

6036

2009-2010 Regular Sessions

I N S E N A T E

June 21, 2009

Introduced by Sen. PERKINS -- (at request of the Governor) -- read twice
and ordered printed, and when printed to be committed to the Committee
on Rules

AN ACT to amend the general business law, in relation to debt collection
procedures

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

1 Section 1. Article 29-H of the general business law, as added by chap-
2 ter 753 of the laws of 1973, is amended to read as follows:

3 ARTICLE 29-H

4 DEBT COLLECTION PROCEDURES

5 Section 600. Definitions.

6 601. Prohibited CREDITOR practices.

7 602. [Violations and penalties] CREDITOR RESPONSIBILITIES.

8 603. [Severability] PROHIBITED DEBT COLLECTION PRACTICES.

9 603-A. SELLING OR TRANSFERRING OF DEBTS.

10 603-B. PRIVATE RIGHT OF ACTION.

11 603-C. VIOLATIONS AND PENALTIES.

12 603-D. SEVERABILITY.

13 S 600. Definitions. As used in this article, unless the context or
14 subject matter otherwise requires: 1. "[Consumer claim] DEBT" OR
15 "CONSUMER DEBT" means any obligation OR ALLEGED OBLIGATION of a natural
16 person for the payment of money [or its equivalent which is or is
17 alleged to be in default and which arises] ARISING out of a CONSUMER
18 transaction wherein credit has been offered or extended to a natural
19 person, and the money, property [or], INSURANCE, service OR SERVICES
20 which [was] ARE the subject of the transaction [was] ARE primarily for
21 personal, family or household purposes, WHETHER OR NOT SUCH OBLIGATION
22 HAS BEEN REDUCED TO A JUDGMENT. The term includes an obligation of a
23 natural person who is a co-maker, endorser, guarantor or surety as well
24 as the natural person to whom such credit was originally extended.

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

LBD12107-01-9

1 2. "Debtor" means any natural person who owes or who is asserted to
2 owe a [consumer claim] CONSUMER DEBT.

3 3. "[Principal creditor] CREDITOR" means any person, firm, ASSOCI-
4 ATION, corporation, [or] organization [to whom] OR OTHER BUSINESS ENTITY
5 THAT OFFERS OR EXTENDS CREDIT, CREATING a consumer [claim is] DEBT owed,
6 due or asserted to be due or owed, [or any assignee for value of said
7 person, firm, corporation or organization] BUT SUCH TERM DOES NOT
8 INCLUDE ANY PERSON, ASSOCIATION, FIRM, CORPORATION, ORGANIZATION OR
9 OTHER BUSINESS ENTITY TO THE EXTENT THAT IT RECEIVES AN ASSIGNMENT OR
10 TRANSFER OF A DEBT IN DEFAULT SOLELY FOR THE PURPOSE OF FACILITATING
11 COLLECTION OF SUCH DEBT FOR ANOTHER.

12 4. "COMMUNICATION" MEANS THE CONVEYING OF INFORMATION REGARDING A DEBT
13 DIRECTLY OR INDIRECTLY TO ANY PERSON THROUGH ANY MEDIUM.

14 5. "CONSUMER" MEANS ANY NATURAL PERSON OBLIGATED OR ALLEGEDLY OBLI-
15 GATED TO PAY ANY DEBT ARISING OUT OF A TRANSACTION IN WHICH THE MONEY,
16 PROPERTY, INSURANCE, OR SERVICES WHICH ARE THE SUBJECT OF THE TRANS-
17 ACTION ARE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, WHETH-
18 ER OR NOT SUCH OBLIGATION HAS BEEN REDUCED TO JUDGMENT.

19 6. "DEBT COLLECTOR" MEANS AN INDIVIDUAL, ASSOCIATION, FIRM, CORPO-
20 RATION, ORGANIZATION OR OTHER BUSINESS ENTITY WHO, AS PART OF HIS OR HER
21 JOB, REGULARLY COLLECTS OR SEEKS TO COLLECT FROM A CONSUMER A DEBT OWED
22 OR DUE TO ANOTHER OR ALLEGED TO BE OWED OR DUE.

