

4530--A

Cal. No. 915

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sens. SALAND, FARLEY, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules and the general business law, in relation to prohibited debt collection practices

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

1 Section 1. Subparagraph (i) of paragraph 3 of subdivision (a) of rule
2 5224 of the civil practice law and rules, as amended by chapter 452 of
3 the laws of 2006, the opening paragraph as amended by chapter 552 of the
4 laws of 2006, is amended to read as follows:
5 (i) information subpoenas, served on an individual or entity other
6 than the judgment debtor, may be served on an individual, corporation,
7 partnership or sole proprietorship only if the judgment creditor or the
8 judgment creditor's attorney has a reasonable belief that the party
9 receiving the subpoena has in their possession information about the
10 debtor that will assist the creditor in collecting his or her judgment.
11 Any information subpoena served pursuant to this subparagraph shall
12 contain a certification signed by the judgment creditor or his or her
13 attorney stating the following: I HEREBY CERTIFY THAT THIS INFORMATION
14 SUBPOENA COMPLIES WITH RULE 5224 OF THE CIVIL PRACTICE LAW AND RULES AND
15 SECTION 601 OF THE GENERAL BUSINESS LAW THAT I HAVE A REASONABLE BELIEF
16 THAT THE PARTY RECEIVING THIS SUBPOENA HAS IN THEIR POSSESSION INFORMA-
17 TION ABOUT THE DEBTOR THAT WILL ASSIST THE CREDITOR IN COLLECTING THE
18 JUDGMENT. By signing the certification, the judgment creditor or attor-
19 ney certifies that, to the best of that person's knowledge, information
20 and belief, formed after an inquiry reasonable under the circumstances,
21 that the individual or entity receiving the subpoena has relevant infor-
22 mation about the debtor.

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

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1 S 2. Subdivision 9 of section 601 of the general business law, as
2 added by chapter 753 of the laws of 1973, is amended and a new subdivi-
3 sion 10 is added to read as follows:

4 9. Use a communication which simulates in any manner legal or judicial
5 process or which gives the appearance of being authorized, issued or
6 approved by a government, governmental agency, or attorney at law when
7 it is not[.]; OR

8 10. IF SUCH PRINCIPAL CREDITOR SENDS MORE THAN FIFTY INFORMATION
9 SUBPOENAS PER MONTH, FAIL TO KEEP COMPLETE RECORDS CONCERNING ALL INFOR-
10 MATION SUBPOENAS SENT. SUCH RECORDS SHALL BE MAINTAINED FOR FIVE YEARS.
11 CONTEMPORANEOUS RECORDS SHALL BE KEPT THAT SET FORTH WITH SPECIFICITY
12 THE GROUNDS FOR THE PRINCIPAL CREDITOR'S REASONABLE BELIEF, WHICH MUST
13 BE CERTIFIED AND ACCOMPANY EACH INFORMATION SUBPOENA PURSUANT TO RULE
14 FIFTY-TWO HUNDRED TWENTY-FOUR OF THE CIVIL PRACTICE LAW AND RULES, THAT
15 THE PARTY RECEIVING THE SUBPOENA HAS IN ITS POSSESSION INFORMATION ABOUT
16 THE DEBTOR THAT WILL ASSIST THE CREDITOR IN COLLECTING HIS OR HER JUDGE-
17 MENT. IN ADDITION TO ANY OTHER PENALTY THAT MY BE IMPOSED, FAILURE TO
18 MAINTAIN RECORDS IN ACCORDANCE WITH THIS SUBDIVISION SHALL SUBJECT SUCH
19 A PRINCIPAL CREDITOR TO A CIVIL PENALTY OF NOT MORE THAN FIFTY DOLLARS
20 PER SUBPOENA, UP TO A MAXIMUM OF FIVE THOUSAND DOLLARS PER VIOLATION, IN
21 AN ACTION BROUGHT BY THE ATTORNEY GENERAL.

22 S 3. Section 602 of the general business law is amended by adding a
23 new subdivision 3 to read as follows:

24 3. ANY AGGRIEVED PERSON OR ENTITY SERVED WITH MORE THAN FIFTY INFORMA-
25 TION SUBPOENAS PER MONTH BY A PRINCIPAL CREDITOR OR HIS OR HER AGENT
26 SHALL ALSO HAVE A CAUSE OF ACTION TO CHALLENGE COMPLIANCE WITH SUBDIVI-
27 SION TEN OF SECTION SIX HUNDRED ONE OF THIS ARTICLE AND/OR THE CERTIF-
28 ICATION REQUIREMENTS OF RULE FIFTY-TWO HUNDRED TWENTY-FOUR OF THE CIVIL
29 PRACTICE LAW AND RULES. IN SUCH ACTION, A SUCCESSFUL PLAINTIFF SHALL BE
30 AWARDED TEN DOLLARS FOR EACH INFORMATION SUBPOENA SERVED UPON SUCH
31 PLAINTIFF WHERE IT IS SHOWN THAT THE REQUIRED CERTIFICATION FOR SUCH
32 INFORMATION SUBPOENA WAS NOT MADE PURSUANT TO RULE FIFTY-TWO HUNDRED
33 TWENTY-FOUR OF THE CIVIL PRACTICE LAW AND RULES, THAT THE REQUIRED
34 RECORD FOR SUCH INFORMATION SUBPOENA WAS NOT MAINTAINED PURSUANT TO
35 SUBDIVISION TEN OF SECTION SIX HUNDRED ONE OF THIS ARTICLE, OR THAT THE
36 SPECIFIC GROUNDS FOR THE CERTIFICATION REQUIRED TO ACCOMPANY SUCH INFOR-
37 MATION SUBPOENA PURSUANT TO RULE FIFTY-TWO HUNDRED TWENTY-FOUR OF THE
38 CIVIL PRACTICE LAW AND RULES WERE NOT REASONABLE. A SUCCESSFUL PLAINTIFF
39 MAY ALSO BE AWARDED COURT COSTS AND ATTORNEY FEES.

40 S 4. This act shall take effect on the thirtieth day after it shall
41 have become a law and shall apply to information subpoenas served on or
42 after such date.