

STATE OF NEW YORK

429

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

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, in relation to regulation of debt collection; and to repeal article 29-H of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 29-H of the general business law is REPEALED and a new article 29-H is added to read as follows:

ARTICLE 29-H

FAIR DEBT COLLECTION PRACTICES ACT

Section 600. Definitions.

601. Prohibited practices.

602. Creditors and debt collectors.

603. Enforcement.

603-a. Separability clause.

§ 600. Definitions. As used in this article unless the context requires otherwise the following terms shall have the following meanings:

1. "Person" means any natural person, corporation, sole proprietorship, business, trust, partnership, incorporated or unincorporated association, estate, co-operative or any other legal entity except any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt constitutes the performance of official duties.

2. "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 result of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

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

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1 3. "Consumer" means any natural person obligated or allegedly obli-
2 gated to pay any debt.

3 4. "Debt collector" means any person, firm, corporation or organiza-
4 tion or any employee thereof engaged in any business a purpose of which
5 is the collection of debts, or who regularly collects or attempts to
6 collect, directly or indirectly, debts owed or due or alleged to be owed
7 or due another, or any person, firm, corporation or organization or any
8 employee thereof engaged in any business a purpose of which is locating
9 or attempting to locate consumers.

10 5. "Creditor" means any person, firm, corporation or organization or
11 any employee thereof to whom a debt is owed, due or alleged to be owed
12 or due, or any assignee for value of said person, firm, corporation or
13 organization.

14 6. "Debt collection" means any action, conduct or practice in
15 connection with the collection of a debt.

16 7. "Location information" means a debtor's place of abode and his
17 listed telephone number at such place, or his place of employment.

18 8. "Verification" means a contract, receipt, order, writing or
19 documentation which evidences the existence of a debt.

20 9. "Communication" means the conveying of information regarding a debt
21 directly or indirectly to any person through any medium.

22 § 601. Prohibited practices. 1. No debt collector or creditor shall
23 collect or attempt to collect any debt by means of any threat, coercion
24 or attempted coercion. This includes but is not limited to the following
25 activities:

26 a. Using or threatening to use violence or any illegal means to cause
27 harm to the person, reputation or property of any person; or

28 b. Accusing or threatening to accuse falsely any person of fraud or
29 any crime, or any conduct which can reasonably be expected to disgrace
30 such other person or in any way subject him or her to ridicule or
31 contempt of society; or

32 c. Making or threatening to make any false accusations to another
33 person, including any credit reporting agency, that a consumer has not
34 paid a just debt; or

35 d. Threatening to sell or assign a debt with an attending represen-
36 tation or implication that as a result of such sale or assignment the
37 consumer would be subjected to any action which could constitute a
38 violation of this article; or

39 e. Threatening the non-payment of a debt will result in the arrest or
40 criminal prosecution of any person; or

41 f. Disclosing or threatening to disclose information affecting the
42 consumer's reputation for credit worthiness with knowledge or reason to
43 know that such information is false; or

44 g. Threatening any action which the debt collector or creditor in the
45 usual course of its business does not in fact take; or

46 h. Claiming, attempting or threatening to enforce a right with know-
47 ledge or reason to know that the right does not exist.

48 2. No debt collector or creditor shall oppress, harass or abuse any
49 person in connection with the collection of or the attempt to collect a
50 debt. This includes but is not limited to the following activities:

51 a. Using any obscene or profane language or any language which can
52 reasonably be expected to abuse the hearer or reader; or

53 b. Making telephone calls without the meaningful disclosure of the
54 debt collector's identity except as otherwise provided by this article;
55 or

1 c. Causing any expense to any person for telephone calls, telegrams or
2 other charges incurred through a medium of communication by concealment
3 of the identity of the debt collector or creditor or the purposes of the
4 communication; or

5 d. Causing a telephone to ring repeatedly or continuously in a manner
6 that can reasonably be expected to annoy, harass or needlessly disturb
7 any person; or

8 e. Communicating with any person with such frequency or in such a
9 manner as can reasonably be expected to constitute an annoyance or an
10 unwarranted disturbance of such person; or

11 f. Communicating or attempting to communicate with any person at any
12 unusual time or place, or at any time or place which can reasonably be
13 expected to be inconvenient for such person. In the absence of an indi-
14 cation to the contrary, it shall be presumed that telephone communi-
15 cations received before eight o'clock A.M. and after nine o'clock P.M.
16 are inconvenient.

