit a financial affidavit  
124 in a form prescribed by the court and signed under the penalties of perjury. If the consumer  
125 indicates through the financial affidavit that all income and assets are exempt and files it as  
126 directed by the court, the court shall acknowledge receipt and inform both parties that the hearing  
127 is cancelled. Once a signed financial affidavit form indicating that all income and assets are  
128 exempt is on file in that case, no further supplementary proceedings or payment review hearings  
129 may be scheduled unless the judgment creditor presents evidence of the judgment debtor's non-  
130 exempt income or assets and the court determines that there is a reasonable basis to believe that  
131 there are non-exempt assets or income warranting the scheduling of a new supplementary  
132 proceeding or payment review hearing.

133           (b) Notwithstanding the provisions of sections 18 and 20 of chapter 224 or any other  
134 applicable law or court rule, for matters arising from a consumer debt no capias or other warrant  
135 to compel the attendance of a consumer shall be issued for failure of the consumer to appear at a  
136 supplementary proceeding in a civil action for the examination of a consumer pursuant to section  
137 14 of chapter 224 or a payment review hearing in a small claims action pursuant to Uniform  
138 Small Claims Rule 7(i). Instead failure to appear shall trigger the scheduling of a show cause  
139 hearing for the court to determine whether a capias or other warrant to compel the attendance of  
140 a consumer should issue. No capias or other warrant shall issue to compel the attendance of a

consumer without evidence that notice of the show cause hearing was served on the consumer either by signed return receipt or by a sworn return of service.

(c) Notwithstanding the provisions of sections 18 and 20 of chapter 224 or any other applicable law or court rule, a consumer that is compelled to attend pursuant to a capias or other warrant shall be brought before the court the same day. The consumer shall be given the opportunity to complete the financial affidavit described in paragraph (a). The capias or other warrant shall be satisfied by the consumer's appearance in court or completion of the financial affidavit indicating that all forms of income and assets are exempt.

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

Section 5. (a) If a plaintiff prevails in an action to collect a consumer debt, interest computed pursuant to section 6C of chapter 231 or section 8 of chapter 235 shall be limited to a fixed rate of interest of 6 per cent per annum. A higher rate of interest on the judgment shall not be permitted, including the rate provided for in the contract. (b) If the plaintiff prevails in an action to collect a consumer debt, the plaintiff shall be entitled to collect attorney's fees only if the contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay attorney's fees, subject to the following provisions: (i) if the contract or other document evidencing indebtedness provides for attorney's fees in some specific percentage, the provision and obligation shall be valid and enforceable up to but not in excess of 15 per cent of the amount of the debt excluding attorney's fees and collection costs; (ii) if a contract or other

document evidencing indebtedness provides for the payment of reasonable attorney's fees by the consumer, without specifying a specific percentage, the provision shall be construed to mean the lesser of 15 per cent of the amount of the debt, excluding attorney's fees and collection costs, or the amount of attorney's fees calculated by a reasonable rate for such cases multiplied by the amount of time reasonably expended to obtain the judgment; and (iii) the documentation setting forth a party's obligation to pay attorney's fees shall be provided to the court before a court may enforce those provisions; provided, however, that the documentation shall not include materials that the plaintiff has already filed together with the complaint in compliance with applicable court rules.

(c) If the consumer is the prevailing party in an action to collect a consumer debt, the consumer shall be entitled to an award of reasonable attorney's fees, unless the case is voluntarily dismissed with prejudice pursuant to Rule 41(a)(1)(i) of the Massachusetts Rules of Civil Procedure or a stipulation of dismissal explicitly provides otherwise. The amount of the debt that the plaintiff sought shall not be a factor in determining the reasonableness of the award. In the alternative, at the consumer's election, a prevailing consumer in an action to collect a consumer debt shall be awarded the amount of attorney's fees that the plaintiff would have been entitled to collect if the plaintiff had been the prevailing party.

Section 6. (a) A violation of sections 2 to 5, inclusive, shall also be a violation of chapter 93A.

(b) A portion of a contract, including a consumer form contract, that violates sections 2 to 5, inclusive, shall be void.

184           SECTION 2. Section 28 of chapter 246 of the General Laws is hereby amended by  
185 adding the following paragraph:-

186           This section shall not apply in a proceeding to attach earnings or a pension to satisfy a  
187 judgment for collection of a consumer debt, as defined in section 1 of chapter 93L, and in such  
188 an action said chapter 93L shall apply.

189           SECTION 3. Section 3 of Chapter 93L shall not apply to a consumer debt for which the  
190 cause of action accrued before January 1, 2020; provided, however, that subsection (b) of section  
191 3 of said chapter 93L shall apply to payments made after the effective date of this act. Provided  
192 further that subsection (b) of section 6 of chapter 93L shall not apply to a contract, including a  
193 consumer form contract that is in effect before January 1, 2020.

194           SECTION 4. This act shall take effect on January 1, 2021.