

3926

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I N A S S E M B L Y

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Introduced by M. of A. PHEFFER, MILLMAN, FIELDS, COLTON, P. RIVERA, GALEF, JAFFEE, GIANARIS, CAHILL, KOON, ROBINSON, ROSENTHAL, STIRPE, CLARK, ESPAILLAT, HOOPER -- Multi-Sponsored by -- M. of A. BOYLAND, DelMONTE, GLICK, HOYT, LANCMAN, MAGEE, MAISEL, MAYERSOHN, McENENY, PERRY, REILLY, J. RIVERA, SCARBOROUGH, SWEENEY, TOWNS, WALKER, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

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

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

1 Section 1. Legislative intent. The legislature hereby finds the pres-
2 ence of consumer-related problems with respect to the practices of debt
3 collection agencies. Federal and state laws regulate how debt collectors
4 may communicate with debtors and prohibit the use of certain threaten-
5 ing, deceptive and unfair collection practices. Despite these legal
6 protections, the number of consumer complaints regarding debt collection
7 practices continue to rise. Consumer complaints received by the Federal
8 Trade Commission regarding third-party debt collectors grew for the
9 tenth consecutive year in 2007, and consumers filed with the Commission
10 more complaints against third-party collectors than against any other
11 specific industry. While the majority of those engaged in the business
12 of debt collection are honest and ethical in their dealings, there is a
13 minority of unscrupulous collection agencies in operation that practice
14 abusive tactics. Due to the sensitive nature of the information used in
15 the course of such agency's everyday business, and the vulnerable posi-
16 tion consumers find themselves in when dealing with these agencies, it
17 is incumbent upon this legislature to protect the interests, reputations
18 and fiscal well-being of the citizens of this state against those agen-
19 cies who would abuse their privilege of operation. Therefore, it is
20 herein declared that the state should license debt collection agencies.

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

LBD06743-02-9

1 S 2. The general business law is amended by adding a new article
2 29-HHH to read as follows:

3 ARTICLE 29-HHH

4 DEBT COLLECTION AGENCIES

5 SECTION 604-K. DEFINITIONS.

6 604-L. DEBT COLLECTION AGENCIES.

7 604-M. SURETY BONDING REQUIREMENT.

8 604-N. PENALTIES.

9 604-O. APPLICABILITY.

10 S 604-K. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
11 SHALL HAVE THE FOLLOWING MEANINGS:

12 1. (A) "DEBT COLLECTION AGENCY" SHALL MEAN A PERSON, FIRM OR CORPO-
13 RATION ENGAGED IN BUSINESS, THE PRINCIPAL PURPOSE OF WHICH IS TO REGU-
14 LARLY COLLECT OR ATTEMPT TO COLLECT DEBTS: (I) OWED OR DUE OR ASSERTED
15 TO BE OWED OR DUE TO ANOTHER; OR (II) OBTAINED BY, OR ASSIGNED TO, SUCH
16 PERSON, FIRM OR CORPORATION, THAT ARE IN DEFAULT WHEN OBTAINED OR
17 ACQUIRED BY SUCH PERSON, FIRM OR CORPORATION.

18 (B) THE TERM DOES NOT INCLUDE: (I) ANY OFFICER OR EMPLOYEE OF A CREDI-
19 TOR WHILE, IN THE NAME OF THE CREDITOR, COLLECTING DEBTS FOR SUCH CREDI-
20 TOR;

21 (II) ANY OFFICER OR EMPLOYEE OF A DEBT COLLECTION AGENCY;

22 (III) ANY PERSON WHILE ACTING AS A DEBT COLLECTION AGENCY FOR ANOTHER
23 PERSON, BOTH OF WHOM ARE RELATED BY COMMON OWNERSHIP OR AFFILIATED BY
24 CORPORATE CONTROL, IF THE PERSON ACTING AS A DEBT COLLECTION AGENCY DOES
25 SO ONLY FOR PERSONS TO WHOM IT IS SO RELATED OR AFFILIATED AND IF THE
26 PRINCIPAL BUSINESS OF SUCH PERSON IS NOT THE COLLECTION OF DEBTS;

27 (IV) ANY PERSON WHILE SERVING OR ATTEMPTING TO SERVE LEGAL PROCESS ON
28 ANY OTHER PERSON IN CONNECTION WITH THE JUDICIAL ENFORCEMENT OF ANY
29 DEBT;

