

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the executive law, in relation to debt collection notices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1.    The general business law is amended by adding a new  
2     section 601-a to read as follows:

3     S 601-A. DEBT COLLECTION NOTICE TO CONSUMERS.    1. AS USED IN THIS  
4     SECTION, THE FOLLOWING TERM SHALL HAVE THE FOLLOWING MEANING:

5     "DEBT COLLECTION AGENCY" SHALL MEAN A PERSON, FIRM OR CORPORATION  
6     ENGAGED IN BUSINESS, THE PRINCIPAL PURPOSE OF WHICH IS TO REGULARLY  
7     COLLECT OR ATTEMPT TO COLLECT DEBTS: (I) OWED OR DUE OR ASSERTED TO BE  
8     OWED OR DUE TO ANOTHER; OR (II) OBTAINED BY, OR ASSIGNED TO, SUCH  
9     PERSON, FIRM OR CORPORATION, THAT ARE IN DEFAULT WHEN OBTAINED OR  
10    ACQUIRED BY SUCH PERSON, FIRM OR CORPORATION.

11    THE TERM DOES NOT INCLUDE: (I) ANY OFFICER OR EMPLOYEE OF A CREDITOR  
12    WHILE, IN THE NAME OF THE CREDITOR, COLLECTING DEBTS FOR SUCH CREDITOR;

13    (II) ANY PERSON WHILE ACTING AS A DEBT COLLECTION AGENCY FOR ANOTHER  
14    PERSON, BOTH OF WHOM ARE RELATED BY COMMON OWNERSHIP OR AFFILIATED BY  
15    CORPORATE CONTROL, IF THE PERSON ACTING AS A DEBT COLLECTION AGENCY DOES  
16    SO ONLY FOR PERSONS TO WHOM IT IS SO RELATED OR AFFILIATED AND IF THE  
17    PRINCIPAL BUSINESS OF SUCH PERSON IS NOT THE COLLECTION OF DEBTS;

18    (III) ANY PERSON WHILE SERVING OR ATTEMPTING TO SERVE LEGAL PROCESS ON  
19    ANY OTHER PERSON IN CONNECTION WITH THE JUDICIAL ENFORCEMENT OF ANY  
20    DEBT;

21    (IV) ANY ATTORNEY-AT-LAW OR LAW FIRM COLLECTING A DEBT IN SUCH CAPACI-  
22    TY ON BEHALF OF AND IN THE NAME OF A CLIENT THROUGH LEGAL ACTIVITIES  
23    SUCH AS THE FILING AND PROSECUTION OF LAWSUITS TO REDUCE DEBTS TO JUDG-  
24    MENTS, BUT NOT ANY ATTORNEY-AT-LAW OR LAW FIRM WHO REGULARLY ENGAGES IN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 ACTIVITIES TRADITIONALLY ASSOCIATED WITH DEBT COLLECTION, INCLUDING BUT  
2 NOT LIMITED TO, SENDING DEMAND LETTERS OR MAKING COLLECTION TELEPHONE  
3 CALLS;

4 (V) ANY PERSON EMPLOYED BY A UTILITY REGULATED UNDER THE PROVISIONS OF  
5 THE PUBLIC SERVICE LAW, ACTING FOR SUCH UTILITY;

6 (VI) ANY PERSON COLLECTING OR ATTEMPTING TO COLLECT ANY DEBT OWED OR  
7 DUE OR ASSERTED TO BE OWED OR DUE ANOTHER TO THE EXTENT SUCH ACTIVITY;

8 (A) IS INCIDENTAL TO A BONA FIDE FIDUCIARY OBLIGATION OR A BONA FIDE  
9 ESCROW AGREEMENT; (B) CONCERNS A DEBT WHICH WAS ORIGINATED BY SUCH  
10 PERSON; OR (C) CONCERNS A DEBT WHICH WAS NOT IN DEFAULT AT THE TIME IT  
11 WAS OBTAINED BY SUCH PERSON AS A SECURED PARTY IN A COMMERCIAL CREDIT  
12 TRANSACTION INVOLVING THE CREDITOR;

13 (VII) ANY OFFICER OR EMPLOYEE OF THE UNITED STATES, ANY STATE THEREOF  
14 OR ANY POLITICAL SUBDIVISION OF ANY STATE TO THE EXTENT THAT COLLECTING  
15 OR ATTEMPTING TO COLLECT ANY DEBT OWED IS IN THE PERFORMANCE OF HIS OR  
16 HER OFFICIAL DUTIES; OR

17 (VIII) ANY NON-PROFIT ORGANIZATION WHICH, AT THE REQUEST OF CONSUMERS,  
18 PERFORMS BONA FIDE CONSUMER CREDIT COUNSELING AND ASSISTS CUSTOMERS IN  
19 THE LIQUIDATION OF THEIR DEBTS BY RECEIVING PAYMENTS FROM SUCH CUSTOMERS  
20 AND DISTRIBUTING SUCH AMOUNTS TO CREDITORS.

21 2. EACH AND EVERY DEBT COLLECTION AGENCY SHALL INCLUDE IN EACH INITIAL  
22 CORRESPONDENCE ON A PAST DUE DEBT TO A DEBTOR A CLEAR AND CONSPICUOUS  
23 WRITTEN STATEMENT OF AT LEAST THE FOLLOWING ITEMS, IN SUBSTANTIALLY THE  
24 FOLLOWING FORM, TO BE CLEARLY AND CONSPICUOUSLY LABELED "DEBTOR'S BILL  
25 OF RIGHTS":

26 DEBTOR'S BILL OF RIGHTS

27 AS A DEBTOR WHO OWES OR MAY OWE A CONSUMER CLAIM, YOU ARE GIVEN SOME  
28 PROTECTION AND RIGHTS BY THE NEW YORK AND FEDERAL LAWS REGULATING DEBT  
29 COLLECTION PROCEDURES. YOU SHOULD BE AWARE OF YOUR RIGHTS AND NOT  
30 PERMIT YOUR RIGHTS TO BE VIOLATED. SOME, NOT ALL, OF THE MORE IMPORTANT  
31 PROTECTIONS ARE HIGHLIGHTED BELOW.

