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2021-2022 Regular Sessions

IN SENATE

January 27, 2021

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law and the civil practice law and rules, in relation to licensing consumer debt collectors

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

1 Section 1. The banking law is amended by adding a new article 7 to
2 read as follows:

ARTICLE VII

LICENSED CONSUMER DEBT COLLECTORS

Section 295. Definitions.

6 296. License required; entities exempt.

7 297. Application for license; fees.

8 298. Surety bond required.

9 299. Examination; books and records; reports.

10 300. Prohibited acts.

11 301. Regulations; minimum standards.

12 302. Application for acquisition of control of a consumer debt
13 collector.

14 303. Suspension and revocation.

15 304. Bad actors.

16 305. Penalties.

17 306. Preemption.

18 § 295. Definitions. As used in this article:

19 1. "Applicant" means a consumer debt collector who has filed an appli-
20 cation to obtain a license under this article.

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

LBD02792-05-1

1 2. "Communication" and "communicate" means the conveying of informa-
2 tion regarding a debt directly or indirectly to any person through any
3 medium.

4 3. "Consumer debt" means any obligation of a natural person for the
5 payment of money or its equivalent which arises out of a transaction
6 which was primarily for personal, family, or household purposes. The
7 term includes an obligation of a natural person who is a co-maker,
8 endorser, guarantor or surety of such a transaction.

9 4. "Consumer debtor" means any natural person who owes or is asserted
10 to owe any consumer debt.

11 5. "Consumer debt collector" means any person who engages in a busi-
12 ness, a principal purpose of which is to regularly collect or attempt to
13 collect, directly or indirectly, consumer debts: (a) owed or due or
14 asserted to be owed or due to another person; or (b) obtained by or
15 assigned to such person that are in default when obtained or acquired by
16 such person. The term includes any creditor who, in the process of
17 collecting its own consumer debts, and uses any name other than its own
18 which would reasonably indicate that a third person is collecting or
19 attempting to collect a consumer debt.

20 6. "Control" means the possession, direct or indirect, of the power to
21 direct or cause the direction of the management and policies of a
22 person, whether through the ownership of voting securities, by contract,
23 except a commercial contract for goods or non-management services, or
24 otherwise. Control shall be presumed to exist if any person directly or
25 indirectly owns, controls or holds with the power to vote ten percent or
26 more of the voting securities of any other person.

27 7. "Creditor" means any person to whom a consumer debt is owed, due or
28 asserted to be due or owed, or any assignee for value of said person.

29 8. "Licensee" means a consumer debt collector that possesses one or
30 more licenses pursuant to this article.

31 9. "Person" means a natural person or any entity, including but not
32 limited to any partnership, corporation, limited liability company,
33 branch, agency, association, organization, any similar entity or any
34 combination of the foregoing acting in concert.

35 § 296. License required; entities exempt. 1. No person shall act with-
36 in this state as a consumer debt collector, directly or indirectly,
37 without first obtaining a license from the superintendent. A consumer
38 debt collector is acting within this state if it is physically located
39 in New York or if it is seeking to collect from any consumer debtor that
40 resides within this state.

41 2. No creditor, or the state or municipality of the state, may utilize
42 the services of a consumer debt collector to collect from a consumer
43 debtor that resides within this state unless the consumer debt collector
44 is licensed by the superintendent.

45 3. No person shall accept payments from consumer debtors on behalf of
46 a consumer debt collector acting within this state unless such consumer
47 debt collector is licensed by the superintendent.

