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

4817--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MONSERRATE -- 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

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:

Section 1. Legislative intent. The legislature hereby finds the presence of consumer-related problems with respect to the practices of debt collection agencies. Federal and state laws regulate how debt collectors may communicate with debtors and prohibit the use of certain threatening, deceptive and unfair collection practices. Despite these legal protections, the number of consumer complaints regarding debt collection practices continue to rise. Consumer complaints received by the Federal Trade Commission regarding third-party debt collectors grew for the eleventh consecutive year in 2008, and consumers filed with the Commission more complaints against third-party collectors than against any other specific industry. While the majority of those engaged in the business of debt collection are honest and ethical in their dealings, there is a minority of unscrupulous collection agencies in operation that practice abusive tactics. Due to the sensitive nature of the information used in the course of such agency's everyday business, and the vulnerable position consumers find themselves in when dealing with these agencies, it is incumbent upon this legislature to protect the interests, reputations and fiscal well-being of the citizens of this state against those agencies who would abuse their privilege of operation. Therefore, it is herein declared that the state should license debt collection agencies.

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

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

LBD06743-09-9

ARTICLE 29-HHH

DEBT COLLECTION AGENCIES

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

1. (A) "DEBT COLLECTION AGENCY" SHALL MEAN A PERSON, FIRM OR CORPORATION ENGAGED IN BUSINESS, THE PRINCIPAL PURPOSE OF WHICH IS TO REGULARLY COLLECT OR ATTEMPT TO COLLECT DEBTS OWED OR DUE OR ASSERTED TO BE OWED OR DUE TO ANOTHER AND SHALL ALSO INCLUDE A BUYER OF DELINQUENT DEBT WHO SEEKS TO COLLECT SUCH DEBT EITHER DIRECTLY OR THROUGH THE SERVICES OF ANOTHER BY, INCLUDING BUT NOT LIMITED TO, INITIATING OR USING LEGAL PROCESSES OR OTHER MEANS TO COLLECT OR ATTEMPT TO COLLECT SUCH DEBT.

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

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

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

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

(V) ANY ATTORNEY-AT-LAW OR LAW FIRM COLLECTING A DEBT IN SUCH CAPACITY ON BEHALF OF AND IN THE NAME OF A CLIENT SOLELY THROUGH ACTIVITIES THAT MAY ONLY BE PERFORMED BY A LICENSED ATTORNEY, BUT NOT ANY ATTORNEY-AT-LAW OR LAW FIRM OR PART THEREOF WHO REGULARLY ENGAGES IN ACTIVITIES TRADITIONALLY PERFORMED BY DEBT COLLECTORS, INCLUDING, BUT NOT LIMITED TO, CONTACTING A DEBTOR THROUGH THE MAIL OR VIA TELEPHONE WITH THE PURPOSE OF COLLECTING A DEBT OR OTHER ACTIVITIES AS DETERMINED BY RULE OF THE SECRETARY;

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

(VII) ANY PERSON COLLECTING OR ATTEMPTING TO COLLECT ANY DEBT OWED OR DUE OR ASSERTED TO BE OWED OR DUE ANOTHER TO THE EXTENT SUCH ACTIVITY: (A) IS INCIDENTAL TO A BONA FIDE FIDUCIARY OBLIGATION OR A BONA FIDE ESCROW AGREEMENT; (B) CONCERNS A DEBT WHICH WAS ORIGINATED BY SUCH PERSON; OR (C) CONCERNS A DEBT WHICH WAS NOT IN DEFAULT AT THE TIME IT WAS OBTAINED BY SUCH PERSON AS A SECURED PARTY IN A COMMERCIAL CREDIT TRANSACTION INVOLVING THE CREDITOR;

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

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

2. "CONSUMER" MEANS ANY NATURAL PERSON OBLIGATED OR ALLEGEDLY OBLIGATED TO PAY ANY DEBT.

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

4. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

5. "DIVISION" MEANS THE DIVISION OF CRIMINAL JUSTICE SERVICES.

6. "SECRETARY" MEANS THE SECRETARY OF STATE.