30 (V) ANY ATTORNEY-AT-LAW OR LAW FIRM COLLECTING A DEBT IN SUCH CAPACITY
31 ON BEHALF OF AND IN THE NAME OF A CLIENT THROUGH LEGAL ACTIVITIES SUCH
32 AS THE FILING AND PROSECUTION OF LAWSUITS TO REDUCE DEBTS TO JUDGMENTS,
33 BUT NOT ANY ATTORNEY-AT-LAW OR LAW FIRM WHO REGULARLY ENGAGES IN ACTIV-
34 ITIES TRADITIONALLY ASSOCIATED WITH DEBT COLLECTION, INCLUDING BUT NOT
35 LIMITED TO, SENDING DEMAND LETTERS OR MAKING COLLECTION TELEPHONE CALLS;

36 (VI) ANY PERSON EMPLOYED BY A UTILITY REGULATED UNDER THE PROVISIONS
37 OF THE PUBLIC SERVICE LAW, ACTING FOR SUCH UTILITY;

38 (VII) ANY PERSON COLLECTING OR ATTEMPTING TO COLLECT ANY DEBT OWED OR
39 DUE OR ASSERTED TO BE OWED OR DUE ANOTHER TO THE EXTENT SUCH ACTIVITY:

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

45 (VIII) ANY OFFICER OR EMPLOYEE OF THE UNITED STATES, ANY STATE THEREOF
46 OR ANY POLITICAL SUBDIVISION OF ANY STATE TO THE EXTENT THAT COLLECTING
47 OR ATTEMPTING TO COLLECT ANY DEBT OWED IS IN THE PERFORMANCE OF HIS OR
48 HER OFFICIAL DUTIES; OR

49 (IX) ANY NON-PROFIT ORGANIZATION WHICH, AT THE REQUEST OF CONSUMERS,
50 PERFORMS BONA FIDE CONSUMER CREDIT COUNSELING AND ASSISTS CUSTOMERS IN
51 THE LIQUIDATION OF THEIR DEBTS BY RECEIVING PAYMENTS FROM SUCH CUSTOMERS
52 AND DISTRIBUTING SUCH AMOUNTS TO CREDITORS.

53 2. "CONSUMER" MEANS ANY NATURAL PERSON OBLIGATED OR ALLEGEDLY OBLI-
54 GATED TO PAY ANY DEBT.

55 3. "DEBT" MEANS ANY OBLIGATION OR ALLEGED OBLIGATION OF A CONSUMER TO
56 PAY MONEY ARISING OUT OF A TRANSACTION IN WHICH THE MONEY, PROPERTY,

1 INSURANCE, OR SERVICES WHICH ARE THE SUBJECT OF THE TRANSACTION ARE
2 PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, WHETHER OR NOT
3 SUCH OBLIGATION HAS BEEN REDUCED TO JUDGMENT.

4 4. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

5 5. "SECRETARY" MEANS THE SECRETARY OF STATE.

6 S 604-L. DEBT COLLECTION AGENCIES. 1. ON OR AFTER OCTOBER FIRST, TWO
7 THOUSAND TEN, IT SHALL BE UNLAWFUL FOR ANY PERSON TO ACT AS A DEBT
8 COLLECTION AGENCY WITHOUT FIRST HAVING OBTAINED A LICENSE IN ACCORDANCE
9 WITH THE PROVISIONS OF THIS ARTICLE, AND WITHOUT FIRST BEING IN COMPLI-
10 ANCE WITH ALL OTHER APPLICABLE LAWS, RULES AND REGULATIONS.

11 2.(A) ALL LICENSES ISSUED PURSUANT TO THIS ARTICLE SHALL BE VALID FOR
12 TWO YEARS UNLESS SOONER SUSPENDED OR REVOKED. THE SECRETARY SHALL ESTAB-
13 LISH BY REGULATION THE EXPIRATION DATE OF SUCH LICENSES.

14 (B) THE ANNUAL FEE FOR A LICENSE OR RENEWAL THEREOF SHALL BE FIVE
15 HUNDRED DOLLARS.

16 3. (A) EACH PERSON APPLYING FOR A DEBT COLLECTION AGENCY LICENSE OR
17 RENEWAL THEREOF SHALL FILE AN APPLICATION IN SUCH FORM AND DETAIL AS THE
18 SECRETARY MAY PRESCRIBE AND SHALL PAY THE FEE REQUIRED BY THIS SECTION.

