

**Testimony of April Kuehnhoff, Staff Attorney at the  
National Consumer Law Center on behalf of its low-income clients**

**Before Joint Financial Services Committee  
In support of S.146/H.804, An Act relative to family financial protection  
October 27, 2015**

The National Consumer Law Center<sup>1</sup> thanks Senator Eldridge for introducing S.146 and Representative Brodeur for introducing its companion H.804 and offers the following testimony in support of S.146/H.804.

I. Debt Collection in Massachusetts

Debt collection affects millions of Massachusetts residents. In 2014, the Urban Institute reported that nearly *1 in 4* Massachusetts residents with credit reports had a debt in collection due to non-payment of a bill and that the average amount of the debt was \$4,602.<sup>2</sup>

Between 2004 and 2013, 1.9 million lawsuits were filed in small claims and district courts across the Commonwealth.<sup>3</sup> Of these 1.9 million lawsuits, *at least 1.2 million were filed by professional debt collectors.*<sup>4</sup> These numbers are consistent with the Boston Globe's previous report that professional debt collectors filed an estimated 575,000 lawsuits in these same courts between 2000 and 2005.<sup>5</sup> Moreover, these numbers indicate that reforms enacted since the Boston Globe's groundbreaking reporting on debt collection in 2006 have not stemmed the tide of debt collection litigation in Massachusetts courts.

II. Debt Buyers: The New Debt Collection Paradigm

---

<sup>1</sup> The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income and elderly people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damages wrought by debt collection and wage garnishment from across the nation. This testimony is presented on behalf of our low-income clients.

<sup>2</sup> Caroline Ratcliffe, et al. Urban Institute, *Delinquent Debt in America*, at 9 (July 30, 2014).

<sup>3</sup> Jessica Mendoza, et al., "Collection claims abuses move up to higher courts," Boston Globe (Mar. 28, 2015), available at: <https://www.bostonglobe.com/metro/2015/03/28/new-restrictions-debt-collectors-district-court/sIMWIBGAjooNXc1QomaNpM/story.html>.

<sup>4</sup> Id.

<sup>5</sup> M. Resendez, F. Latour, "No Mercy for Consumers," Boston Globe (July 30, 2006), available at: <https://www.bostonglobe.com/metro/2006/07/30/mercy-for-consumers/gTImLuYbDUIfyWg8X5m5pN/story.html>.

In order to understand why debt collection affects the lives of so many Massachusetts residents, it is important to understand the role that debt buyers play in debt collection. An entire industry has emerged that feeds on defaulted consumer debts. “Debt buyers” purchase consumer debts that have been written off by the original lender.<sup>6</sup> Despite paying a deeply discounted rate for these debts – just four cents on the dollar on average<sup>7</sup> – debt buyers aggressively seek to collect the full amount of the debt, as well as adding interest, penalty fees, and attorney’s fees.

The debt buying industry has enjoyed remarkable growth. In 1993, the face value of defaulted consumer debt purchased by debt buyers nationally was less than \$10 billion.<sup>8</sup> By 2005, that number had increased to nearly \$130 billion.<sup>9</sup> Although sales of consumer debt decreased during the Great Recession, the amount of debt sold increased again in 2011.<sup>10</sup>

Debt buyers purchase accounts in bulk, typically obtaining only an electronic spreadsheet with minimal information about the debts.<sup>11</sup> Most of the time, they do not receive the credit application, the account agreement, monthly statements, payment records, or any customer service records that would reflect customer disputes.<sup>12</sup> In addition to providing little information about the debt, many debt sellers will not even guarantee that they own the accounts they are selling or that the amounts listed as owed by account holders are correct.<sup>13</sup>

Debts are often resold again and again between debt buyers, with each owner potentially attempting to collect on the accounts.<sup>14</sup> Over the course of multiple sales and collection attempts, the debts continue to age while the documentation related to the debts is discarded, is corrupted, or becomes more difficult to access. Moreover, original creditors typically do not have an obligation to produce documentation of the debt to secondary buyers, who must instead make requests for documentation to the first debt buyer and rely on the previous debt buyer to relay these requests to the original creditor.<sup>15</sup> Some debt sellers provide that they will not supply contract records to the debt buyers after just six months,<sup>16</sup> while debt buyer collection activities may go on for years after the debt is bought.