23 THE TERM DOES NOT INCLUDE:

24 (A) ANY OFFICER OR EMPLOYEE OF A CREDITOR WHILE, IN THE NAME OF THE
25 CREDITOR, COLLECTING DEBTS FOR SUCH CREDITOR;

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

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

33 (D) ANY INDIVIDUAL EMPLOYED BY A NONPROFIT ORGANIZATION WHICH, AT THE
34 REQUEST OF CONSUMERS, PERFORMS BONA FIDE CONSUMER CREDIT COUNSELING AND
35 ASSISTS CONSUMERS IN THE LIQUIDATION OF THEIR DEBTS BY RECEIVING
36 PAYMENTS FROM SUCH CONSUMERS AND DISTRIBUTING SUCH AMOUNTS TO CREDITORS;

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

42 (F) ANY PERSON COLLECTING OR ATTEMPTING TO COLLECT ANY DEBT OWED OR
43 DUE OR ASSERTED TO BE OWED OR DUE ANOTHER TO THE EXTENT SUCH ACTIVITY
44 (I) IS INCIDENTAL TO A BONA FIDE FIDUCIARY OBLIGATION OR A BONA FIDE
45 ESCROW ARRANGEMENT; (II) CONCERNS A DEBT WHICH WAS ORIGINATED BY SUCH
46 PERSON; (III) CONCERNS A DEBT WHICH WAS NOT IN DEFAULT AT THE TIME IT
47 WAS OBTAINED BY SUCH PERSON; OR (IV) CONCERNS A DEBT OBTAINED BY SUCH
48 PERSON'S SECURED PARTY IN A COMMERCIAL CREDIT TRANSACTION INVOLVING THE
49 CREDITOR.

50 7. "LOCATION INFORMATION" MEANS A CONSUMER'S PLACE OF ABODE AND HIS OR
51 HER TELEPHONE NUMBER AT SUCH PLACE, OR HIS OR HER PLACE OF EMPLOYMENT.

52 8. "VERIFICATION OF THE DEBT" MEANS A COPY OF THE LAST BILL OR NOTICE
53 OF COLLECTION SENT FROM THE CREDITOR TO THE DEBTOR, ANY JUDGMENT LEVIED
54 IN CONJUNCTION WITH SUCH DEBT, AND, IF APPLICABLE, A COPY OF THE JUDG-
55 MENT RELEASE AND A COPY OF THE WRITTEN COMMUNICATION ADVISING THE DEBTOR
56 THAT HIS OR HER DEBT HAS BEEN SOLD OR TRANSFERRED.

1 S 601. Prohibited CREDITOR practices. No [principal] creditor, as
2 defined by this article, or his OR HER agent shall:

3 1. Simulate in any manner a law enforcement officer, or a represen-
4 tative of any governmental agency of the state of New York or any of its
5 political subdivisions; or

6 2. Knowingly collect, attempt to collect, or assert a right to any
7 collection fee, attorney's fee, court cost or expense unless such
8 [changes] CHARGES are justly due and legally chargeable against the
9 debtor; or

10 3. Disclose or threaten to disclose information affecting the debtor's
11 reputation for credit worthiness with knowledge or reason to know that
12 the information is false; or

13 4. Communicate or threaten to communicate the nature of a consumer
14 [claim] DEBT to the debtor's employer prior to obtaining final judgment
15 against the debtor. The provisions of this subdivision shall not
16 prohibit a [principal] creditor from communicating with the debtor's
17 employer to execute a wage assignment agreement if the debtor has
18 consented to such an agreement; or

19 5. Disclose or threaten to disclose information concerning the exist-
20 ence of a debt known to be disputed by the debtor without disclosing
21 that fact; or

22 6. Communicate with the debtor or any member of his OR HER family or
23 household AT ANY TIME OTHER THAN BETWEEN THE HOURS OF 8:00 A.M. AND 9:00
24 P.M. LOCAL TIME OR with such frequency [or at such unusual hours] or in
25 such a manner as can reasonably be expected to abuse or harass the
26 debtor; or

27 7. Threaten any action which the [principal] creditor in the usual
28 course of his OR HER business does not in fact take; or

29 8. Claim, or attempt or threaten to enforce a right with knowledge or
30 reason to know that the right does not exist; or

31 9. Use a communication which simulates in any manner legal or judicial
32 process or which gives the appearance of being authorized, issued or
33 approved by a government, governmental agency, or attorney at law when
34 it is not.