19 (B) IN ADDITION TO ANY OTHER INFORMATION REQUIRED, THE SECRETARY SHALL
20 REQUIRE THE FOLLOWING INFORMATION:

21 (I) THE NAME AND RESIDENCE ADDRESS OF THE APPLICANT;

22 (II) THE BUSINESS NAME, IF OTHER THAN APPLICANT;

23 (III) THE PLACE, INCLUDING THE CITY, TOWN OR VILLAGE, WITH THE STREET
24 AND NUMBER, WHERE THE BUSINESS IS TO BE LOCATED;

25 (IV) THE BUSINESS TELEPHONE OF THE APPLICANT;

26 (V) THE LENGTH OF TIME THAT THE APPLICANT HAS BEEN A DEBT COLLECTION
27 AGENCY;

28 (VI) A STATEMENT INDICATING WHETHER THE APPLICANT HAS:

29 (A) BEEN CONVICTED OF ANY CRIME OR IS A DEBTOR ON ANY UNPAID CIVIL
30 JUDGMENT RELATING TO WORK AS A DEBT COLLECTION AGENCY; AND

31 (B) AT ANY TIME IN THE PAST BEEN ISSUED A LICENSE PURSUANT TO THIS
32 ARTICLE, AND IF SO, WHETHER SUCH LICENSE WAS EVER REVOKED OR SUSPENDED;

33 (VII) A DETAILED DESCRIPTION OF THE BUSINESS PRACTICES OR METHODS
34 USED, OR INTENDED TO BE USED, BY THE APPLICANT TO CONFIRM THE VALIDITY
35 OF THE DEBTS IT SEEKS TO COLLECT FROM CONSUMERS;

36 (VIII) A SUMMARY OF THE APPLICANT'S RECORD-KEEPING POLICY, INCLUDING,
37 BUT NOT LIMITED TO:

38 (A) THE LENGTH OF TIME THE APPLICANT MAINTAINS, OR INTENDS TO MAIN-
39 TAIN, RECORDS PERTAINING TO CONSUMERS; AND

40 (B) THE MANNER IN WHICH THE APPLICANT RECORDS AND STORES, OR INTENDS
41 TO RECORD AND STORE: CONSUMER CHALLENGES TO THE VALIDITY OF DEBT; BILL-
42 ING ERRORS; PAYMENTS MADE BY A CONSUMER; SETTLEMENT AGREEMENTS; INFORMA-
43 TION REGARDING PARTIES RESPONSIBLE FOR DEBT; AND ANY STATEMENTS MADE BY
44 A CONSUMER ALLEGING THAT THE DEBT AROSE FROM IDENTITY THEFT;

45 (IX) WHETHER THE APPLICANT REGULARLY SELLS, OR INTENDS TO SELL, DEBTS.
46 IF THE APPLICANT SELLS, OR INTENDS TO SELL DEBTS, SUCH APPLICANT SHALL
47 BE REQUIRED TO PROVIDE THE SECRETARY WITH A SUMMARY OF THE APPLICANT'S
48 POLICY WITH RESPECT TO THE INFORMATION REGARDING A CONSUMER'S ACCOUNT
49 THAT IT TRANSMITS, OR WILL TRANSMIT, TO THE PURCHASER OF A DEBT;

50 (X) A SWORN STATEMENT BY THE APPLICANT THAT THE INFORMATION SET FORTH
51 IN THE APPLICATION IS CURRENT AND ACCURATE; AND

52 (XI) A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH PRINCIPAL AND
53 OFFICER OF THE APPLICANT ON A STANDARD FINGERPRINT CARD APPROVED BY THE
54 DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH CARDS SHALL BE RETAINED BY
55 THE DEPARTMENT AND USED SOLELY FOR THE PURPOSE OF CONDUCTING AN INVESTI-
56 GATION PURSUANT TO SUBDIVISION THIRTEEN OF THIS SECTION. IF ADDITIONAL

1 COPIES OF FINGERPRINTS ARE REQUIRED THE APPLICANT SHALL FURNISH THEM
2 UPON REQUEST.

3 (C) AN APPLICANT WHO IS A NON-RESIDENT OF THE STATE SHALL PROVIDE THE
4 NAME AND ADDRESS OF A REGISTERED AGENT WITHIN THE STATE OR DESIGNATE THE
5 SECRETARY AS HIS OR HER AGENT UPON WHOM PROCESS OR OTHER NOTIFICATION
6 MAY BE SERVED.

7 4. IN DETERMINING WHETHER TO ISSUE OR RENEW A LICENSE, THE SECRETARY
8 OF STATE MAY CONSIDER THE CHARACTER, COMPETENCY AND INTEGRITY OF THE
9 APPLICANT.