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

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

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

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

(B) IN ADDITION TO ANY OTHER INFORMATION REQUIRED, THE SECRETARY SHALL REQUIRE THE FOLLOWING INFORMATION, AND SHALL, AS APPROPRIATE, REQUIRE SUCH INFORMATION NOT ONLY OF THE APPLICANT BUT ALSO OF ANY OF ITS PRINCIPALS, PARTNERS, OFFICERS AND DIRECTORS, OR ANY PERSON OR ENTITY CONTROLLING AN INTEREST GREATER THAN TEN PERCENT:

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

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

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

(IV) THE BUSINESS TELEPHONE OF THE APPLICANT;

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

(VI) A STATEMENT INDICATING WHETHER THE APPLICANT HAS:

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

(B) AT ANY TIME IN THE PAST BEEN ISSUED A LICENSE PURSUANT TO THIS ARTICLE, OR HAS BEEN ISSUED A LICENSE FOR DEBT COLLECTION ACTIVITIES BY ANY OTHER STATE OR LOCAL AUTHORITY, AND IF SO, WHETHER SUCH LICENSE WAS EVER REVOKED OR SUSPENDED;

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

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

(A) THE LENGTH OF TIME THE APPLICANT MAINTAINS, OR INTENDS TO MAINTAIN, RECORDS PERTAINING TO CONSUMERS; AND

(B) THE MANNER IN WHICH THE APPLICANT RECORDS AND STORES, OR INTENDS TO RECORD AND STORE: CONSUMER CHALLENGES TO THE VALIDITY OF DEBT; BILLING ERRORS; PAYMENTS MADE BY A CONSUMER; SETTLEMENT AGREEMENTS; INFORMATION REGARDING PARTIES RESPONSIBLE FOR DEBT; ANY STATEMENTS MADE BY A CONSUMER ALLEGING THAT THE DEBT AROSE FROM IDENTITY THEFT; AND ANY STATEMENTS MADE BY A CONSUMER STATING THAT THE CONSUMER RECEIVED STATUTORILY EXEMPT INCOME AS DEFINED IN SECTION FIFTY-TWO HUNDRED TWENTY-TWO OF THE CIVIL PRACTICE LAW AND RULES;

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

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

(XI) A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH PRINCIPAL AND OFFICER OF THE APPLICANT RECORDED IN SUCH A MANNER AS MAY BE SPECIFIED BY THE DEPARTMENT TOGETHER WITH A FINGERPRINT FEE, IN SUCH AMOUNT AS SHALL BE DETERMINED BY THE DEPARTMENT, FOR THE COST OF THE DIVISION'S FULL SEARCH AND RETAIN PROCEDURES. BEFORE APPROVING AN APPLICATION, IT SHALL BE THE DUTY OF THE DEPARTMENT TO FORWARD ONE COPY OF SUCH FINGERPRINTS TO THE DIVISION. UPON RECEIPT OF SUCH FINGERPRINTS, THE DIVISION SHALL, PURSUANT TO ITS FULL SEARCH AND RETAIN PROCEDURES, FORWARD TO THE DEPARTMENT A REPORT WITH RESPECT TO THE APPLICANT'S PREVIOUS CRIMINAL HISTORY, IF ANY, OR A STATEMENT THAT THE APPLICANT HAS NO PREVIOUS CRIMINAL HISTORY. IF ADDITIONAL COPIES OF FINGERPRINTS ARE REQUIRED, THE APPLICANT SHALL FURNISH THEM UPON REQUEST.

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

4. IN DETERMINING WHETHER TO ISSUE OR RENEW A LICENSE, THE SECRETARY SHALL CONSIDER THE CHARACTER, COMPETENCY AND INTEGRITY OF THE APPLICANT. THE SECRETARY MAY REFUSE TO ISSUE OR RENEW A LICENSE TO ANY PERSON, FIRM OR CORPORATION WHOM HE OR SHE FINDS HAS: (A) BEEN CONVICTED OF ANY CRIME DEFINED IN ARTICLE ONE HUNDRED FIFTY-FIVE OF THE PENAL LAW OR ARTICLE TWENTY-TWO-A OF THIS CHAPTER OR FAILED TO PAY ANY FINAL CIVIL JUDGMENT RELATING TO WORK AS A DEBT COLLECTION AGENCY, IF SUCH REFUSAL, IN THE JUDGMENT OF THE SECRETARY, BEST PROMOTES THE INTERESTS OF THE PEOPLE OF THIS STATE; OR

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

5. NOTICE IN WRITING IN THE MANNER AND FORM PRESCRIBED BY THE DEPARTMENT SHALL BE GIVEN TO THE DEPARTMENT AT ITS OFFICES IN ALBANY WITHIN TEN DAYS OF CHANGES OF NAME OR ADDRESS BY LICENSED DEBT COLLECTION AGENCIES. THE FEE FOR FILING EACH CHANGE OF NAME OR ADDRESS NOTICE SHALL BE TEN DOLLARS.