48 4. The requirements of subdivisions one, two and three of this section
49 shall not apply to:

50 (a) any officer or employee of a licensed consumer debt collector when
51 attempting to collect on behalf of such consumer debt collector;

52 (b) any officer or employee of a creditor while in the name of the
53 creditor collecting debts for such creditor;

54 (c) any public officer acting in their official capacity;

55 (d) a person who is principally engaged in the business of servicing
56 loans or accounts which are not delinquent for the owners thereof when

1 in addition to requesting payment from delinquent consumer debtors, the
2 person provides other services including receipt of payment, accounting,
3 record-keeping, data processing services and remitting, for loans or
4 accounts which are current as well as those which are delinquent;

5 (e) any person while serving or making a bona fide attempt to serve
6 legal process on any other person in connection with the judicial
7 enforcement of any debt;

8 (f) any non-profit organization which, at the request of a consumer
9 debtor, performs bona fide consumer credit counseling and assists
10 customers in the liquidation of their debts by receiving payments from
11 such consumer debtors and distributing such amounts to creditors;

12 (g) any national bank, federal reserve bank, or agency or division of
13 the federal government, or any insurer doing business under a license
14 issued under the insurance law;

15 (h) a subsidiary or affiliate of any national bank, federal reserve
16 bank, or agency or division of the federal government, or any insurer
17 doing business under a license issued under the insurance law, provided
18 such affiliate or subsidiary is not primarily engaged in the business of
19 purchasing and collecting upon delinquent debt, other than delinquent
20 debt secured by real property;

21 (i) any person engaged in business, the principal purpose of which is
22 to regularly collect or attempt to collect debts owed or due or asserted
23 to be owed or due to another person where the debt is enforced for
24 child support, spousal support, maintenance or alimony, provided, howev-
25 er, that if such person also regularly collects or attempts to collect
26 debts other than those enforced for child support, spousal support,
27 maintenance or alimony, such person must comply with the requirements of
28 this article;

29 (j) any person while acting as a consumer debt collector for another
30 person, both of whom are related by common ownership or affiliated by
31 corporate control, if the person acting as a consumer debt collector
32 does so only for persons to whom it is so related or affiliated and if
33 the principal business of such person is not the collection of debts;

34 (k) any attorney-at-law or law firm collecting a debt in such capacity
35 on behalf of and in the name of a client solely through activities that
36 may only be performed by a licensed attorney, but not any attorney-at-
37 law or law firm or part thereof who regularly engages in activities
38 traditionally performed by debt collectors, including, but not limited
39 to, contacting a debtor through the mail or via telephone with the
40 purpose of collecting a debt or other activities as determined by rule
41 of the superintendent;

42 (l) any person employed by a utility regulated under the provisions of
43 the public service law, acting for such utility;

44 (m) any person collecting or attempting to collect any debt owed or
45 due or asserted to be owed or due another to the extent such activity:
46 (i) is incidental to a bona fide fiduciary obligation or a bona fide
47 escrow agreement; (ii) concerns a debt which was originated by such
48 person; or (iii) concerns a debt which was not in default at the time it
49 was obtained by such person as a secured party in a commercial credit
50 transaction involving the creditor; and

51 (n) any officer or employee of the United States, any state thereof or
52 any political subdivision of any state to the extent that collecting or
53 attempting to collect any debt owed is in the performance of his or her
54 official duties.

55 § 297. Application for license; fees. 1. (a) An application for a
56 license under this article shall be in writing, under oath, and in the

1 form prescribed by the superintendent and shall contain such information
2 as the superintendent may require. In addition to any other information
3 required, the superintendent shall require the following information,
4 and shall, as appropriate, require such information not only of the
5 applicant but also of any of its principals, partners, officers and
6 directors, or any person or entity controlling an interest greater than
7 ten percent:

