

CHAPTER 104—H.F.No. 80

An act relating to judgments; regulating assigned consumer debt default judgments; providing a limitation period to bring an action arising out of consumer debt; setting the bail amount for failure to comply with judgment debtor disclosure requirements in consumer debt cases; amending Minnesota Statutes 2012, sections 491A.02, subdivision 9; 550.011; 588.04; proposing coding for new law in Minnesota Statutes, chapters 541; 548.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2012, section 491A.02, subdivision 9, is amended to read:

Subd. 9. **Judgment debtor disclosure.** Notwithstanding any contrary provision in rule 518 of the Conciliation Court Rules, unless the parties have otherwise agreed, if a conciliation court judgment or a judgment of district court on removal from conciliation court has been docketed in district court, the judgment creditor's attorney as an officer of the court may or the district court in the county in which the judgment originated shall, upon request of the judgment creditor, order the judgment debtor to mail to the judgment creditor information as to the nature, amount, identity, and locations of all the debtor's assets, liabilities, and personal earning. The information must be provided on a form prescribed by the Supreme Court, and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order must contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this section may be ordered payable to the creditor to satisfy the judgment, either partially or fully, subject to section 588.04, paragraph (b).

EFFECTIVE DATE. This section is effective August 1, 2013.

Sec. 2. **[541.053] LIMITATION OF ACTIONS BASED ON CONSUMER DEBT.**

Notwithstanding section 541.31, subdivision 1, actions upon an obligation arising out of a consumer debt primarily for personal, family, or household purposes shall be commenced within six years. After its expiration, the statute of limitations is not revived by the collection of a payment on an account, a discharge in a bankruptcy proceeding, or an oral or written reaffirmation of the debt.

EFFECTIVE DATE. This section is effective August 1, 2013.

Sec. 3. **[548.101] ASSIGNED CONSUMER DEBT DEFAULT JUDGMENTS.**

(a) A party entitled to a judgment by default in a conciliation court or district court action upon an assigned obligation arising out of any consumer debt that is primarily for personal, family, or household purposes and in default at the time of assignment shall apply to the court and submit, in addition to the request, application, or motion for judgment:

(1) a copy of the written contract between the debtor and original creditor or, if no written contract exists, other admissible evidence establishing the terms of the account relationship between the debtor and the original creditor, including the moving party's entitlement to the amounts described in clause (4). If only

the balance owed at the time the debt was charged off or first assigned is claimed to be owed, evidence may include a monthly or periodic billing statement;

(2) admissible evidence establishing that the defendant owes the debt;

(3) the last four numbers of the debtor's Social Security number, if known;

(4) admissible evidence establishing that the amount claimed to be owed is accurate, including the balance owed at the time the debt was charged off or first assigned to another party by the original creditor and, if included in the request, application, or motion for judgment, a breakdown of any fees, interest, and charges added to that amount;

(5) admissible evidence establishing a valid and complete chain of assignment of the debt from the original creditor to the party requesting judgment, including documentation or a bill of sale evidencing the assignment with evidence that the particular debt at issue was included in the assignment referenced in the documentation or bill of sale;

(6) in district court cases, proof that a summons and complaint were properly served on the debtor and that the debtor did not serve a timely answer or, in conciliation court cases, proof that the party seeking the judgment or the party's attorney used reasonable efforts to provide the court administrator with the correct address for the debtor; and

(7) in district court cases, proof that the party requesting the default judgment or the party's attorney mailed a notice of intent to apply for default judgment to the debtor. The notice must be mailed to the debtor at the debtor's last known address at least 14 days before the request, application, or motion for default, and must be substantially in the following form:

Notice of Intent to Apply for Default Judgment

Case Type - Consumer Credit Contract

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF

.....JUDICIAL DISTRICT

NOTICE OF INTENT TO APPLY FOR DEFAULT JUDGMENT

..... Plaintiff,

vs.

..... Defendant.

Court File No.

_____ [Plaintiff] has sued you to collect the following consumer debt that you originally owed to _____ [original creditor]:

_____ [original creditor]

_____ [last four digits of the debtor's account number]

_____ [amount of debt]

_____ [date of charge off or account closing date]

_____ [Plaintiff] served this lawsuit on you on _____ [date]. Under Minnesota law, a lawsuit may be started against you even though it has not yet been filed in court and the court has no record of this lawsuit or this paperwork. You are in default because you did not serve a written Answer on time.

[Plaintiff] will ask the Court to enter a judgment against you without any further court proceedings, unless you mail a written Answer or written response contesting the debt within 14 days from the date below. A judgment is a court order that you must pay a certain amount of money.

Dated:

LAW FIRM, P.A.

.....

Attorney Name, ID#

Address

Phone

(b) If admissible, the same item of evidence or document may be provided to satisfy more than one requirement under paragraph (a), clauses (1) to (5). A court may permit the foundation for documents submitted under paragraph (a) to be established by an affidavit.

(c) Except in conciliation court cases or if a hearing is required under court rules, the court may either:

(1) hold a hearing before entry of a default judgment; or

(2) enter an administrative default judgment without a hearing if the court determines that the evidence submitted satisfies the requirements of paragraph (a).

EFFECTIVE DATE. This section is effective September 1, 2013, and applies to requests, applications, and motions for default judgments and conciliation court cases filed on or after that date.

Sec. 4. Minnesota Statutes 2012, section 550.011, is amended to read:

550.011 JUDGMENT DEBTOR DISCLOSURE.

Unless the parties have otherwise agreed, if a judgment has been docketed in district court for at least 30 days, and the judgment is not satisfied, the judgment creditor's attorney as an officer of the court may or the district court in the county in which the judgment originated shall, upon request of the judgment creditor, order the judgment debtor to mail by certified mail to the judgment creditor information as to the nature, amount, identity, and locations of all the debtor's assets, liabilities, and personal earnings. The information must be provided on a form prescribed by the Supreme Court, and the information shall be sufficiently detailed to enable the judgment creditor to obtain satisfaction of the judgment by way of execution on nonexempt assets and earnings of the judgment debtor. The order must contain a notice that failure to complete the form and mail it to the judgment creditor within ten days after service of the order may result in a citation for civil contempt of court. Cash bail posted as a result of being cited for civil contempt of court order under this section may be ordered payable to the creditor to satisfy the judgment, either partially or fully, subject to section 588.04, paragraph (b).

EFFECTIVE DATE. This section is effective August 1, 2013.

Sec. 5. Minnesota Statutes 2012, section 588.04, is amended to read:

588.04 ARREST; ORDER TO SHOW CAUSE.

(a) In cases of constructive contempt, an affidavit of the facts constituting the contempt shall be presented to the court or officer, who may either issue a warrant of arrest to bring the person charged to answer or, without a previous arrest, upon notice, or upon an order to show cause, which may be served by a sheriff or other officer in the same manner as a summons in an action, may commit the person to jail, impose a fine, or both, and make such order thereupon as the case may require.

(b) When the underlying case involves an obligation arising out of a consumer debt primarily for personal, family, or household purposes, and the contempt is a failure to comply with judgment debtor disclosure requirements under section 491A.02, subdivision 9, or 550.011, bail must be set at \$50. For a

subsequent contempt for a failure to disclose in the same action, bail must be an amount set by the court after considering aggravating and mitigating factors. Bail posted under this section must be returned to the judgment debtor.

EFFECTIVE DATE. This section is effective August 1, 2013.

Presented to the governor May 21, 2013

Signed by the governor May 24, 2013, 2:53 p.m.