10 5. THE SECRETARY MAY REFUSE TO ISSUE OR RENEW A LICENSE TO ANY PERSON,
11 FIRM OR CORPORATION WHOM HE OR SHE FINDS HAS: (A) BEEN CONVICTED OF ANY
12 CRIME, OR FAILED TO PAY ANY FINAL CIVIL JUDGMENT, RELATING TO WORK AS A
13 DEBT COLLECTION AGENCY, IF SUCH REFUSAL, IN THE JUDGMENT OF THE SECRE-
14 TARY, BEST PROMOTES THE INTERESTS OF THE PEOPLE OF THIS STATE; OR

15 (B) VIOLATED ARTICLE TWENTY-NINE-H OF THIS CHAPTER OR THE FEDERAL FAIR
16 DEBT COLLECTION PRACTICES ACT (15 USC S 1692 ET SEQ.).

17 6. NOTICE IN WRITING IN THE MANNER AND FORM PRESCRIBED BY THE DEPART-
18 MENT SHALL BE GIVEN TO THE DEPARTMENT AT ITS OFFICES IN ALBANY WITHIN
19 TEN DAYS OF CHANGES OF NAME OR ADDRESS BY LICENSED DEBT COLLECTION AGEN-
20 CIES. THE FEE FOR FILING EACH CHANGE OF NAME OR ADDRESS NOTICE SHALL BE
21 TEN DOLLARS.

22 7. THE FEES ESTABLISHED BY THIS SECTION SHALL NOT BE REFUNDABLE.

23 8. EACH DEBT COLLECTION AGENCY ENGAGED IN COLLECTING DEBTS SHALL
24 COMMUNICATE HIS OR HER LICENSE NUMBER UPON THE REQUEST OF ANY INTERESTED
25 PARTY. ANY ADVERTISEMENT, LETTERHEAD, RECEIPT OR OTHER PRINTED MATTER OF
26 A LICENSEE MUST CONTAIN THE LICENSE NUMBER ASSIGNED TO THE LICENSEE BY
27 THE DEPARTMENT. SUCH LICENSE NUMBER SHALL BE CLEARLY AND CONSPICUOUSLY
28 DISPLAYED.

29 9. NO PERSON, FIRM OR CORPORATION SHALL: (A) PRESENT, OR ATTEMPT TO
30 PRESENT, AS HIS, HER OR ITS OWN, THE LICENSE NUMBER OF ANOTHER;

31 (B) KNOWINGLY GIVE FALSE EVIDENCE OF A MATERIAL NATURE TO THE DEPART-
32 MENT FOR THE PURPOSE OF PROCURING A LICENSE;

33 (C) FALSELY REPRESENT THEMSELVES TO BE A LICENSED DEBT COLLECTION
34 AGENCY;

35 (D) USE OR ATTEMPT TO USE A LICENSE WHICH HAS EXPIRED;

36 (E) OFFER TO PERFORM OR PERFORM ANY COLLECTION OF DEBTS WITHOUT HAVING
37 A CURRENT LICENSE AS IS REQUIRED UNDER THIS ARTICLE; OR

38 (F) REPRESENT IN ANY MANNER THAT HIS, HER OR ITS LICENSE CONSTITUTES
39 AN ENDORSEMENT OF THE QUALITY OF WORKMANSHIP OR COMPETENCY OF THE DEBT
40 COLLECTION AGENCY.

41 10. LICENSES ISSUED TO DEBT COLLECTION AGENCIES SHALL NOT BE TRANSFER-
42 ABLE OR ASSIGNABLE.

43 11. THE SECRETARY SHALL ISSUE EACH DEBT COLLECTION AGENCY A UNIQUE
44 LICENSE NUMBER.

45 12. THE DEPARTMENT SHALL MAINTAIN AND PUBLISH A REGISTRY OF ALL
46 LICENSED DEBT COLLECTION AGENCIES, WHICH SHALL LIST AND IDENTIFY, ALL
47 LICENSED DEBT COLLECTION AGENCIES DOING BUSINESS IN THIS STATE. THE
48 DEPARTMENT SHALL MAKE THE REGISTRY AVAILABLE ON ITS WEBSITE.

49 13. (A) THE SECRETARY SHALL ADOPT SUCH RULES AND REGULATIONS AS HE OR
50 SHE MAY DETERMINE ARE NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT
51 OF THIS ARTICLE, AND SHALL PROVIDE WRITTEN NOTIFICATION OF THE
52 PROVISIONS OF THIS ARTICLE TO ALL DEBT COLLECTION AGENCIES LICENSED
53 PURSUANT TO THIS ARTICLE.