17 3. No debt collector or creditor shall unlawfully publicize informa-
18 tion relating to any alleged debt or consumer. This includes but is not
19 limited to the following activities:

20 a. Communicating with the consumer's employer or anyone else employed
21 by that employer regarding the debt with the exception that the follow-
22 ing communication shall be permissible:

23 (i) by the creditor or his or her attorney when the communication is
24 for the sole purpose of executing a wage garnishment after the debt has
25 been reduced to judgment and to the extent it is reasonably necessary to
26 actually execute such wage garnishment;

27 (ii) by the creditor or his or her attorney when the communication is
28 for the sole purpose of executing a wage assignment obtained pursuant to
29 article three-A of the personal property law and to the extent it is
30 reasonably necessary to execute such wage assignment;

31 (iii) for the sole purpose of obtaining location information as
32 defined by subdivision six of this section; and

33 (iv) where the consumer or his or her attorney has consented to such
34 communication in writing after the debt has been incurred;

35 b. Disclosing any information regarding a consumer's debt by publish-
36 ing or posting any list of consumers except as permitted by the act of
37 Congress known as the "Fair Credit Reporting Act" or by advertising for
38 sale any claim to enforce payment thereof or in any other manner other
39 than through proper legal process;

40 c. Communicating for the purpose of debt collection with a consumer by
41 postcard; or

42 d. Use of any language or symbol by a debt collector, other than his
43 or her address, on any envelope when communicating with any person for
44 the purpose of debt collection by use of the mails or by telegram except
45 that he may use his business name if such name does not specify that he
46 or she is in the debt collection business.

47 4. No debt collector or creditor shall collect or attempt to collect a
48 debt or obtain or attempt to obtain information concerning a consumer by
49 any fraudulent, deceptive, false, or misleading representation or means.
50 This includes but is not limited to the following activities:

51 a. The use, by any debt collector, creditor or any employee of any
52 debt collector or creditor in any communication for the purpose of debt
53 collection of any name that is not such person's actual name; provided
54 that such person may use a name other than his or her actual name if he
55 or she uses the same name in all communications for the purpose of debt
56 collection and if such person or his or her employer has that name on

1 file so that the true identity of the debt collector can be ascertained;
2 or

3 b. Except as otherwise provided by subdivision six of this section to
4 obtain location information, failing to disclose in all written communi-
5 cations that the debt collector is attempting to collect a debt and that
6 any information obtained will be used for that purpose; or

7 c. Falsely representing that the debt collector or creditor has in his
8 or her possession information or something of value for the consumer; or

9 d. Failing to disclose the name of the person to whom the debt is owed
10 at the time of making any demand for money; or

11 e. Falsely representing the character, extent, amount or legal status
12 of a debt; or

13 f. Falsely representing or implying that any debt collector or credi-
14 tor is vouched for, bonded by, affiliated with, or an instrumentality,
15 agent or official of any agency of the federal government or any state
16 or local government; or

17 g. Using, distributing or selling any written communication which
18 implies, simulates, or is falsely represented to be authorized, issued
19 or approved by a court, a government official, a government or an attor-
20 ney at law; or

21 h. Falsely representing that a debt or an alleged debt has been or may
22 be increased by the addition of attorney's fees, interest, collection
23 fees, or any other fees or charges; or

24 i. Falsely representing the status or true nature of the services
25 rendered or the compensation which may be lawfully received by the debt
26 collector or creditor for the collection of a debt; or

27 j. Communicating with any person in connection with debt collection or
28 in an effort to obtain information about a consumer in the name of, or
29 in a manner which can reasonably be implied to be from, an attorney at
30 law when it is not; or

31 k. Falsely representing that the debt collector or creditor is
32 employed by, or is affiliated with, a credit bureau or a credit report-
33 ing agency as defined by 15 U.S.C., § 1681a(f); or

34 l. Falsely stating, representing or implying that the sale or assign-
35 ment of a debt shall cause the consumer to lose any claim or defense to
36 payment of the debt.