32 1. A DEBT COLLECTOR MAY CONTACT YOU OR ANY MEMBER OF YOUR FAMILY OR  
33 HOUSEHOLD DIRECTLY. HOWEVER, THEY MAY NOT CONTACT YOU WITH SUCH FREQUEN-  
34 CY, AT UNUSUAL HOURS, OR IN A MANNER THAT CAN BE EXPECTED TO ABUSE OR  
35 HARASS YOU. THEY ALSO CANNOT THREATEN ACTION WHICH THEY DO NOT TAKE IN  
36 THE USUAL COURSE OF BUSINESS.

37 2. A DEBT COLLECTOR MAY NOT THREATEN TO CONTACT YOUR EMPLOYER REGARD-  
38 ING A DEBT PRIOR TO OBTAINING A FINAL JUDGMENT AGAINST YOU. HOWEVER, A  
39 DEBT COLLECTOR MAY CONTACT YOUR EMPLOYER TO EXECUTE A WAGE ASSIGNMENT  
40 AGREEMENT IF YOU, THE DEBTOR, HAVE AGREED TO THE ASSIGNMENT.

41 3. A DEBT COLLECTOR CANNOT USE A COMMUNICATION WHICH APPEARS TO BE  
42 AUTHORIZED, ISSUED, OR APPROVED BY A GOVERNMENT AGENCY OR ATTORNEY WHEN  
43 IT IS NOT.

44 4. A DEBT COLLECTOR CANNOT DISCLOSE OR THREATEN TO DISCLOSE INFORMA-  
45 TION AFFECTING YOUR REPUTATION FOR CREDITWORTHINESS IF THE COLLECTOR  
46 KNOWS OR HAS REASON TO KNOW THE INFORMATION IS FALSE. A DEBT COLLECTOR  
47 ALSO CANNOT ATTEMPT OR THREATEN TO ENFORCE A RIGHT WHEN IT KNOWS OR HAS  
48 REASON TO KNOW THE RIGHT DOES NOT EXIST.

49 FOR MORE INFORMATION ABOUT YOUR RIGHTS UNDER STATE AND FEDERAL DEBT  
50 COLLECTION PROCEDURES LAW, CONTACT THE NEW YORK STATE CONSUMER  
51 PROTECTION BOARD AT (INSERT THE CURRENT TELEPHONE NUMBER ESTABLISHED BY  
52 THE STATE CONSUMER PROTECTION BOARD FOR RECEIVING INQUIRIES FROM CONSUM-  
53 ERS) OR (INSERT THE CURRENT ADDRESS OF THE WEBSITE OR WEBPAGE CREATED  
54 PURSUANT TO PARAGRAPH L OF SUBDIVISION THREE OF SECTION FIVE HUNDRED  
55 FIFTY-THREE OF THE EXECUTIVE LAW). YOU MAY ALSO CONTACT THE NEW YORK  
56 STATE ATTORNEY GENERAL AT (INSERT THE CURRENT TELEPHONE NUMBER ESTAB-

1 LISHED BY THE DEPARTMENT OF LAW FOR RECEIVING INQUIRIES FROM CONSUMERS)  
2 OR (INSERT THE CURRENT ADDRESS OF THE WEBSITE OF THE DEPARTMENT OF LAW).  
3 THE NOTICE REQUIRED BY THIS SUBDIVISION SHALL BE PRINTED OR WRITTEN IN  
4 AT LEAST TEN POINT BOLD TYPE.

5 S 2. Subdivision 1 of section 602 of the general business law, as  
6 added by chapter 753 of the laws of 1973, is amended to read as follows:

7 1. Except as otherwise provided by law, any person who [shall violate]  
8 VIOLATES the terms OF SECTION SIX HUNDRED ONE of this article [shall be]  
9 IS guilty of a misdemeanor, and each such violation shall be deemed a  
10 separate offense. A VIOLATION BY ANY PERSON OF SECTION SIX HUNDRED ONE-A  
11 OF THIS ARTICLE, IF SUCH VIOLATION CONSTITUTES THE FIRST SUCH OFFENSE BY  
12 SUCH PERSON, IS PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED TWO HUNDRED  
13 FIFTY DOLLARS. THE SECOND OFFENSE AND ANY OFFENSE COMMITTED THEREAFTER  
14 ARE PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS.

15 S 3. Subdivision 3 of section 553 of the executive law is amended by  
16 adding a new paragraph 1 to read as follows:

17 L. ESTABLISH A WEBSITE OR WEBPAGE THAT INCLUDES, BUT IS NOT LIMITED  
18 TO, INFORMATION REGARDING THE PROTECTION AND RIGHTS AFFORDED TO CONSUM-  
19 ERS UNDER STATE AND FEDERAL LAWS REGULATING DEBT COLLECTION PROCEDURES,  
20 A SAMPLE INITIAL DEBT COLLECTION DISPUTE LETTER, A SAMPLE DEBT  
21 COLLECTION CEASE AND DESIST LETTER, AND THE CURRENT CONTACT INFORMATION  
22 FOR THE ATTORNEY GENERAL AND THE FEDERAL TRADE COMMISSION.

23 S 4. This act shall take effect on the first of January next succeed-  
24 ing the date on which it shall have become a law.