54 (B) IN ADDITION TO ANY OTHER POWERS OF THE SECRETARY, NOT IN LIMITA-
55 TION THEREOF, HE OR SHE SHALL HAVE THE POWER TO ENFORCE THE PROVISIONS
56 OF THIS ARTICLE, TO INVESTIGATE ANY VIOLATION THEREOF, TO INVESTIGATE

1 THE BUSINESS, BUSINESS PRACTICES AND BUSINESS METHODS OF ANY DEBT
2 COLLECTION AGENCY, AND TO CONDUCT ROUTINE EXAMINATIONS OF THE FINANCIAL
3 SOLVENCY OF ANY DEBT COLLECTION AGENCY, IF IN THE OPINION OF THE SECRE-
4 TARY, SUCH INVESTIGATION OR EXAMINATION IS WARRANTED. EACH DEBT
5 COLLECTION AGENCY SHALL BE OBLIGED, ON REQUEST OF THE SECRETARY OF
6 STATE, TO SUPPLY SUCH INFORMATION, BOOKS, PAPERS OR RECORDS AS MAY BE
7 REQUIRED CONCERNING HIS, HER OR ITS BUSINESS, BUSINESS PRACTICES OR
8 BUSINESS METHODS, OR PROPOSED BUSINESS PRACTICES OR METHODS. FAILURE TO
9 COMPLY WITH A LAWFUL REQUEST OF THE SECRETARY SHALL BE A GROUND FOR
10 DENYING AN APPLICATION FOR A LICENSE, OR FOR REVOKING, SUSPENDING, OR
11 FAILING TO RENEW A LICENSE ISSUED UNDER THIS ARTICLE.

12 (C) THE DEPARTMENT SHALL HAVE THE POWER TO REVOKE OR SUSPEND ANY
13 LICENSE, OR IN LIEU THEREOF TO IMPOSE A FINE NOT EXCEEDING TWO THOUSAND
14 DOLLARS PAYABLE TO THE DEPARTMENT, OR REPRIMAND ANY LICENSEE OR DENY AN
15 APPLICATION FOR A LICENSE OR RENEWAL THEREOF UPON PROOF:

16 (I) THAT THE APPLICANT OR LICENSEE HAS VIOLATED ANY OF THE PROVISIONS
17 OF THIS ARTICLE OR THE RULES AND REGULATIONS PROMULGATED PURSUANT TO
18 THIS ARTICLE;

19 (II) THAT THE APPLICANT OR LICENSEE HAS PRACTICED FRAUD, DECEIT OR
20 MISREPRESENTATION;

21 (III) THAT THE APPLICANT OR LICENSEE HAS MADE A MATERIAL MISSTATEMENT
22 IN THE APPLICATION FOR OR RENEWAL OF HIS OR HER LICENSE; OR

23 (IV) THAT THE APPLICANT OR LICENSEE HAS DEMONSTRATED INCOMPETENCE OR
24 UNTRUSTWORTHINESS IN HIS OR HER ACTIONS.

25 14. THE DEPARTMENT SHALL BEFORE DENYING AN APPLICATION FOR A LICENSE
26 OR BEFORE REVOKING OR SUSPENDING ANY LICENSE, OR IMPOSING ANY FINE OR
27 REPRIMAND, AND AT LEAST FIFTEEN DAYS PRIOR TO THE DATE SET FOR THE HEAR-
28 ING, AND UPON DUE NOTICE TO THE COMPLAINANT OR OBJECTOR, NOTIFY IN WRIT-
29 ING THE APPLICANT, OR THE HOLDER OF SUCH LICENSE, OF ANY CHARGE MADE AND
30 SHALL AFFORD SUCH APPLICANT OR LICENSEE AN OPPORTUNITY TO BE HEARD IN
31 PERSON OR BY COUNSEL IN REFERENCE THERETO. SUCH WRITTEN NOTICE MAY BE
32 SERVED PERSONALLY TO THE APPLICANT OR LICENSEE, OR BY REGISTERED MAIL TO
33 THE LAST KNOWN BUSINESS ADDRESS OF SUCH APPLICANT OR LICENSEE.

34 15. THE HEARING ON SUCH CHARGES SHALL BE AT SUCH TIME AND PLACE AS THE
35 DEPARTMENT SHALL PRESCRIBE AND SHALL BE CONDUCTED BY SUCH OFFICER OR
36 PERSON IN THE DEPARTMENT AS THE SECRETARY OF STATE MAY DESIGNATE, WHO
37 SHALL HAVE THE POWER TO SUBPOENA AND BRING BEFORE THE OFFICER, OR PERSON
38 SO DESIGNATED, ANY PERSON IN THIS STATE AND ADMINISTER AN OATH TO AND
39 TAKE TESTIMONY OF ANY PERSON OR CAUSE HIS OR HER DEPOSITION TO BE TAKEN.
40 A SUBPOENA ISSUED UNDER THIS SECTION SHALL BE REGULATED BY THE CIVIL
41 PRACTICE LAW AND RULES. SUCH OFFICER OR PERSON IN THE DEPARTMENT DESIG-
42 NATED TO TAKE SUCH TESTIMONY SHALL NOT BE BOUND BY COMMON LAW OR STATU-
43 TORY RULES OF EVIDENCE OR BY TECHNICAL OR FORMAL RULES OF PROCEDURE.

