

2572--C

2009-2010 Regular Sessions

I N S E N A T E

February 24, 2009

Introduced by Sens. MONSERRATE, DIAZ, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to prohibiting providers of service from solely relying upon consumer credit reports for the purpose of determining whether to provide consumers with service, or for the purpose of requiring the payment of a deposit, fee or higher rate

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

1 Section 1. The general business law is amended by adding a new section
2 391-q to read as follows:
3 S 391-Q. SERVICE PROVIDERS; USE OF CONSUMER CREDIT REPORTS. 1. AS
4 USED IN THIS SECTION, THE TERM "SERVICE PROVIDER" SHALL INCLUDE, BUT NOT
5 BE LIMITED TO, PUBLIC UTILITIES AND INSURANCE COMPANIES.
6 2. NO PERSON OR ENTITY ENGAGED IN THE BUSINESS OF PROVIDING ANY
7 SERVICE IN THIS STATE SHALL RELY SOLELY UPON THE CONSUMER CREDIT REPORT,
8 AS DEFINED IN SUBDIVISION (L) OF SECTION THREE HUNDRED EIGHTY-A OF THIS
9 CHAPTER, OF ANY POTENTIAL CUSTOMER OR CUSTOMERS IN THE DETERMINATION OF
10 WHAT RATES OR PRICES TO CHARGE A CUSTOMER OR CUSTOMERS. NOTHING HEREIN
11 SHALL PROHIBIT A SERVICE PROVIDER FROM REVIEWING OR UTILIZING A CONSUMER
12 CREDIT REPORT IN DETERMINING WHETHER AN APPLICANT MUST PROVIDE SURETY
13 PRIOR TO PROVIDING SERVICES.
14 3. NO PERSON OR ENTITY ENGAGED IN THE BUSINESS OF PROVIDING ANY
15 SERVICE IN THIS STATE SHALL REVIEW OR IN ANY WAY UTILIZE THE CONSUMER
16 CREDIT REPORT, AS DEFINED IN SUBDIVISION (1) OF SECTION THREE HUNDRED
17 EIGHTY-A OF THIS CHAPTER, OF ANY POTENTIAL CUSTOMER OR CUSTOMERS FOR THE

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

LBD00652-13-9

1 PURPOSE OF REQUIRING THE POTENTIAL CUSTOMER OR CUSTOMERS TO PAY AN ADDI-
2 TIONAL FEE OR HIGHER RATE FOR THE PROVISION OR CONTINUANCE OF THE
3 PROVISION OF SERVICE. ANY DEPOSIT REQUIRED BY A SERVICE PROVIDER SHALL
4 NOT EXCEED A MONTHLY PAYMENT AS REQUIRED BY SUCH SERVICE PROVIDER, OR IF
5 THE CONSUMER'S MONTHLY PAYMENT IS VARIABLE, AN AVERAGE FOR SUCH CONSUM-
6 ER'S MONTHLY BILLING.

7 4. ANY PERSON OR ENTITY FOUND BY A COURT OF COMPETENT JURISDICTION TO
8 HAVE VIOLATED SUBDIVISION TWO OR THREE OF THIS SECTION SHALL BE SUBJECT
9 TO A PENALTY OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE
10 THOUSAND DOLLARS FOR EACH SUCH VIOLATION.

11 5. (A) WHENEVER THERE SHALL BE A VIOLATION OF SUBDIVISION TWO OR THREE
12 OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN
13 THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OF COMPETENT
14 JURISDICTION BY A SPECIAL PROCEEDING FOR THE IMPOSITION OF A FINE OR THE
15 ISSUANCE OF AN INJUNCTION AGAINST ANY VIOLATION OF THIS SECTION, UPON
16 NOTICE TO THE SERVICE PROVIDER OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND
17 RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS.

18 (B) IF THE COURT FINDS THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS
19 SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT, ENJOINING AND
20 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
21 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY.

22 (C) IN ANY PROCEEDING PURSUANT TO THIS SUBDIVISION, THE COURT MAY
23 DIRECT RESTITUTION AND MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
24 PROVIDED IN SECTION SIXTY-THREE OF THE EXECUTIVE LAW.

25 (D) IN SUPPORT OF ANY APPLICATION PURSUANT TO THIS SUBDIVISION, THE
26 ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF, DETERMINE RELEVANT FACTS
27 AND ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

28 S 2. This act shall take effect immediately.