- 8 (i) the name and residence address of the applicant;
9 (ii) the business name, if other than the applicant;
10 (iii) the place, including the city, town or village, with the street
11 and number, where the business is to be located;
12 (iv) the business telephone of the applicant;
13 (v) the length of time that the applicant has been a consumer debt
14 collector;
15 (vi) a statement indicating whether the applicant has:
16 (A) been convicted of any crime or is a debtor on any unpaid civil
17 judgment relating to work as a consumer debt collector; and
18 (B) at any time in the past been issued a license pursuant to this
19 article, or has been issued a license for debt collection activities by
20 any other state or local authority, and if so, whether such license was
21 ever revoked or suspended;
22 (vii) a detailed description of the business practices or methods
23 used, or intended to be used, by the applicant to confirm the validity
24 of the debts it seeks to collect from consumers;
25 (viii) a summary of the applicant's record-keeping policy, including,
26 but not limited to:
27 (A) the length of time the applicant maintains, or intends to main-
28 tain, records pertaining to consumers; and
29 (B) the manner in which the applicant records and stores, or intends
30 to record and store: consumer challenges to the validity of debt; bill-
31 ing errors; payments made by a consumer; settlement agreements; infor-
32 mation regarding parties responsible for debt; any statements made by a
33 consumer alleging that the debt arose from identity theft; and any
34 statements made by a consumer stating that the consumer received statu-
35 torily exempt income as defined in section fifty-two hundred twenty-two
36 of the civil practice law and rules;
37 (ix) whether the applicant regularly sells, or intends to sell, debts.
38 If the applicant sells, or intends to sell debts, such applicant shall
39 be required to provide the secretary with a summary of the applicant's
40 policy with respect to the information regarding a consumer's account
41 that it transmits, or will transmit, to the purchaser of a debt; and
42 (x) a sworn statement by the applicant that the information set forth
43 in the application is current and accurate.

44 (b) The superintendent may reject an application for a license or an
45 application for the renewal of a license if he or she is not satisfied
46 that the financial responsibility, character, reputation, integrity and
47 general fitness of the applicant and of the owners, partners or members
48 thereof, if the applicant be a partnership or association, and of the
49 officers and directors, if the applicant be a corporation, are such as
50 to command the confidence of the public and to warrant the belief that
51 the business for which the application for a license is filed will be
52 operated lawfully, honestly and fairly.

53 2. At the time of making the application for a license, the applicant
54 shall pay to the superintendent a fee as prescribed pursuant to section
55 eighteen-a of this chapter for each proposed location, for investigating
56 the application.

1 3. In addition to any other fee imposed on an applicant or licensee,
2 every licensee shall pay to the superintendent the sums provided to be
3 paid under the provisions of section two hundred six of the financial
4 services law.

5 4. The license shall be for a period of two years as of the first of
6 January each year, or such other date as determined by the superinten-
7 dent by regulation.

8 5. Each license shall plainly state the name of the licensee and the
9 city or town with the name of the street and number, if any, of the
10 place where the business is to be carried on. A licensee shall not
11 change the location where the business of the licensee is to be carried
12 on without first providing written notice to the superintendent. The
13 relocation notice shall be in writing setting forth the reason for the
14 relocation, and shall be accompanied by a relocation investigation fee
15 to be determined pursuant to section eighteen-a of this chapter.

16 6. The business shall at all times be conducted in the name of the
17 licensee as it appears on the license and in no other name, including a
18 shortened or abbreviated version thereof.

19 7. The license shall not be transferable nor assignable.

20 8. The superintendent may participate in a multi-state licensing
21 system for the sharing of regulatory information and for the licensing
22 and application, by electronic or other means, of entities engaged in
23 the business of debt collection. The superintendent may establish
24 requirements for participation by an applicant in a multi-state licens-
25 ing system which may vary from the provisions of this section. The
26 superintendent may require a background investigation of each applicant
27 for a consumer debt collector license by means of fingerprint, which
28 shall be submitted by all applicants simultaneously with an application
29 and which the superintendent may submit to the division of criminal
30 justice services and the federal bureau of investigations for state and
31 national criminal history record checks. If the applicant is a partner-
32 ship, association, corporation or other form of business organization,
33 the superintendent may require a background investigation for each
34 member or shareholder holding more than five percent ownership, board
35 director and principal officer of the applicant and any individual
36 acting as a manager of an office location. The applicant shall pay
37 directly to the multi-state licensing system any additional fees relat-
38 ing to participation in the multi-state licensing system.