44 16. IN THE EVENT THAT THE DEPARTMENT SHALL DENY THE APPLICATION FOR,
45 OR REVOKE OR SUSPEND ANY SUCH LICENSE, OR IMPOSE ANY FINE OR REPRIMAND,
46 ITS DETERMINATION SHALL BE IN WRITING AND OFFICIALLY SIGNED. THE
47 ORIGINAL OF SUCH DETERMINATIONS, WHEN SO SIGNED, SHALL BE FILED IN THE
48 OFFICE OF THE DEPARTMENT AND COPIES THEREOF SHALL BE MAILED TO THE
49 APPLICANT OR LICENSEE AND TO THE COMPLAINANT WITHIN TWO DAYS AFTER SUCH
50 FILING.

51 17. THE DEPARTMENT, ACTING BY THE OFFICE OR PERSON DESIGNATED TO
52 CONDUCT THE HEARING PURSUANT TO SUBDIVISION FOURTEEN OF THIS SECTION OR
53 BY SUCH OTHER OFFICER OR PERSON IN THE DEPARTMENT AS THE SECRETARY OF
54 STATE MAY DESIGNATE, SHALL HAVE THE POWER TO SUSPEND THE LICENSE OF ANY
55 LICENSEE WHO HAS BEEN CONVICTED IN THIS STATE OR ANY OTHER STATE OR
56 TERRITORY OF A FELONY OR OF ANY MISDEMEANOR FOR A PERIOD NOT EXCEEDING

THIRTY DAYS PENDING A HEARING AND A DETERMINATION OF CHARGES MADE AGAINST HIM OR HER. IF SUCH HEARING IS ADJOURNED AT THE REQUEST OF THE LICENSEE, OR BY REASON OF ANY ACT OR OMISSION BY HIM OR HER OR ON HIS OR HER BEHALF, SUCH SUSPENSION MAY BE CONTINUED FOR THE ADDITIONAL PERIOD OF SUCH ADJOURNMENT.

18. THE ACTION OF THE DEPARTMENT IN GRANTING OR REFUSING TO GRANT OR TO RENEW A LICENSE UNDER THIS ARTICLE OR IN REVOKING OR SUSPENDING OR REFUSING TO REVOKE OR SUSPEND SUCH A LICENSE OR IMPOSING ANY FINE OR REPRIMAND SHALL BE SUBJECT TO REVIEW BY A PROCEEDING INSTITUTED UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES AT THE INSTANCE OF THE APPLICANT FOR SUCH LICENSE, THE HOLDER OF A LICENSE SO REVOKED, SUSPENDED, FINED OR REPRIMANDED OR THE PERSON AGGRIEVED.

19. THE DEPARTMENT SHALL MAINTAIN AND PUBLISH A REGISTRY OF ALL LICENSED DEBT COLLECTION AGENCIES, WHICH SHALL LIST AND IDENTIFY ON A STATE BY STATE BASIS, ALL LICENSED DEBT COLLECTION AGENCIES ATTEMPTING TO COLLECT DEBTS FROM NEW YORK RESIDENTS. THE DEPARTMENT SHALL MAKE THE REGISTRY AVAILABLE ON ITS WEBSITE. COPIES OF THE ROSTER SHALL BE MADE AVAILABLE UPON REQUEST AND PAYMENT OF A FEE TO BE DETERMINED BY THE SECRETARY OF STATE AND APPROVED BY THE DIRECTOR OF THE DIVISION OF THE BUDGET.

20. FOR THE PURPOSE OF THIS ARTICLE, LICENSEES MAY BE HELD RESPONSIBLE FOR STATEMENTS, REPRESENTATIONS, PROMISES OR ACTS OF THEIR EMPLOYEES OR THEIR AGENTS WITHIN THE SCOPE OF THEIR AUTHORITY; PROVIDED, HOWEVER, THAT LICENSEES SHALL NOT BE HELD RESPONSIBLE FOR STATEMENTS, REPRESENTATIONS, PROMISES OR ACTS WHICH ARE CONTRARY TO INSTRUCTIONS OR WHICH CONSTITUTE GROSS NEGLIGENCE OR INTENTIONAL TORTS UNLESS SPECIFICALLY AUTHORIZED BY THE LICENSEE.