35 S 602. CREDITOR RESPONSIBILITIES. EVERY CREDITOR OR HIS OR HER AGENT
36 SHALL SEND A NOTICE TO THE LAST KNOWN ADDRESS OF THE DEBTOR ADVISING THE
37 DEBTOR WHEN HIS OR HER DEBT IS BEING SOLD OR TRANSFERRED, PRIOR TO OR
38 CONTEMPORANEOUS WITH THE SALE OF THE DEBT. A COPY OF THIS NOTICE SHALL
39 BE TRANSMITTED TO THE PERSON, FIRM, ORGANIZATION OR ENTITY TO WHOM THE
40 CREDITOR OR HIS OR HER AGENT HAS AGREED TO SELL OR TRANSFER THE DEBT,
41 ALONG WITH A COPY OF ANY NOTICE IN REGARD TO THE DEBT PROVIDED TO THE
42 CREDITOR IN ACCORDANCE WITH PARAGRAPH (B) OF SUBDIVISION SEVEN OF
43 SECTION SIX HUNDRED THREE OF THIS ARTICLE. A CREDITOR SHALL PROVIDE A
44 COPY OF SUCH NOTICE TO ANY DEBT COLLECTOR HIRED TO COLLECT SUCH DEBT.

45 S 603. PROHIBITED DEBT COLLECTION PRACTICES. IT IS AN UNCONSCIONABLE
46 AND DECEPTIVE TRADE PRACTICE FOR A DEBT COLLECTOR TO ATTEMPT TO COLLECT
47 A DEBT OWED, DUE, OR ASSERTED TO BE OWED OR DUE EXCEPT IN ACCORDANCE
48 WITH THE FOLLOWING:

49 1. ACQUISITION OF LOCATION INFORMATION. ANY DEBT COLLECTOR COMMUNICAT-
50 ING WITH ANY PERSON OTHER THAN THE CONSUMER FOR THE PURPOSE OF ACQUIRING
51 LOCATION INFORMATION ABOUT THE CONSUMER IN ORDER TO COLLECT A DEBT
52 SHALL:

53 (A) IDENTIFY HIMSELF OR HERSELF, STATE THAT HE OR SHE IS CONFIRMING OR
54 CORRECTING LOCATION INFORMATION ABOUT THE CONSUMER, AND, ONLY IF
55 EXPRESSLY REQUESTED, IDENTIFY HIS OR HER EMPLOYER;

56 (B) NOT STATE OR IMPLY THAT SUCH CONSUMER OWES ANY DEBT;

1 (C) NOT COMMUNICATE WITH ANY SUCH PERSON MORE THAN ONCE, UNLESS
2 REQUESTED TO DO SO BY SUCH PERSON OR UNLESS THE DEBT COLLECTOR REASON-
3 ABLY BELIEVES THAT THE EARLIER RESPONSE OF SUCH PERSON IS ERRONEOUS OR
4 INCOMPLETE AND THAT SUCH PERSON NOW HAS CORRECT OR COMPLETE LOCATION
5 INFORMATION. FOR THE PURPOSES OF THIS PARAGRAPH, THE DEBT COLLECTOR NEED
6 NOT COUNT AS A COMMUNICATION RETURNED UNOPENED MAIL OR A MESSAGE LEFT
7 WITH A PARTY OTHER THAN THE PERSON THE DEBT COLLECTOR IS ATTEMPTING TO
8 REACH IN ORDER TO ACQUIRE LOCATION INFORMATION ABOUT THE CONSUMER, AS
9 LONG AS THE MESSAGE IS LIMITED TO A TELEPHONE NUMBER, THE NAME OF THE
10 DEBT COLLECTOR AND A REQUEST THAT THE RECIPIENT TELEPHONE THE DEBT
11 COLLECTOR;

12 (D) NOT COMMUNICATE BY POST CARD;

13 (E) NOT USE ANY LANGUAGE OR SYMBOL ON ANY ENVELOPE OR IN THE CONTENTS
14 OF ANY COMMUNICATION EFFECTED BY THE MAILS OR TELEGRAM THAT INDICATES
15 THAT THE DEBT COLLECTOR IS IN THE DEBT COLLECTION BUSINESS OR THAT THE
16 COMMUNICATION RELATES TO THE COLLECTION OF A DEBT, PROVIDED THAT A DEBT
17 COLLECTOR MAY USE HIS OR HER BUSINESS NAME OR THE NAME OF A DEPARTMENT
18 WITHIN HIS OR HER ORGANIZATION AS LONG AS ANY NAME USED DOES NOT CONNOTE
19 DEBT COLLECTION; AND