37 5. No debt collector or creditor shall collect or attempt to collect
38 any debt in any of the following ways:

39 a. Collecting or attempting to collect from the consumer all or any
40 part of the debt collector's or creditor's fee or charge for services
41 rendered, or collecting or attempting to collect any interest or other
42 charge, fee or expense incidental to the principal debt, unless such
43 expense is expressly authorized by contract or law; or

44 b. Communicating for the purpose of debt collection with anyone other
45 than the consumer's attorney, except as otherwise provided by this arti-
46 cle, if the debt collector or creditor knows the consumer is represented
47 by such attorney with respect to such debt and has knowledge of or can
48 readily ascertain such attorney's name and address, unless the attorney
49 fails to respond within a reasonable time to a communication from the
50 debt collector or creditor, or the attorney consents in writing to
51 direct communication with the consumer. This subdivision shall not
52 prohibit service of process on a consumer as permitted by article three
53 of the civil practice law and rules; or

54 c. Using, distributing, selling, or preparing for use any written
55 communication that violates or fails to conform to the postal laws and
56 regulations of the United States; or

1 d. Communicating or attempting to communicate with the consumer at his
2 or her place of employment after the consumer has requested that he not
3 be contacted at his or her place of employment; or

4 e. Except as otherwise provided by subdivision six of this section,
5 communicating in connection with debt collection with any person after
6 such person has notified the debt collector or creditor in writing that
7 he or she wishes the debt collector or creditor to cease all further
8 communications with him or her or communicating with the consumer after
9 such consumer has notified the debt collector or creditor that he or she
10 refuses to pay the debt. This subdivision shall not prohibit a debt
11 collector or creditor from communicating with the consumer once, in
12 writing, to advise him or her that certain specified action will be
13 taken or to advise the consumer that further collection activity is
14 being terminated. This subdivision shall not prohibit any communications
15 required by law; or

16 f. Communication by a debt collector with a consumer by telephone or
17 in person prior to three business days after a debt collector has sent
18 its initial written communication to the consumer, which written commu-
19 nication shall comply with subdivision seven of this section.

20 6. Any debt collector or creditor communicating with any person other
21 than the consumer for the purpose of acquiring location information
22 about the consumer shall:

23 a. Identify himself or herself, state that he or she is confirming or
24 correcting location information concerning the consumer, and, only if
25 expressly requested, identify his or her employer; and

26 b. Not state that the consumer owes any debt; and

27 c. Not communicate with any such person more than once unless
28 requested to do so by such person or unless the debt collector or credi-
29 tor reasonably believes that the earlier response of such person is
30 erroneous or incomplete and that such person now has correct or complete
31 location information; and

32 d. Not use any language or symbol on any envelope or in the contents
33 of any communication effected by the mails or telegraph that indicates
34 that the sender is in the debt collection business or that the communi-
35 cation relates to the collection of a debt; and

36 e. After the debt collector or creditor knows the consumer is repres-
37 ented by an attorney with regard to the subject debt and has knowledge
38 of or can readily ascertain such attorney's name and address, not commu-
39 nicate with any person other than that attorney, unless the attorney
40 fails to respond within a reasonable time to communication from the debt
41 collector.

42 7. The initial written communication from a debt collector to a
43 consumer for the purpose of debt collection shall, unless the consumer
44 has paid the debt, include on the face of the communication:

45 a. The amount of the debt; and

46 b. The name of the creditor to whom the debt is owed if not the same
47 as the debt collector; and

48 c. A statement that unless the consumer, within thirty days after
49 receipt of the notice, disputes the validity of the debt, or any portion
50 thereof, the debt will be assumed to be valid by the debt collector; and

51 d. A statement that if the consumer notifies the debt collector in
52 writing within the thirty-day period that the debt, or any portion ther-
53 eof, is disputed, the debt collector will obtain verification of the
54 debt or a copy of a judgment against the consumer if one has in fact
55 been rendered and a copy of such verification or judgment will be mailed
56 to the consumer by the debt collector; and

1 e. A statement that, upon the consumer's written request within the
2 thirty-day period, the debt collector will mail him or her the name and
3 address of the original creditor, if different from the current credi-
4 tor; and

5 f. The authority, if any, of the debt collector to initiate a lawsuit
6 to collect the debt on behalf of the creditor.