21. (A) ANY PERSON, FIRM OR CORPORATION THAT OPERATES AS A DEBT COLLECTION AGENCY WITHOUT BEING LICENSED SHALL BE REQUIRED TO PAY A CIVIL PENALTY IN THE SUM OF ONE HUNDRED DOLLARS PER ATTEMPT TO COLLECT A DEBT IN VIOLATION OF THIS SECTION. HOWEVER, ANY SUCH PERSON, FIRM OR CORPORATION AGAINST WHOM SUCH PENALTY HAS BEEN ASSESSED MAY AVOID ALL BUT FIVE HUNDRED DOLLARS OF SUCH PENALTY BY OBTAINING A LICENSE AS REQUIRED BY THIS SECTION, PROVIDED THAT APPLICATION FOR SUCH LICENSE IS MADE NOT MORE THAN TEN DAYS AFTER THE IMPOSITION OF SUCH PENALTY AND THE DEBT COLLECTION AGENCY HAS NEVER RECEIVED A PRIOR FINE OR FAILURE TO REGISTER IN NEW YORK OR IN ANY OTHER STATE THAT REQUIRES LICENSURE.

(B) IN ADDITION TO ANY OTHER PENALTIES, IF A PERSON IS FOUND TO HAVE COMMITTED REPEATED, MULTIPLE OR PERSISTENT VIOLATION OF ANY PROVISION OF THIS ARTICLE, SUCH PERSON MAY BE RESPONSIBLE FOR THE COST OF THE DEPARTMENT'S INVESTIGATION.

S 604-M. SURETY BONDING REQUIREMENT. 1. AS A CONDITION OF OBTAINING A LICENSE PURSUANT TO THIS ARTICLE, EVERY DEBT COLLECTION AGENCY APPLICANT WHO IS APPLYING FOR A LICENSE AND EMPLOYS BETWEEN ONE AND FOUR INDIVIDUALS ENGAGED IN THE COLLECTION OF DEBTS SHALL OBTAIN AND CONTINUE IN FULL FORCE AND EFFECT A BOND, CONTRACT OF INDEMNITY, OR IRREVOCABLE LETTER OF CREDIT, PAYABLE TO THE PEOPLE OF THE STATE OF NEW YORK, IN THE AMOUNT OF TEN THOUSAND DOLLARS.

2. AS A CONDITION TO OBTAINING A LICENSE PURSUANT TO THIS ARTICLE, EVERY DEBT COLLECTION AGENCY APPLICANT WHO IS APPLYING FOR A LICENSE AND EMPLOYES BETWEEN FIVE AND NINE INDIVIDUALS ENGAGED IN THE COLLECTION OF DEBTS SHALL OBTAIN AND CONTINUE IN FULL FORCE AND EFFECT A BOND, CONTRACT OF INDEMNITY, OR IRREVOCABLE LETTER OF CREDIT, PAYABLE TO THE PEOPLE OF THE STATE OF NEW YORK, IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS.

1 3. AS A CONDITION TO OBTAINING A LICENSE PURSUANT TO THIS ARTICLE,
2 EVERY DEBT COLLECTION AGENCY APPLICANT WHO IS APPLYING FOR A LICENSE AND
3 EMPLOYS TEN OR MORE INDIVIDUALS ENGAGED IN THE COLLECTION OF DEBTS SHALL
4 OBTAIN AND CONTINUE IN FULL FORCE AND EFFECT A BOND, CONTRACT OF INDEM-
5 NITY, OR IRREVOCABLE LETTER OF CREDIT, PAYABLE TO THE PEOPLE OF THE
6 STATE OF NEW YORK, IN THE AMOUNT OF FIFTY THOUSAND DOLLARS.

7 4. SUCH SURETY BOND, CONTRACT OF INDEMNITY, OR IRREVOCABLE LETTER OF
8 CREDIT SHALL BE CONDITIONED THAT THE APPLICANT WILL COMPLY WITH THIS
9 ARTICLE, ARTICLE TWENTY-NINE-H, AND ARTICLE TWENTY-NINE-HH OF THIS CHAP-
10 TER AND PAY ALL FINES IMPOSED, OR INVESTIGATORY COSTS REQUIRED TO BE
11 PAID, PURSUANT TO SUCH ARTICLES.