6. THE FEES ESTABLISHED BY THIS SECTION SHALL NOT BE REFUNDABLE.

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

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

(B) KNOWINGLY GIVE FALSE EVIDENCE OF A MATERIAL NATURE TO THE DEPARTMENT FOR THE PURPOSE OF PROCURING A LICENSE;

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

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

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

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

9. LICENSES ISSUED TO DEBT COLLECTION AGENCIES SHALL NOT BE TRANSFERABLE OR ASSIGNABLE.

10. THE SECRETARY SHALL ISSUE EACH DEBT COLLECTION AGENCY A UNIQUE LICENSE NUMBER.

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

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

(B) IN ADDITION TO ANY OTHER POWERS OF THE SECRETARY, NOT IN LIMITATION THEREOF, HE OR SHE SHALL HAVE THE POWER TO ENFORCE THE PROVISIONS OF THIS ARTICLE, TO INVESTIGATE ANY VIOLATION THEREOF, TO INVESTIGATE THE BUSINESS, BUSINESS PRACTICES AND BUSINESS METHODS OF ANY DEBT COLLECTION AGENCY, AND TO CONDUCT ROUTINE EXAMINATIONS OF THE FINANCIAL SOLVENCY OF ANY DEBT COLLECTION AGENCY, IF IN THE OPINION OF THE SECRETARY, SUCH INVESTIGATION OR EXAMINATION IS WARRANTED. EACH DEBT COLLECTION AGENCY SHALL BE OBLIGED, ON REQUEST OF THE SECRETARY OF STATE, TO SUPPLY SUCH INFORMATION, BOOKS, PAPERS OR RECORDS AS MAY BE REQUIRED CONCERNING HIS, HER OR ITS BUSINESS, BUSINESS PRACTICES OR BUSINESS METHODS, OR PROPOSED BUSINESS PRACTICES OR METHODS. FAILURE TO COMPLY WITH A LAWFUL REQUEST OF THE SECRETARY SHALL BE A GROUND FOR DENYING AN APPLICATION FOR A LICENSE, OR FOR REVOKING, SUSPENDING, OR FAILING TO RENEW A LICENSE ISSUED UNDER THIS ARTICLE.

(C) THE DEPARTMENT SHALL HAVE THE POWER TO REVOKE OR SUSPEND ANY LICENSE, OR IN LIEU THEREOF TO IMPOSE A FINE NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN TWO THOUSAND DOLLARS PER VIOLATION OR INSTANCE, PAYABLE TO THE DEPARTMENT, OR REPRIMAND ANY LICENSEE OR DENY AN APPLICATION FOR A LICENSE OR RENEWAL THEREOF UPON PROOF:

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

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

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

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

13. THE DEPARTMENT SHALL BEFORE DENYING AN APPLICATION FOR A LICENSE OR BEFORE REVOKING OR SUSPENDING ANY LICENSE, OR IMPOSING ANY FINE OR REPRIMAND, AND AT LEAST FIFTEEN DAYS PRIOR TO THE DATE SET FOR THE HEARING, AND UPON DUE NOTICE TO THE COMPLAINANT OR OBJECTOR, NOTIFY IN WRITING THE APPLICANT, OR THE HOLDER OF SUCH LICENSE, OF ANY CHARGE MADE AND SHALL AFFORD SUCH APPLICANT OR LICENSEE AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL IN REFERENCE THERETO. SUCH WRITTEN NOTICE MAY BE SERVED PERSONALLY TO THE APPLICANT OR LICENSEE, OR BY CERTIFIED MAIL TO THE LAST KNOWN BUSINESS ADDRESS OF SUCH APPLICANT OR LICENSEE.

14. THE HEARING ON SUCH CHARGES SHALL BE AT SUCH TIME AND PLACE AS THE DEPARTMENT SHALL PRESCRIBE AND SHALL BE CONDUCTED BY SUCH OFFICER OR PERSON IN THE DEPARTMENT AS THE SECRETARY MAY DESIGNATE, WHO SHALL HAVE

THE POWER TO SUBPOENA AND BRING BEFORE THE OFFICER, OR PERSON SO DESIGNATED, ANY PERSON IN THIS STATE AND ADMINISTER AN OATH TO AND TAKE TESTIMONY OF ANY PERSON OR CAUSE HIS OR HER DEPOSITION TO BE TAKEN. A SUBPOENA ISSUED UNDER THIS SECTION SHALL BE REGULATED BY THE CIVIL PRACTICE LAW AND RULES. SUCH OFFICER OR PERSON IN THE DEPARTMENT DESIGNATED TO TAKE SUCH TESTIMONY SHALL NOT BE BOUND BY COMMON LAW OR STATUTORY RULES OF EVIDENCE OR BY TECHNICAL OR FORMAL RULES OF PROCEDURE.

