S T A T E O F N E W Y O R K

707

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. SAVINO -- 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, in relation to prohibiting debt collectors from collecting or attempting to collect a debt owed by a deceased debtor that is known to be deceased

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

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

S 601-A. PROHIBITED PRACTICES REGARDING DECEASED DEBTORS. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "DEBT" MEANS ANY OBLIGATION OR ALLEGED OBLIGATION OF A CONSUMER TO PAY MONEY ARISING OUT OF A TRANSACTION IN WHICH THE MONEY, PROPERTY, INSURANCE, OR SERVICES WHICH ARE THE SUBJECT OF THE TRANSACTION ARE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, WHETHER OR NOT SUCH OBLIGATION HAS BEEN REDUCED TO JUDGMENT; AND

(B) "DEBT COLLECTOR" MEANS AN INDIVIDUAL WHO, AS PART OF HIS OR HER JOB, REGULARLY COLLECTS OR ATTEMPTS TO COLLECT DEBTS: (I) OWED OR DUE OR ASSERTED TO BE OWED OR DUE TO ANOTHER; OR (II) OBTAINED BY, OR ASSIGNED TO, SUCH PERSON, FIRM OR CORPORATION, THAT ARE IN DEFAULT WHEN OBTAINED OR ACQUIRED BY SUCH PERSON, FIRM OR CORPORATION.

2. ANY PRINCIPAL CREDITOR OR DEBT COLLECTOR COMMUNICATING WITH ANY PERSON FOR THE PURPOSE OF ATTEMPTING TO COLLECT A DEBT INCURRED BY A DECEASED DEBTOR THAT SUCH PERSON IS NOT LEGALLY REQUIRED TO PAY, SHALL DISCLOSE TO SUCH PERSON THAT HE OR SHE IS NOT LEGALLY REQUIRED TO PAY SUCH DEBT. IN ADDITION, SUCH PRINCIPAL CREDITOR OR DEBT COLLECTOR SHALL NOT MAKE ANY MISREPRESENTATION ABOUT SUCH PERSON'S OBLIGATION TO PAY SUCH DEBT.

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

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3. (A) IN ADDITION TO ANY RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT TO THIS ARTICLE, ANY PERSON AGGRIEVED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE THE FOREGOING LIABILITY, THE COURT MAY AWARD THE COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTORNEY'S FEES. EACH COMMUNICATION THAT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION.

(B) ANY CONSUMER ENTITLED TO BRING AN ACTION UNDER THIS SUBDIVISION MAY, IF THE UNLAWFUL ACT OR PRACTICE HAS CAUSED DAMAGE TO OTHER CONSUMERS SIMILARLY SITUATED, BRING AN ACTION ON BEHALF OF HIMSELF AND SUCH OTHER CONSUMERS TO RECOVER DAMAGES OR OBTAIN OTHER RELIEF AS PROVIDED FOR IN THIS SUBDIVISION. ANY ACTION BROUGHT UNDER THIS SUBDIVISION SHALL COMPLY WITH ARTICLE NINE OF THE CIVIL PRACTICE LAW AND RULES.

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

1. Except as otherwise provided by law, any person who [shall violate] WILLFULLY VIOLATES the terms of this article [shall be], EXCEPT THE TERMS CONTAINED IN SECTION SIX HUNDRED ONE-A OF THIS ARTICLE, IS guilty of a misdemeanor, and each such violation shall be deemed a separate offense.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.