12 5. RECOVERY AGAINST ANY SURETY BOND, CONTRACT OF INDEMNITY, OR IRREV-
13 OCABLE LETTER OF CREDIT MAY BE MADE BY THE ATTORNEY GENERAL ON BEHALF OF
14 THE PEOPLE OF THE STATE OF NEW YORK. THE TOTAL LIABILITY IMPOSED ON THE
15 SURETY BOND UNDER THIS SECTION FOR ALL BREACHES OF THE BOND CONDITION IS
16 LIMITED TO THE FACE AMOUNT OF THE BOND. SUCH LIABILITY IS LIMITED TO THE
17 AMOUNT OF THE PENALTY OR INVESTIGATORY COSTS. IN NO EVENT WILL THE SURE-
18 TY ON A BOND BE LIABLE FOR TOTAL CLAIMS IN EXCESS OF THE BOND AMOUNT,
19 REGARDLESS OF THE NUMBER OR NATURE OF CLAIMS MADE AGAINST THE BOND OR
20 THE NUMBER OF YEARS THE BOND REMAINED IN FORCE.

21 6. ANY SURETY ISSUING A BOND PURSUANT TO THIS SECTION SHALL BE
22 REQUIRED TO PROVIDE THIRTY DAYS NOTICE TO THE SECRETARY OF STATE PRIOR
23 TO THE EFFECTIVE DATE OF CANCELLATION OF THE BOND. THE FAILURE TO MAIN-
24 TAIN SUCH A BOND SHALL OPERATE TO REVOKE THE LICENSE OF THE DEBT
25 COLLECTION AGENCY.

26 S 604-N. PENALTIES. WHEREVER THERE SHALL BE A VIOLATION OF THIS ARTI-
27 CLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF
28 THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURIS-
29 DICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE
30 TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE
31 CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFAC-
32 TION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED
33 THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE,
34 ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF
35 THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY
36 SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL
37 AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
38 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
39 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
40 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT LESS
41 THAN ONE HUNDRED DOLLARS NOR MORE THAN TEN THOUSAND DOLLARS FOR EACH
42 VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTOR-
43 NEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE
44 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-
45 TICE LAW AND RULES.

46 S 604-O. APPLICABILITY. 1. THIS ARTICLE SHALL APPLY TO ALL DEBT
47 COLLECTION AGENCIES, PROVIDED, HOWEVER, THAT A POLITICAL SUBDIVISION MAY
48 IMPOSE OTHER REQUIREMENTS THAT ARE IN ADDITION TO THE MINIMUM STANDARDS
49 SET FORTH IN THIS ARTICLE.

50 2. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO LIMIT IN
51 ANY WAY THE AUTHORITY OF A POLITICAL SUBDIVISION TO ENACT, IMPLEMENT AND
52 CONTINUE TO ENFORCE LOCAL LAWS AND REGULATIONS GOVERNING DEBT COLLECTION
53 AGENCIES THAT WERE IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS ARTI-
54 CLE, OR TO ENACT, IMPLEMENT AND ENFORCE ANY AMENDMENTS THERETO AFTER THE
55 EFFECTIVE DATE OF THIS ARTICLE.

1 S 3. Subdivision (e) of rule 3015 of the civil practice law and rules,
2 as amended by chapter 465 of the laws of 1996, is amended to read as
3 follows:

4 (e) License to do business. Where the plaintiff's cause of action
5 against a consumer arises from the plaintiff's conduct of a business
6 which is required by state or local law to be licensed by the department
7 of consumer affairs of the city of New York, the Suffolk county depart-
8 ment of consumer affairs, the Westchester county department of consumer
9 affairs/weight-measures, the county of Rockland, the county of Putnam
10 [or], the Nassau county department of consumer affairs OR THE DEPARTMENT
11 OF STATE PURSUANT TO ARTICLE TWENTY-NINE-HHH OF THE GENERAL BUSINESS
12 LAW, the complaint shall allege, as part of the cause of action, that
13 plaintiff is duly licensed and shall contain the name and number, if
14 any, of such license and the governmental agency which issued such
15 license; provided, however, that where the plaintiff does not have a
16 license at the commencement of the action the plaintiff may, subject to
17 the provisions of rule thirty hundred twenty-five of this article, amend
18 the complaint with the name and number of an after-acquired license and
19 the name of the governmental agency which issued such license or move
20 for leave to amend the complaint in accordance with such provisions. The
21 failure of the plaintiff to comply with this subdivision will permit the
22 defendant to move for dismissal pursuant to paragraph seven of subdivi-
23 sion (a) of rule thirty-two hundred eleven of this chapter.

24 S 4. This act shall take effect on the ninetieth day after it shall
25 have become a law; provided, however, that effective immediately, the
26 addition, amendment and/or repeal of any rule or regulation necessary
27 for the implementation of this act on its effective date are authorized
28 and directed to be made and completed on or before such effective date.