20 (F) IF THE DEBT COLLECTOR KNOWS THE CONSUMER IS REPRESENTED BY AN
21 ATTORNEY WITH REGARD TO THE SUBJECT DEBT AND IF THE DEBT COLLECTOR HAS
22 KNOWLEDGE OF THE ATTORNEY'S NAME AND ADDRESS OR CAN READILY ASCERTAIN
23 SUCH ATTORNEY'S NAME AND ADDRESS, NOT COMMUNICATE WITH ANY PERSON OTHER
24 THAN THAT ATTORNEY FOR THE PURPOSE OF ACQUIRING LOCATION INFORMATION
25 ABOUT THE CONSUMER UNLESS THE ATTORNEY FAILS TO PROVIDE THE CONSUMER'S
26 LOCATION WITHIN A REASONABLE PERIOD OF TIME AFTER A REQUEST FOR THE
27 CONSUMER'S LOCATION FROM THE DEBT COLLECTOR AND:

28 (I) INFORMS THE DEBT COLLECTOR THAT HE OR SHE IS NOT AUTHORIZED TO
29 ACCEPT PROCESS FOR THE CONSUMER, OR

30 (II) FAILS TO RESPOND TO THE DEBT COLLECTOR'S INQUIRY ABOUT THE ATTOR-
31 NEY'S AUTHORITY TO ACCEPT PROCESS WITHIN A REASONABLE PERIOD OF TIME
32 AFTER THE INQUIRY.

33 2. COMMUNICATION IN CONNECTION WITH DEBT COLLECTION. (A) WITHOUT THE
34 PRIOR WRITTEN CONSENT OF THE CONSUMER GIVEN DIRECTLY TO THE DEBT COLLEC-
35 TOR AFTER THE INSTITUTION OF DEBT COLLECTION PROCEDURES, OR WITHOUT
36 PERMISSION OF A COURT OF COMPETENT JURISDICTION, A DEBT COLLECTOR SHALL
37 NOT COMMUNICATE WITH THE CONSUMER IN CONNECTION WITH THE COLLECTION OF
38 ANY DEBT:

39 (I) ORALLY, AT ANY TIME OTHER THAN BETWEEN THE HOURS OF 8:00 A.M. AND
40 9:00 P.M. LOCAL TIME OR ANY UNUSUAL PLACE KNOWN, OR WHICH SHOULD BE
41 KNOWN, TO BE INCONVENIENT TO THE CONSUMER;

42 (II) AT THE CONSUMER'S PLACE OF EMPLOYMENT. IF THE DEBT COLLECTOR HAS
43 RECEIVED CONSENT FROM THE CONSUMER TO COMMUNICATE WITH THE CONSUMER AT
44 THE CONSUMER'S PLACE OF EMPLOYMENT, THE DEBT COLLECTOR MAY COMMUNICATE
45 WITH THE CONSUMER, UNLESS THE DEBT COLLECTOR KNOWS OR HAS REASON TO KNOW
46 THAT THE CONSUMER'S EMPLOYER OR SUPERVISOR PROHIBITS THE CONSUMER FROM
47 RECEIVING SUCH A COMMUNICATION, OR

48 (III) WITH EXCESSIVE FREQUENCY. IN THE ABSENCE OF KNOWLEDGE OF CIRCUM-
49 STANCES TO THE CONTRARY, A DEBT COLLECTOR SHALL ASSUME THAT MORE THAN
50 TWICE DURING A SEVEN-CALENDAR-DAY PERIOD IS EXCESSIVELY FREQUENT. IN
51 MAKING ITS CALCULATION, THE DEBT COLLECTOR NEED NOT INCLUDE ANY COMMUNI-
52 CATION BETWEEN A CONSUMER AND THE DEBT COLLECTOR WHICH IS IN RESPONSE TO
53 AN ORAL OR WRITTEN COMMUNICATION FROM THE CONSUMER, OR RETURNED UNOPENED
54 MAIL, OR A MESSAGE LEFT WITH A PARTY OTHER THAN ONE WHO IS RESPONSIBLE
55 FOR THE DEBT AS LONG AS THE MESSAGE IS LIMITED TO A TELEPHONE NUMBER,
56 THE NAME OF THE DEBT COLLECTOR AND A REQUEST THAT ONE WHO IS RESPONSIBLE

FOR THE DEBT TELEPHONE THE DEBT COLLECTOR; OR ANY COMMUNICATION WHICH IS REQUIRED BY LAW OR CHOSEN FROM AMONG ALTERNATIVES OF WHICH ONE IS REQUIRED BY LAW.

