

SENATE No. 578

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 fairness in debt collection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/28/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/29/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/1/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/30/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>1/30/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>11/13/2019</i>

SENATE No. 578

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 578) of James B. Eldridge, Paul Brodeur, Tram T. Nguyen, Anne M. Gobi and other members of the General Court for legislation relative to fairness in debt collection. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 120 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 is written off as unlikely to be collected and worthless,
9 pursuant to 26 U.S.C. section 166.

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

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

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

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

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

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

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

53 Section 2. (a) Notwithstanding section 34 of chapter 235, if earnings of a consumer are
54 attached to satisfy a judgment for collection of a consumer debt, that consumer’s earnings for a
55 week that are less than 90 times the greater of the federal minimum hourly wage under 29 U.S.C.
56 section 206(a)(1) or the state minimum hourly wage under section 1 of chapter 151 in effect at
57 the time shall be exempt from the attachment and not subject to garnishment. This exemption
58 shall be adjusted pro rata for a pay period that is more than weekly.

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

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

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

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

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

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

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

85 Section 3. (a) Notwithstanding section 2 of chapter 260, an action for the collection of a
86 consumer debt shall be commenced only within four years after the cause of action accrues. This
87 limitations period shall apply to a consumer debt, whether the claim sounds in contract, account
88 stated, open account or other cause, and notwithstanding another applicable statute of limitations,
89 unless a shorter limitations period is provided under the laws of the commonwealth or as

90 described in paragraph (b). This time period also applies to a claim for a consumer debt based on
91 a contract or instrument under seal.

92 (b) A consumer debt of a resident of this state that arose in another jurisdiction or that is
93 otherwise governed by another jurisdiction's laws shall be governed by subsection (a) or the
94 other jurisdiction's limitations period, whichever is shorter.

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

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

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

103 (f) If the limitation period under this section has expired, then the right to collect the
104 consumer debt is extinguished as well as the remedy. No creditor, debt buyer, or debt collector
105 shall attempt to collect a consumer debt after the applicable statute of limitations period
106 described in subsection (a) or (b) has expired; provided, however, that nothing in this chapter
107 shall prohibit a creditor, debt buyer, or debt collector from accepting a voluntary payment
108 initiated by a consumer after the applicable statute of limitations period under subsection (a) or
109 (b) has expired. Such a voluntary payment shall not revive or extend the limitations period. Any
110 unpaid portion of the consumer debt shall remain extinguished with collection prohibited.

111 (g) Notwithstanding section 20 of chapter 260 or any other general or special law to the
112 contrary, an action upon a judgment or decree on a consumer debt, including an execution upon
113 or trustee process based on the judgment or decree and other activity to collect on the judgment,
114 shall be commenced within 5 years after the entry of the judgment or decree. A judgment whose
115 enforcement has been barred by the running of this limitations period shall not be revived or
116 renewed.

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

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

134 there are non-exempt assets or income warranting the scheduling of a new supplementary
135 proceeding or payment review hearing.

136 (b) Notwithstanding the provisions of sections 18 and 20 of chapter 224 or any other
137 applicable law or court rule, for matters arising from a consumer debt no capias or other warrant
138 to compel the attendance of a consumer shall be issued for failure of the consumer to appear at a
139 supplementary proceeding in a civil action for the examination of a consumer pursuant to section
140 14 of chapter 224 or a payment review hearing in a small claims action pursuant to Uniform
141 Small Claims Rule 7(i). Instead failure to appear shall trigger the scheduling of a show cause
142 hearing for the court to determine whether a capias or other warrant to compel the attendance of
143 a consumer should issue. No capias or other warrant shall issue to compel the attendance of a
144 consumer without evidence that notice of the show cause hearing was served on the consumer
145 either by signed return receipt or by a sworn return of service.

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

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

156 Section 5. (a) If a plaintiff prevails in an action to collect a consumer debt, interest
157 computed pursuant to section 6C of chapter 231 or section 8 of chapter 235 shall be limited to
158 the rate of interest equal to the weekly average 1-year constant maturity treasury yield, but not
159 less than 2 per cent per annum nor more than 5 per cent per annum, as published by the Board of
160 Governors of the Federal Reserve System, for the calendar week preceding the date of the
161 judgment. A higher rate of interest on the judgment shall not be permitted, including the rate
162 provided for in the contract.

163 (b) If the plaintiff prevails in an action to collect a consumer debt, the plaintiff shall be
164 entitled to collect attorney's fees only if the contract or other document evidencing the
165 indebtedness sets forth an obligation of the consumer to pay attorney's fees, subject to the
166 following provisions: (i) if the contract or other document evidencing indebtedness provides for
167 attorney's fees in some specific percentage, the provision and obligation shall be valid and
168 enforceable up to but not in excess of 15 per cent of the amount of the debt excluding attorney's
169 fees and collection costs; (ii) if a contract or other document evidencing indebtedness provides
170 for the payment of reasonable attorney's fees by the consumer , without specifying a specific
171 percentage, the provision shall be construed to mean the lesser of 15 per cent of the amount of
172 the debt, excluding attorney's fees and collection costs, or the amount of attorney's fees
173 calculated by a reasonable rate for such cases multiplied by the amount of time reasonably
174 expended to obtain the judgment; and (iii) the documentation setting forth a party's obligation to
175 pay attorney's fees shall be provided to the court before a court may enforce those provisions;
176 provided, however, that the documentation shall not include materials that the plaintiff has
177 already filed together with the complaint in compliance with applicable court rules.

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

186 Section 6. (a) A violation of sections 2 to 5, inclusive, shall also be a violation of chapter
187 93A.

188 (b) A portion of a contract, including a consumer form contract, that violates sections 2 to
189 5, inclusive, shall be void.

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

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

195 SECTION 3. Section 3 of Chapter 93L shall not apply to a consumer debt for which the
196 cause of action accrued before January 1, 2020; provided, however, that subsection (b) of section
197 3 of said chapter 93L shall apply to payments made after the effective date of this act. Provided
198 further that subsection (b) of section 6 of chapter 93L shall not apply to a contract, including a
199 consumer form contract that is in effect before January 1, 2020.

SECTION 4. This act shall take effect on January 1, 2020.