39 9. The superintendent shall issue each consumer debt collector a
40 unique license number.

41 10. The department shall maintain and publish a registry of all
42 licensed debt collection agencies, which shall list and identify, all
43 licensed debt collection agencies doing business in this state. The
44 department shall make the registry available on its website.

45 11. Each consumer debt collector engaged in collecting debts shall
46 communicate his or her license number upon the request of any interested
47 party. Any advertisement, letterhead, receipt or other printed matter
48 of a licensee must contain the license number assigned to the licensee
49 by the department. Such license number shall be clearly and conspicu-
50 ously displayed.

51 12. No person shall: (a) present, or attempt to present, as his, her
52 or its own, the license number of another;

53 (b) knowingly give false evidence of a material nature to the depart-
54 ment for the purpose of procuring a license;

55 (c) falsely represent themselves to be a licensed consumer debt
56 collector;

1 (d) use or attempt to use a license which has expired;
2 (e) offer to perform or perform any collection of debts without having
3 a current license as is required under this article; or
4 (f) represent in any manner that his, her or its license constitutes
5 an endorsement of the quality of workmanship or competency of the
6 consumer debt collector.

7 § 298. Surety bond required. 1. (a) A consumer debt collector shall be
8 required to file and maintain in force a surety bond, issued by a domes-
9 tic insurer, as a condition precedent to the issuance or renewal and
10 maintenance of a license under this article.

11 (b) The bond shall be for the benefit of creditors who obtain a judg-
12 ment from a court of competent jurisdiction based on the failure of the
13 consumer debt collector to remit money collected on account and owed to
14 the creditor. The bond shall also be for the benefit of consumer
15 debtors or the attorney general seeking restitution for consumer debtors
16 when such consumer debtor or the attorney general obtains judgment from
17 a court of competent jurisdiction based on a violation by the consumer
18 debt collector of the federal Fair Debt Collection Practice Act or any
19 other New York law or federal law which is applicable to the consumer
20 debt collector.

21 (c) The bond shall be in a form prescribed by the superintendent in a
22 sum based on the gross profit reported to the Internal Revenue Service
23 for the previous year by such consumer debt collector as follows:

24 (i) ten thousand dollars for consumer debt collectors that reported a
25 gross profit of less than two hundred fifty thousand dollars;

26 (ii) twenty-five thousand dollars for consumer debt collectors that
27 reported a gross profit of two hundred fifty thousand dollars or more;

28 (iii) fifty thousand dollars for consumer debt collectors that
29 reported a gross profit of five hundred thousand dollars or more;

30 (iv) seventy-five thousand dollars for consumer debt collectors that
31 reported a gross profit of seven hundred fifty thousand dollars or more;

32 (v) one hundred thousand dollars for consumer debt collectors that
33 reported a gross profit of one million dollars or more.

34 (d) The bond shall be continuous in form and run concurrently with the
35 original and each renewal license period unless terminated by the insur-
36 ance company. An insurance company may terminate a bond and avoid
37 further liability by filing a notice of termination with the department
38 sixty days prior to the termination and at the same time sending the
39 same notice to the consumer debt collector.

40 2. A license shall be automatically cancelled on the termination date
41 of the bond unless a new bond is filed with the department to become
42 effective at the termination date of the prior bond.

43 3. If a license has been cancelled under this section, the consumer
44 debt collector must file a new application to obtain a license and will
45 be considered a new applicant if it obtains a new bond.

46 4. For the purposes of this section the term "domestic insurer" shall
47 have the same meaning as given in section one hundred seven of the
48 insurance law. If a bond required by this section is not reasonably
49 available from a domestic insurer the superintendent may, in his or her
50 discretion, permit, on a case by case basis or by order, consumer debt
51 collectors to obtain the bond required by this section from such other
52 entities licensed by the department as the superintendent deems appro-
53 priate.