As a result of this lack of documentation, debt buyers frequently pursue flawed claims. The FTC has concluded that “the information received by debt collectors is often inadequate and

---

<sup>6</sup> Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry* (Jan. 2013), available at: <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>.

<sup>7</sup> Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at ii (Jan. 2013).

<sup>8</sup> Robert M. Hunt, Fed. Reserve Bank of Philadelphia, *Understanding the Model: The Life Cycle of a Debt*, at 19 (June 6, 2013), available at: [https://www.ftc.gov/sites/default/files/documents/public\\_events/life-debt-data-integrity-debt-collection/understandingthemodel.pdf](https://www.ftc.gov/sites/default/files/documents/public_events/life-debt-data-integrity-debt-collection/understandingthemodel.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at 20, 29 (Jan. 2013).

<sup>12</sup> *Id.* at T-9.

<sup>13</sup> Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 *Harv. J. on Legis.* 41, 7 (2015).

<sup>14</sup> Jake Halpern, *Bad Paper: Chasing Debt from Wall Street to the Underworld* (2014).

<sup>15</sup> Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at iii-iv (Jan. 2013).

<sup>16</sup> *Id.* at 26.

results in attempts to collect from the wrong consumer or to collect the wrong amount.”<sup>17</sup> Some claims that have been settled or paid in full are reentered into collection. Other claims target the wrong person or victims of identity theft.<sup>18</sup> Still others are beyond the statute of limitations, were discharged by the consumer in bankruptcy, or were disputed with the original creditor years before by the consumer for fraud, nonperformance, or another problem. A report by several New York City nonprofit and legal services organizations found that 35% of debt buyer lawsuits were clearly meritless.<sup>19</sup>

Consumers are particularly vulnerable to these flawed claims because they are almost never represented by an attorney. A Maryland study found that consumers were represented by an attorney in only 2% of collection lawsuits.<sup>20</sup> Another study found that attorneys represented consumers in only 2% of the 195,000 collection cases filed in New York in 2011.<sup>21</sup> Before a number of pro bono programs were instituted, an earlier study had found the percentage was well under 1%.<sup>22</sup>

It is thus not surprising that this system works for debt buyers. Estimates are as high as 90% of collection lawsuits result in default judgments,<sup>23</sup> and very few of these are ever set aside. One study found only about 2% of the default judgments in New York City were later set aside.<sup>24</sup> And of course many of the cases not resulting in default judgments resulted in settlements very favorable to the collector. As a result, collectors in New York City in one year obtained an estimated \$800 million in judgments based on almost \$1 billion in claims.<sup>25</sup>

The fact that cases are almost never contested also means the debt buyers do not have to worry about adequate legal pleadings. A New York City study also found that in 99% of the cases in which default judgments were entered, the materials underlying those applications constituted inadmissible hearsay and did not meet New York’s standards for the entry of a default judgment.<sup>26</sup> In 85% of the cases, the supporting evidence was an affidavit from the debt buyer’s own employee, and in another 12% it was from an employee of an unidentified

---

<sup>17</sup> Fed. Trade Comm’n, *Collecting Consumer Debts: The Challenges of Change*, A Workshop Report, at 24 (Feb. 2009).

<sup>18</sup> Kathy M. Kristof, “When debt collectors go after the wrong person,” *Los Angeles Times* (Dec. 19, 2010), available at <http://articles.latimes.com/2010/dec/19/business/la-fi-perfin-20101219>.

<sup>19</sup> New Economy Project, *Debt Deception* at 2.

<sup>20</sup> Peter Holland, *Junk Justice: A Statistical Analysis of 4400 Lawsuits Filed by Debt Buyers*, 26 *Loy. Consumer L. Rev.* 179 (2014).

<sup>21</sup> New Economy Project, *The Debt Collection Racket in New York* (June 2013).

<sup>22</sup> Urban Justice, *Debt Weight, the Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (Oct. 2007).