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

16. THE DEPARTMENT, ACTING BY THE OFFICE OR PERSON DESIGNATED TO CONDUCT THE HEARING PURSUANT TO SUBDIVISION THIRTEEN OF THIS SECTION OR BY SUCH OTHER OFFICER OR PERSON IN THE DEPARTMENT AS THE SECRETARY OF STATE MAY DESIGNATE, SHALL HAVE THE POWER TO SUSPEND THE LICENSE OF ANY LICENSEE WHO HAS BEEN CONVICTED IN THIS STATE OR ANY OTHER STATE OR 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.

17. 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.

18. 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.

19. (A) ANY PERSON, FIRM OR CORPORATION THAT OPERATES AS A DEBT COLLECTION AGENCY WITHOUT A LICENSE SHALL BE REQUIRED TO PAY A CIVIL PENALTY TO THE DEPARTMENT OF NOT MORE THAN FIVE HUNDRED DOLLARS PER ATTEMPT TO COLLECT A DEBT IN VIOLATION OF THIS SECTION.

(B) IN ADDITION TO ANY OTHER PENALTIES, IF A PERSON IS FOUND TO HAVE COMMITTED REPEATED, MULTIPLE OR PERSISTENT VIOLATIONS 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 IN THE AMOUNT OF TEN THOUSAND DOLLARS TO BE FILED WITH THE SECRETARY.

2. AS A CONDITION TO OBTAINING A LICENSE PURSUANT TO THIS ARTICLE, EVERY DEBT COLLECTION AGENCY APPLICANT WHO IS APPLYING FOR A LICENSE AND

EMPLOYS 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 IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS TO BE FILED WITH THE SECRETARY.

3. AS A CONDITION TO OBTAINING A LICENSE PURSUANT TO THIS ARTICLE, EVERY DEBT COLLECTION AGENCY APPLICANT WHO IS APPLYING FOR A LICENSE AND EMPLOYS BETWEEN TEN AND TWENTY 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 IN THE AMOUNT OF FIFTY THOUSAND DOLLARS TO BE FILED WITH THE SECRETARY.

4. AS A CONDITION TO OBTAINING A LICENSE PURSUANT TO THIS ARTICLE, EVERY DEBT COLLECTION AGENCY APPLICANT WHO IS APPLYING FOR A LICENSE AND EMPLOYS TWENTY OR MORE 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, IN THE AMOUNT OF SEVENTY-FIVE THOUSAND DOLLARS TO BE FILED WITH THE SECRETARY.

5. SUCH SURETY BOND, CONTRACT OF INDEMNITY, OR IRREVOCABLE LETTER OF CREDIT SHALL BE CONDITIONED THAT THE APPLICANT WILL COMPLY WITH THIS ARTICLE, ARTICLE TWENTY-NINE-H, AND ARTICLE TWENTY-NINE-HH OF THIS CHAPTER AND PAY ALL CIVIL PENALTIES, FINES, OR OTHER OBLIGATIONS IMPOSED BY THE SECRETARY OR A COURT OF LAW, INVESTIGATORY COSTS REQUIRED TO BE PAID, OR ANY FINAL JUDGMENT AGAINST THE LICENSEE PURSUANT TO SUCH ARTICLES.

6. THE TOTAL LIABILITY IMPOSED ON THE SURETY BOND UNDER THIS SECTION FOR ALL BREACHES OF THE BOND CONDITION IS LIMITED TO THE FACE AMOUNT OF THE BOND. SUCH LIABILITY IS LIMITED TO THE AMOUNT OF THE PENALTY OR INVESTIGATORY COSTS. IN NO EVENT WILL THE SURETY ON A BOND BE LIABLE FOR TOTAL CLAIMS IN EXCESS OF THE BOND AMOUNT, REGARDLESS OF THE NUMBER OR NATURE OF CLAIMS MADE AGAINST THE BOND OR THE NUMBER OF YEARS THE BOND REMAINED IN FORCE.

7. ANY SURETY ISSUING A BOND PURSUANT TO THIS SECTION AND ANY LICENSEE SHALL BE REQUIRED TO PROVIDE THIRTY DAYS NOTICE TO THE SECRETARY PRIOR TO THE EFFECTIVE DATE OF CANCELLATION OF THE BOND. THE FAILURE TO MAINTAIN SUCH A BOND SHALL OPERATE TO REVOKE THE LICENSE OF THE DEBT COLLECTION AGENCY UPON NOTICE AND HEARING.

S 604-N. PENALTIES. 1. WHEREVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

2. ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS ARTICLE MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR ONE THOUSAND DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO TEN THOUSAND DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY VIOLATED THIS ARTICLE. IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE THE FOREGOING LIABILITY, THE COURT SHALL AWARD THE COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTORNEY'S FEES.

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

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

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

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

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