54 § 299. Examination; books and records; reports. 1. For the purpose of
55 enforcing the provisions of this article and for ensuring the safe and
56 sound operation of the consumer debt collector business, the superinten-

1 dent may at any time, and as often as may be determined, either
2 personally or by a person duly appointed by the superintendent, investi-
3 gate the loans, business, business practices, and business methods of
4 any consumer debt collector, and examine the books, accounts, records,
5 and files used therein of every licensee.

6 2. The superintendent and duly designated representatives and law
7 enforcement officials whose presence is requested by the superintendent
8 shall have free access to the offices and place of business, books,
9 accounts, papers, records, audio recordings, files, safes and vaults of
10 all such licensees wherever located. The superintendent shall have
11 authority to require the attendance of and to examine under oath all
12 persons whomsoever whose testimony may be required relative to such
13 consumer debts, including the purchase, sale and collection thereof, as
14 well as payment processing on such consumer debts, and related business.

15 3. The superintendent may also address to a licensee, or the officers,
16 employees or agents thereof, any inquiry in relation to its trans-
17 actions, operations, or conditions, or any matter connected therewith.
18 Every person so addressed shall reply in writing to such inquiry prompt-
19 ly and truthfully, and such reply shall be, if required by the super-
20 intendent, subscribed by such individual, or by such officer or officers
21 of a corporation, as the superintendent shall designate, and affirmed by
22 them as true under the penalties of perjury.

23 4. Each licensee shall keep and use in its business such books,
24 accounts, and records as will enable the superintendent to determine
25 whether such licensee is complying with the provisions of this article
26 and with the rules and regulations promulgated hereunder. Every licen-
27 see shall keep recordings of consumer collection calls and make such
28 recordings available to the superintendent upon request. Every licensee
29 shall preserve such books, accounts, and records, for at least five
30 years after making the final entry regarding a consumer debt. Preserva-
31 tion of photographic reproduction thereof or records in photographic
32 form, including an optical disk storage system and the use of electronic
33 data processing equipment that provides comparable records to those
34 otherwise required and which are available for examination upon request
35 shall constitute compliance with the requirements of this section.

36 5. Each licensee shall annually, on or before April first, file a
37 report with the superintendent giving such information as the super-
38 intendent may require concerning the business and operations during the
39 preceding calendar year of each licensed place of business conducted by
40 such licensee within the state under authority of this article. Such
41 report shall be subscribed and affirmed as true by the licensee under
42 the penalties of perjury and shall be in the form prescribed by the
43 superintendent.

44 6. In addition to annual reports, the superintendent may require such
45 additional regular or special reports as may be deemed necessary to the
46 proper supervision of licensees under this article. Such additional
47 reports shall be in the form prescribed by the superintendent and shall
48 be subscribed and affirmed as true under the penalties of perjury.

49 7. The expenses of every examination of the affairs of a consumer debt
50 collector subject to this section shall be borne and paid by the licen-
51 see.

52 § 300. Prohibited acts. 1. No consumer debt collector that is required
53 to be licensed under this article shall engage in unfair, unconsciona-
54 ble, deceptive, false, misleading, abusive, or unlawful acts or prac-
55 tices.

2. Without limiting the general application of the prohibited acts in subdivision one of this section, it shall be unlawful for any consumer debt collector to:

(a) engage in any act or practice which would be a violation of the federal Fair Debt Collection Practices Act, any other New York law or federal law which is applicable to the consumer debt collector, or any act or practice which would be prohibited under section six hundred one of the general business law if the consumer debt collector was a principal creditor or his or her agent;

(b) engage or retain the services of any person who, being required to be licensed under this article, does not have a valid license issued by the department; or

(c) cause any act to be done which violates this section.