<sup>23</sup> *McCullough v. Johnson, Rodenburg & Lauinger, L.L.C.*, 637 F.3d 939 (9th Cir. 2011) (Montana collection attorney estimated that 90% of collection lawsuits result in a default); Fed. Trade Comm’n, *Repairing a Broken System 7* (July 2010) (most panelists from around the country at FTC hearings indicated that the 90% figure was about right; also citing a number of studies); The Legal Aid Soc’y, *Debt Deception 6* (May 2010) (study of New York City collection lawsuits found that 94.3% of cases in sample resulted in a default judgment or a settlement); *Dignity Faces a Steamroller: Small-Claims Proceedings Ignore Rights, Tilt to Collectors*, *Boston Globe*, July 31, 2006 (study of collection actions in Massachusetts found an 80% default rate).

<sup>24</sup> Urban Justice, *Debt Weight, the Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (Oct. 2007).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

entity.<sup>27</sup> Another study concluded that, among the sample of cases reviewed, no application by a debt buyer for a default judgment complied with New York law.<sup>28</sup> When clinical law students represented consumer defendants in Massachusetts Small Claims courts in 2009-2010, 60 of the 60 cases were dismissed by the debt collectors bringing the suits when faced with the clinical students' mere appearance in court.

### III. How this Bill Would Help Consumers

S.146/H.804 would respond to a number of problems faced by low-income and elderly consumers. The following section by section analysis highlights the proposed reforms and how they would benefit low-income consumers.

#### a. Section 3: Wage Garnishment

Applying G. L. c. 246, § 28, Massachusetts courts currently exempt 50 times the Massachusetts minimum wage<sup>29</sup> or 85 percent of the debtor's gross wages for each week, whichever is greater.<sup>30</sup> These exemptions permit significant rates of garnishment for Massachusetts residents with incomes that are less than 50% of the \$104,545 Massachusetts median income for a 4-person family.<sup>31</sup>

**Table 1: Amounts Subject to Garnishment under G. L. c. 246, § 28 (\$9 min. wage)**

Gross Annual Pay	Gross Weekly Wage	Weekly Amount Subject to Garnishment Order	Annual Amount Subject to Garnishment
\$23,400.00	\$450.00	\$0.00	\$0.00
\$26,000.00	\$500.00	\$50.00	\$2,600.00
\$28,600.00	\$550.00	\$82.50	\$4,290.00
\$31,200.00	\$600.00	\$90.00	\$4,680.00
\$36,400.00	\$700.00	\$105.00	\$5,460.00
\$39,000.00	\$750.00	\$112.50	\$5,850.00
\$41,600.00	\$800.00	\$120.00	\$6,240.00
\$44,200.00	\$850.00	\$127.50	\$6,630.00
\$46,800.00	\$900.00	\$135.00	\$7,020.00
\$49,400.00	\$950.00	\$142.50	\$7,410.00
\$52,000.00	\$1,000.00	\$150.00	\$7,800.00

<sup>27</sup> *Id.*

<sup>28</sup> New Economy Project, *The Debt Collection Racket in New York* (June 2013).

<sup>29</sup> The Massachusetts minimum wage is currently greater than the federal minimum wage.

<sup>30</sup> Currently federal law exempts 75 percent of disposable earnings. 15 U.S.C. § 1671.

<sup>31</sup> U.S. Dept. of Health & Human Servs. "Massachusetts State Median Income for FFY 2015," available at: <http://www.liheapch.acf.hhs.gov/profiles/povertytables/FY2015/masmi.htm>

These garnishment rates will remain high even when the Massachusetts minimum wage increases to \$11 per hour.

**Table 2: Amounts Subject to Garnishment under G. L. c. 246, § 28 (\$11 min. wage)**

Gross Annual Pay	Gross Weekly Wage	Weekly Amount Subject to Garnishment Order	Annual Amount Subject to Garnishment
\$23,400.00	\$450.00	\$0.00	\$0.00
\$26,000.00	\$500.00	\$0.00	\$0.00
\$28,600.00	\$550.00	\$0.00	\$0.00
\$31,200.00	\$600.00	\$50.00	\$2,600.00
\$36,400.00	\$700.00	\$105.00	\$5,460.00
\$39,000.00	\$750.00	\$112.50	\$5,850.00
\$41,600.00	\$800.00	\$120.00	\$6,240.00
\$44,200.00	\$850.00	\$127.50	\$6,630.00
\$46,800.00	\$900.00	\$135.00	\$7,020.00
\$49,400.00	\$950.00	\$142.50	\$7,410.00
\$52,000.00	\$1,000.00	\$150.00	\$7,800.00