(B) IN ORDER TO COLLECT A DEBT, AND EXCEPT AS PROVIDED BY SUBDIVISION ONE OF THIS SECTION, WITHOUT THE PRIOR WRITTEN CONSENT OF THE CONSUMER GIVEN DIRECTLY TO THE DEBT COLLECTOR AFTER THE INSTITUTION OF DEBT COLLECTION PROCEDURES, OR WITHOUT THE PRIOR WRITTEN CONSENT OF THE CONSUMER'S ATTORNEY OR WITHOUT THE EXPRESS PERMISSION OF A COURT OF COMPETENT JURISDICTION, OR AS REASONABLY NECESSARY TO EFFECTUATE A POST JUDGMENT JUDICIAL REMEDY, A DEBT COLLECTOR MAY NOT COMMUNICATE, IN CONNECTION WITH THE COLLECTION OF ANY DEBT, WITH ANY PERSON OTHER THAN THE CONSUMER, HIS OR HER ATTORNEY, A CONSUMER REPORTING AGENCY IF OTHERWISE PERMITTED BY LAW, THE CREDITOR, THE ATTORNEY OF THE CREDITOR, OR ATTORNEY OF THE DEBT COLLECTOR.

(C) AFTER INSTITUTION OF DEBT COLLECTION, A DEBT COLLECTOR SHALL NOT COMMUNICATE WITH A CONSUMER WITH RESPECT TO A DEBT IF THE CONSUMER HAS NOTIFIED THE DEBT COLLECTOR IN WRITING THAT THE CONSUMER REFUSES TO PAY A DEBT OR WISHES THE DEBT COLLECTOR TO CEASE FURTHER COMMUNICATION WITH THE CONSUMER WITH RESPECT TO THAT DEBT, EXCEPT:

(I) TO ADVISE THE CONSUMER THAT THE DEBT COLLECTOR'S FURTHER EFFORTS ARE BEING TERMINATED;

(II) TO NOTIFY THE CONSUMER THAT THE DEBT COLLECTOR MAY INVOKE SPECIFIED REMEDIES WHICH ARE ORDINARILY INVOKED BY SUCH DEBT COLLECTOR;

(III) WHERE APPLICABLE, TO NOTIFY THE CONSUMER THAT THE DEBT COLLECTOR INTENDS TO INVOKE A SPECIFIED REMEDY, OR

(IV) TO RESPOND TO EACH SUBSEQUENT COMMUNICATION FROM THE CONSUMER.

(D) FOR THE PURPOSE OF THIS SUBDIVISION THE TERM "CONSUMER" INCLUDES THE CONSUMER'S PARENT (IF THE CONSUMER IS A MINOR), GUARDIAN, EXECUTOR, ADMINISTRATOR, AND SPOUSE (UNLESS THE DEBT COLLECTOR KNOWS OR HAS REASON TO KNOW THAT THE CONSUMER IS LEGALLY SEPARATED FROM OR NO LONGER LIVING WITH HIS OR HER SPOUSE), OR AN INDIVIDUAL AUTHORIZED BY THE CONSUMER TO MAKE PURCHASES AGAINST THE ACCOUNT WHICH IS THE SUBJECT OF THE COLLECTION EFFORTS. A REQUEST THAT THE DEBT COLLECTOR CEASE FURTHER COMMUNICATION, PROVIDED FOR UNDER THIS SUBDIVISION, IF MADE BY THE CONSUMER'S SPOUSE OR AN INDIVIDUAL AUTHORIZED BY THE CONSUMER TO MAKE PURCHASES AGAINST THE ACCOUNT, ONLY AFFECTS THE DEBT COLLECTOR'S ABILITY TO COMMUNICATE FURTHER WITH THE PERSON MAKING THE REQUEST.