3. No consumer debt collector licensed under this article shall:

(a) without the prior written or recorded and revocable consent of the consumer debtor given directly to the debt collector or the express permission of a court of competent jurisdiction, a consumer debt collector may not communicate with a consumer debtor in connection with the collection of any debts:

(i) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer debtor. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer debtor is after eight o'clock antemeridian and before eight o'clock postmeridian, local time at the consumer debtor's location;

(ii) if the debt collector knows the consumer debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer debtor;

(iii) at the consumer debtor's place of employment;

(iv) more than two times by telephone in a seven day period unless returning a call made at the consumer debtor's request;

(v) by voicemail on to any telephone that is known or which reasonably should be known may be received by someone other than the consumer debtor; or

(vi) by means of electronic communications, including but not limited to SMS text message, messaging applications on mobile telephones, electronic mail, Facebook, and other forms of social media.

(b) communicate with a consumer debtor by postcard;

(c) continue communication with a consumer debtor after the consumer debt collector's first communication if the debt collector fails to send the consumer debtor a notice in writing within five days of that first communication, which such notice shall be promulgated by the superintendent;

(d) continue to communicate with a consumer debtor about a consumer debt that the consumer debtor disputes without providing the consumer debtor with data or documents that verify the disputed consumer debt; or

(e) utilize a service or technology that intentionally causes the telephone network to indicate to the receiver of a call that the originator of the call is a station other than the true originating station for the purpose of collecting a consumer debt.

§ 301. Regulations; minimum standards. The superintendent may promulgate rules and regulations giving effect to the provisions of this article. Such rules and regulations may include but shall not be limited to

1 the establishment of minimum standards to be observed by consumer debt
2 collectors acting within this state and further defining acts and prac-
3 tices which are unfair, unconscionable, deceptive, false, misleading,
4 abusive, or unlawful under section three hundred of this article.

5 § 302. Application for acquisition of control of a consumer debt
6 collector. 1. No person shall acquire control of a licensee under this
7 article without the prior approval of the superintendent.

8 2. Any person desirous of acquiring such control shall make written
9 application to the superintendent, such application shall be in such
10 form and shall contain such information, including the information
11 required under section two hundred ninety-seven of this article, as the
12 superintendent may require and such person, at the time of making such
13 application if not licensed, shall pay to the superintendent an investi-
14 gation fee as prescribed pursuant to section eighteen-a of this chapter.

15 3. In determining whether to approve or deny an application under this
16 section, the superintendent shall consider:

17 (a) whether the financial responsibility, experience, character, and
18 general fitness of the person seeking to acquire control, and of the
19 members thereof if such person be a partnership or association, and of
20 the officers, directors and controlling stockholders thereof if such
21 person be a corporation, are such as to command the confidence of the
22 community and to warrant belief that the business will be operated
23 honestly, fairly, and efficiently within the purpose of this article;

24 (b) the effect the acquisition may have on competition; and

25 (c) whether the acquisition may be hazardous or prejudicial to debtors
26 or creditors in this state.

27 4. If no such application has been made prior to the acquisition of
28 control, the license for each place of business maintained and operated
29 by the licensee shall, at the discretion of the superintendent, become
30 null and void and each such license shall be surrendered to the super-
31 intendent.

32 § 303. Suspension and revocation. 1. In addition to any other power
33 provided by law, the superintendent may suspend or revoke the license of
34 a consumer debt collector, if after notice and an opportunity to be
35 heard, the superintendent finds that a consumer debt collector has:

36 (a) committed any fraud, engaged in any dishonest activities or made
37 any misrepresentation;

38 (b) violated any provisions of this chapter or any regulation issued
39 pursuant thereto, or has violated any other law in the course of its or
40 his or her dealings as a consumer debt collector;

41 (c) made a false statement or material omission in the application for
42 or renewal of a license under this article or failed to give a true
43 reply to a question in such application; or

44 (d) demonstrated incompetency or untrustworthiness to act as a consum-
45 er debt collector.