7 8. If the consumer notifies the debt collector within the thirty-day
8 period described in subdivision seven of this section that the debt, or
9 any portion thereof, is disputed, or that the consumer requests the name
10 and address of the original creditor, the debt collector shall cease
11 collection of the debt, or any disputed portion thereof, until the debt
12 collector obtains verification of the original creditor and a copy of
13 such verification or judgment or name and address of the original credi-
14 tor is provided to the consumer by the debt collector.

15 9. The initial written communication from a creditor to a consumer in
16 connection with the collection of any debt not within the scope of 15
17 U.S.C. § 1666 (et seq.) or article thirty-four of this chapter for the
18 purpose of debt collection, shall, unless the consumer has paid the
19 debt, include:

20 a. The amount of the debt; and

21 b. The name of the original creditor if not the same as the current
22 creditor; and

23 c. A statement that if the consumer notifies the creditor within thir-
24 ty days after receipt of the notice that the debt, or any portion there-
25 of, is disputed, the creditor will provide the consumer with verifica-
26 tion of the debt or a copy of a judgment against the consumer, if one
27 has in fact been rendered.

28 10. If the consumer notifies the creditor within the thirty-day period
29 described in subdivision nine of this section that the debt, or any
30 portion thereof, is disputed the creditor shall cease debt collection
31 with respect to the debt, or any disputed portion thereof, until the
32 creditor provides the consumer verification of the debt or a copy of a
33 judgment.

34 11. The failure of a consumer to dispute the validity of a debt under
35 this section shall not be construed by any court as an admission of
36 liability by the consumer.

37 12. The initial communication from a debt collector or a creditor to a
38 consumer in connection with the collection of any debt shall include the
39 following in at least ten point type either on the face of such communi-
40 cation or on a separate piece of paper provided at the same time as such
41 communication:

42 "Your rights as a consumer debtor. The New York 'fair debt collection
43 practices act' provides protection to debtors from abusive or illegal
44 debt collection practices.

45 Some of these protections include:

46 a. Calling you before 8 o'clock A.M. or after 9 o'clock P.M. unless
47 the debt collector knows that communication at that time is convenient;

48 b. Calling you at your job if you tell the debt collector not to do
49 so;

50 c. Using abusive or harassing or deceptive methods to collect a debt;
51 and

52 d. Continuing to communicate with you after you have told the debt
53 collector in writing to stop or that you refuse to pay the debt. By
54 exercising this right, the debt will not necessarily be eliminated and
55 you may still be sued by the creditor to recover the debt.

1 If you believe that a debt collector has attempted to collect a debt
2 in an unlawful manner, contact the state attorney general's office, the
3 federal trade commission, your local consumer protection agency or a
4 private attorney. You have the right to sue a debt collector that
5 violates the law and if you are successful you can recover money damages
6 and your attorney's fees. This lawsuit can be brought in any court
7 including small claims court."

8 13. All written notices required to be provided by this article shall
9 be written in both English and Spanish where the recipient of such
10 notices resides in a city in the state with a population of one million
11 or more.

12 § 602. Creditors and debt collectors. 1. Multiple debts. If any
13 consumer owes multiple debts and makes any single payment to any debt
14 collector or creditor not within the scope of 15 U.S.C. § 1666 or arti-
15 cle thirty-four of this chapter, with respect to such debts, such debt
16 collector or creditor shall not apply such payment to any debt which is
17 disputed by the debtor if the debtor has notified the debt collector or
18 creditor of such dispute as provided by section six hundred one of this
19 article and where applicable shall apply such payment in accordance with
20 the consumer's directions.

21 2. Venue. Any creditor who brings any legal action on a debt against a
22 consumer shall do so in the county in which such consumer signed the
23 contract sued upon or in the county in which the consumer resides at the
24 commencement of the action.