Under S.146/H.804, net or garnishable earnings below 80 times the minimum wage (\$720 per week with a \$9 minimum wage and \$880 per week with an \$11 minimum wage) would be completely exempt. Above that threshold, 10 percent of net or garnishable earnings would be subject to garnishment if weekly garnishable earnings are less than \$1200 and 15 percent if greater. This would significantly increase protections for low-income debtors.

b. Section 4: Statutes of Limitations

Statutes of limitations are laws that limit the length of time available for bringing a lawsuit in court. They are designed to protect “defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.”<sup>32</sup>

Too often, however, these laws fail to help consumers because they are not easily understood by non-lawyers. Statutes of limitations generally only protect consumers if consumers know about the availability of this defense and assert it affirmatively. The determination of which limitations period applies to a particular action is often complicated, even for lawyers and judges. Furthermore, consumers rarely know that a partial payment, or even simply an admission, can extend the limitations period. As the Federal Trade Commission

<sup>32</sup> United States v. Kubrick, 444 U.S. 111, 117 (1979) (citation omitted).

(FTC) noted, “most consumers do not know or understand their legal rights with respect to the collection of time-barred debts.”<sup>33</sup>

S.146/H.804 would protect consumers by:

- Creating a single 3 year statute of limitations<sup>34</sup> for all consumer debts being collected in the state and decreasing the length of statute of limitations from 6 years to 3 years (Section 4(a));
- Establishing the rule that the debt is extinguished and prohibiting further collection activities after the 3 year statute of limitations has run (Section 4(c));
- Prohibiting renewal or extension of the statute of limitations period because of partial payments or acknowledgments of the debt (Section 4(d)); and
- Decreasing the period of time during which the creditor can collect on a court judgment from 20 years<sup>35</sup> to 5 years for all consumer debts (Section 4(f)).

c. Section 5: Imprisonment for Debt

Currently, G. L. c. 224, § 18 provides for the issuance of “warrants for arrest and other processes to secure the attendance of debtors or creditors to answer for any contempt.” Unfortunately, as written this statute can be abused by creditors who seek these warrants and then use the threat of arrest to force debtors to make payments. Under duress, debtors may make payments that they can ill afford or might not even be legally obligated to make due to wage exemptions. S.146/H.804 would prohibit creditors from seeking these warrants.

d. Section 6(a): Interest

Currently, Massachusetts provides for a 12 percent statutory rate of interest under G. L. c. 231, §6C (pre-judgment interest) and G. L. c. 235, §8 (post-judgment interest). This is a very high interest rate that causes an unpaid judgment to double every six years. Because a large portion of judgments in Massachusetts are taken against financially distressed households, this high rate is another hurdle keeping them from returning to financial viability and stability. Moreover, the high rate of interest means that consumers who are only able to make small payments on a judgment may end up with a non-amortizing judgment that can never be paid off.

S.146/H.804 would adopt an interest rate used by the Treasury and require that rate to be used instead of contractual interest rates. The interest rate on federal court judgments is currently tied to the same rate.<sup>36</sup>

---

<sup>33</sup> Fed. Trade Comm’n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*, at 26 (July 2010).

<sup>34</sup> Sixteen states already provide a three-year statute of limitations for either written contracts, oral contracts, or both, so this bill’s choice of a three-year period is not an unusual departure from existing practice. National Consumer Law Center, *Collection Actions*, § 3.6.4.2 (3d ed. 2014).

<sup>35</sup> G. L. c. 260, § 20.

<sup>36</sup> United States Courts, “Post Judgment Interest Rate,” available at: <http://www.uscourts.gov/services-forms/fees/post-judgement-interest-rate>.

e. Section 6(b): Attorney's Fees

This section prohibits seeking attorney's fees from a consumer in a collection lawsuit to only those instances in which the underlying contract or other document obligates the consumer for such fees. This section also limits these fees to a reasonable percentage of the amount owed by the consumer. Finally, this section gives the consumer the right to collect attorney's fees if s/he prevails, to the same extent the collector could have collected them, i.e., 15% of the amount of the debt or a reasonable hourly rate, if the contract provides for attorney's fees for the collector. This provision would make it more economically feasible for private attorneys to provide representation to consumer defendants in debt collection cases.