46 2. The department shall before revoking or suspending any license and
47 at least fifteen days prior to the date set for the hearing, and upon
48 due notice to the complainant or objector, notify in writing the holder
49 of such license, of any charge made and shall afford such licensee an
50 opportunity to be heard in person or by counsel in reference thereto.
51 Such written notice may be served personally to the licensee, or by
52 certified mail to the last known business address of such licensee.

53 § 304. Bad actors. 1. In addition to any other power provided by law,
54 the superintendent may require any licensee to remove any director,
55 officer or employee or to refrain from engaging or retaining any inde-
56 pendent contractor or service provider if such director, officer,

1 employee, independent contractor or service provider has themselves had
2 a license under this chapter suspended or revoked, or has caused the
3 licensee to violate any provision of this chapter or regulations promul-
4 gated thereunder.

5 2. No person that is the subject of an order under this section remov-
6 ing them as a director, officer or employee or preventing a licensee
7 from engaging or retaining them as an independent contractor or service
8 provider, shall become engaged with any licensee without obtaining the
9 prior written approval of the superintendent. Nor shall such person fail
10 to disclose that it is the subject of an order under this section to any
11 licensee for which it is acting or seeking to act as a director, offi-
12 cer, employee, independent contractor or service provider.

13 3. Any consumer debt collector or entity claiming to be a consumer
14 debt collector that is not licensed pursuant to this article and know-
15 ingly conducts business involving debt collection shall be required to
16 pay a civil penalty to the department of not more than the lesser of
17 five hundred dollars per attempt to collect a debt or one hundred thou-
18 sand dollars in total damages in violation of this article.

19 § 305. Penalties. 1. In addition to such penalties as may otherwise be
20 applicable by law, including but not limited to the penalties available
21 under section forty-four of this chapter, the superintendent may require
22 a person operating as a consumer debt collector without a license to pay
23 a civil penalty to the department a sum not to exceed five hundred
24 dollars per attempt to collect a debt in violation of this article.

25 2. Nothing in this article shall limit any statutory or common-law
26 right of any person to bring any action in any court for any act, or
27 the right of the state to punish any person for any violation of any
28 law.

29 § 306. Preemption. The provisions of this article shall exclusively
30 govern the licensing of debt collection agencies in the state of New
31 York notwithstanding the provisions of any other law to the contrary
32 and further, no local law shall be enacted which shall require any fee
33 or license for the licensure or registration of debt collection agen-
34 cies.

35 § 2. Subdivision 10 of section 36 of the banking law, as amended by
36 section 2 of part L of chapter 58 of the laws of 2019, is amended to
37 read as follows:

38 10. All reports of examinations and investigations, correspondence and
39 memoranda concerning or arising out of such examination and investi-
40 gations, including any duly authenticated copy or copies thereof in the
41 possession of any banking organization, bank holding company or any
42 subsidiary thereof (as such terms "bank holding company" and "subsidi-
43 ary" are defined in article three-A of this chapter), any corporation
44 or any other entity affiliated with a banking organization within the
45 meaning of subdivision six of this section and any non-banking subsid-
46 iary of a corporation or any other entity which is an affiliate of a
47 banking organization within the meaning of subdivision six-a of this
48 section, foreign banking corporation, licensed lender, licensed casher
49 of checks, licensed mortgage banker, registered mortgage broker,
50 licensed mortgage loan originator, licensed sales finance company,
51 registered mortgage loan servicer, licensed student loan servicer,
52 licensed insurance premium finance agency, licensed transmitter of
53 money, licensed budget planner, licensed consumer debt collector, any
54 other person or entity subject to supervision under this chapter, or the
55 financial services law or the insurance law, or the department, shall be
56 confidential communications, shall not be subject to subpoena and shall

1 not be made public unless, in the judgment of the superintendent, the
2 ends of justice and the public advantage will be subserved by the publi-
3 cation thereof, in which event the superintendent may publish or author-
4 ize the publication of a copy of any such report or any part thereof in
5 such manner as may be deemed proper or unless such laws specifically
6 authorize such disclosure. For the purposes of this subdivision,
7 "reports of examinations and investigations, and any correspondence and
8 memoranda concerning or arising out of such examinations and investi-
9 gations", includes any such materials of a bank, insurance or securities
10 regulatory agency or any unit of the federal government or that of this
11 state any other state or that of any foreign government which are
12 considered confidential by such agency or unit and which are in the
13 possession of the department or which are otherwise confidential materi-
14 als that have been shared by the department with any such agency or unit
15 and are in the possession of such agency or unit.