25 3. Bona fide error. No person shall be guilty of a violation of para-
26 graph b or d of subdivision five or paragraph c or e of subdivision six
27 of section six hundred one of this article or subdivision one of this
28 section if the action complained of resulted from a bona fide error
29 notwithstanding the use of reasonable procedures adopted to avoid such
30 error and any evidence of such bona fide error shall only be raised as
31 an affirmative defense in any action brought to enforce this article.

32 § 603. Enforcement. 1. Attorney general enforcement. Whenever there
33 shall be a violation of this article an application may be made by the
34 attorney general in the name of the people of the state of New York to a
35 court or justice having jurisdiction to issue an injunction, and upon
36 notice to the defendant of not less than five days, to enjoin and
37 restrain the continuance of such violation; and if it shall appear to
38 the satisfaction of the court or justice that the defendant has, in
39 fact, violated this article, an injunction may be issued by such court
40 or justice, enjoining and restraining any further violation, without
41 requiring proof that any person has, in fact, been injured or damaged
42 thereby. In such action or proceeding, the attorney general may apply
43 for a civil penalty of not less than fifty dollars and not more than
44 five thousand dollars per violation, and, where appropriate, for resti-
45 tution and damages to aggrieved consumers; and the court may make allow-
46 ances to the attorney general as provided in paragraph six of subdivi-
47 sion (a) of section eighty-three hundred three of the civil practice law
48 and rules. In connection with any such proposed application, the attor-
49 ney general is authorized to take proof and make a determination of the
50 relevant facts and to issue subpoenas in accordance with the civil prac-
51 tice law and rules.

52 2. Private right of action. Any debt collector or creditor who
53 violates any provision of this article with respect to any individual
54 shall be liable in any court of competent jurisdiction, including small
55 claims court, to such individual in an amount equal to:

1 a. Such person's damages sustained as a result of such violation or
2 fifty dollars whichever is greater, for each violation; and
3 b. Such additional punitive damages as the court may allow; and
4 c. Such person's costs and attorney's fees.

5 In an action brought by any person to enforce this article, the court
6 may, subject to its jurisdiction, issue an injunction to restrain or
7 prevent any violation of this article or any continuance of any such
8 violation.

9 3. Other remedies. This article shall not annul, alter, affect or
10 exempt any person subject to the provisions of this article from comply-
11 ing with the laws, ordinances, rules or regulations of any locality or
12 other governmental body, relating to debt collection practices, except
13 to the extent that such laws, ordinances, rules or regulations are
14 inconsistent with any provision of this article, but no such law, ordi-
15 nance, rule or regulation shall be considered inconsistent, if it
16 affords greater protection to the consumer. This article shall not
17 annul, alter or affect the rights of any person against any creditor or
18 debt collector.

19 4. Limits on creditor liability for acts of debt collector. In any
20 action pursuant to the provisions of this article a creditor shall be
21 liable for the acts of a debt collector authorized to or engaged in debt
22 collection with respect to a debt owed or alleged to be owed to the
23 creditor if:

24 a. The creditor has knowledge or reason to believe that the debt
25 collector engages in those acts or practices which are in violation of
26 this article; or

27 b. The creditor has authorized the debt collector to engage in debt
28 collection with respect to the debt without taking reasonable steps to
29 ascertain that there is no reason to believe that the debt collector
30 engages in those acts or practices which are in violation of this arti-
31 cle. Reasonable steps shall include reviewing the formal written commu-
32 nications of the debt collector, and reviewing reports of consumer
33 complaints against the debt collector prepared by the Better Business
34 Bureau or other consumer protection agencies.

35 § 603-a. Separability clause. If any part or provision of this article
36 or the application thereof to any person or circumstances be adjudged
37 invalid by a court of competent jurisdiction, such judgment shall be
38 confined in its operation to the part, provision or application directly
39 involved in the controversy in which such judgment shall have been
40 rendered and shall not affect or impair the validity of the remainder of
41 this article or the application thereof to other persons or circum-
42 stances and the legislature hereby declares that it would have enacted
43 this article or the remainder thereof had the invalidity of such
44 provision or application thereof been apparent.

45 § 2. This act shall take effect on the first of September next
46 succeeding the date on which it shall have become a law.