16 § 3. Paragraph (a) of subdivision 1 of section 44 of the banking law,
17 as amended by section 4 of part L of chapter 58 of the laws of 2019, is
18 amended to read as follows:

19 (a) Without limiting any power granted to the superintendent under any
20 other provision of this chapter, the superintendent may, in a proceeding
21 after notice and a hearing, require any safe deposit company, licensed
22 lender, licensed casher of checks, licensed sales finance company,
23 licensed insurance premium finance agency, licensed transmitter of
24 money, licensed mortgage banker, licensed student loan servicer, regis-
25 tered mortgage broker, licensed mortgage loan originator, registered
26 mortgage loan servicer, licensed consumer debt collector or licensed
27 budget planner to pay to the people of this state a penalty for any
28 violation of this chapter, any regulation promulgated thereunder, any
29 final or temporary order issued pursuant to section thirty-nine of this
30 article, any condition imposed in writing by the superintendent in
31 connection with the grant of any application or request, or any written
32 agreement entered into with the superintendent.

33 § 4. The opening paragraph of subdivision (a) of section 3218 of the
34 civil practice law and rules, as amended by chapter 311 of the laws of
35 1963, is amended to read as follows:

36 Affidavit of defendant. Except as provided in section thirty-two
37 hundred one of this article and subdivision (e) of this section, a judg-
38 ment by confession may be entered, without an action, either for money
39 due or to become due, or to secure the plaintiff against a contingent
40 liability in behalf of the defendant, or both, upon an affidavit
41 executed by the defendant;

42 § 5. Section 3218 of the civil practice law and rules is amended by
43 adding a new subdivision (e) to read as follows:

44 (e) Prohibition on certain judgments by confession. 1. No judgment of
45 confession may be entered on: (i) any amount due from one or more indi-
46 viduals for personal, family, household, consumer, investment or non-bu-
47 siness purposes;

48 (ii) any amount under two hundred fifty thousand dollars due from any
49 person for any purpose; or

50 (iii) any amount due from any person that either: (A) is currently not
51 a resident of the state, (B) was not a resident of the state at the time
52 the affidavit authorizing the entry of the judgment of confession was
53 executed, or (C) if not a natural person, does not have a place of busi-
54 ness in the state or did not have a place of business in the state at
55 the time the affidavit authorizing the entry of the judgment of
56 confession was executed.

1 2. Paragraph one of this subdivision shall not apply to a judgment by
2 confession entered or sought to be entered by the state, a domestic
3 municipal corporation or any public officer acting in their official
4 capacity.

5 § 6. The civil practice law and rules is amended by adding a new
6 section 5022 to read as follows:

7 § 5022. Judgments obtained from unlicensed consumer debt collectors.
8 Any judgment obtained against a consumer debtor by, or on behalf of, a
9 consumer debt collector acting without a license from the superintendent
10 of the department of financial services, when such license is required,
11 in violation of section two hundred ninety-six of article seven of the
12 banking law, shall be null and void.

13 § 7. This act shall take effect on the one hundred eightieth day after
14 it shall have become a law; provided, however that sections one, two and
15 three of this act shall take effect October 1, 2021. Effective imme-
16 diately, the addition, amendment and/or repeal of any rule or regulation
17 necessary for the implementation of this act on its effective date are
18 authorized to be made and completed on or before such effective date.