3. HARASSMENT OR ABUSE. A DEBT COLLECTOR SHALL NOT HARASS, OPPRESS OR ABUSE ANY PERSON IN CONNECTION WITH THE COLLECTION OF A DEBT. WITHOUT LIMITING THE GENERAL APPLICATION OF THE FOREGOING, THE FOLLOWING CONDUCT IS PROHIBITED:

(A) THE USE OR THREAT OF VIOLENCE OR OTHER CRIMINAL MEANS TO HARM THE PHYSICAL PERSON, REPUTATION, OR PROPERTY OF ANY PERSON;

(B) THE USE OF OBSCENE OR PROFANE LANGUAGE OR LANGUAGE THE NATURAL CONSEQUENCE OF WHICH IS TO ABUSE THE RECIPIENT OF THE COMMUNICATION;

(C) THE ADVERTISEMENT FOR SALE OF ANY DEBT TO COERCE PAYMENT OF THE DEBT;

(D) CAUSING A TELEPHONE TO RING OR ENGAGING ANY PERSON IN TELEPHONE CONVERSATION REPEATEDLY OR CONTINUOUSLY WITH INTENT TO ANNOY, ABUSE, OR HARASS ANY PERSON AT THE CALLED NUMBER;

(E) THE PUBLICATION OF A LIST OF CONSUMERS WHO ALLEGEDLY REFUSE TO PAY DEBTS, EXCEPT TO ANOTHER EMPLOYEE OF THE DEBT COLLECTOR'S EMPLOYER OR TO A CONSUMER REPORTING AGENCY OR TO PERSONS MEETING THE REQUIREMENTS OF 15 USC 1681A(F) OR 15 USC 1681B(3); OR

1 (F) EXCEPT AS PROVIDED BY SUBDIVISION ONE OF THIS SECTION, THE PLACE-
2 MENT OF TELEPHONE CALLS WITHOUT MEANINGFUL DISCLOSURE OF THE CALLER'S
3 IDENTITY.

4 4. FALSE OR MISLEADING REPRESENTATIONS. A DEBT COLLECTOR SHALL NOT
5 MAKE ANY FALSE, DECEPTIVE, OR MISLEADING REPRESENTATION OR MEANS IN
6 CONNECTION WITH THE COLLECTION OF ANY DEBT. WITHOUT LIMITING THE GENERAL
7 APPLICATION OF THE FOREGOING, THE FOLLOWING CONDUCT IS PROHIBITED:

8 (A) THE FALSE REPRESENTATION OR IMPLICATION THAT THE DEBT COLLECTOR IS
9 VOUCHERED FOR, BONDED BY, OR AFFILIATED WITH THE UNITED STATES OR ANY
10 STATE, INCLUDING THE USE OF ANY BADGE, UNIFORM OR FACSIMILE THEREOF;

11 (B) THE FALSE REPRESENTATION OF:

12 (I) THE CHARACTER, AMOUNT, OR LEGAL STATUS OF ANY DEBT, OR

13 (II) ANY SERVICES RENDERED OR COMPENSATION WHICH MAY BE LAWFULLY
14 RECEIVED BY ANY DEBT COLLECTOR FOR THE COLLECTION OF A DEBT;

15 (C) THE FALSE REPRESENTATION OR IMPLICATION THAT ANY INDIVIDUAL IS AN
16 ATTORNEY OR ANY COMMUNICATION IS FROM AN ATTORNEY;

17 (D) THE REPRESENTATION OR IMPLICATION THAT NONPAYMENT OF ANY DEBT WILL
18 RESULT IN THE ARREST OR IMPRISONMENT OF ANY PERSON OR THE SEIZURE,
19 GARNISHMENT, ATTACHMENT, OR SALE OF ANY PROPERTY OR WAGES OF ANY PERSON
20 UNLESS SUCH ACTION IS LAWFUL AND THE DEBT COLLECTOR OR CREDITOR INTENDS
21 TO PURSUE SUCH ACTION;

22 (E) THE THREAT TO TAKE ANY ACTION THAT CANNOT LEGALLY BE TAKEN OR THAT
23 IS NOT INTENDED TO BE TAKEN;

24 (F) THE FALSE REPRESENTATION OR IMPLICATION THAT A SALE, REFERRAL, OR
25 OTHER TRANSFER OF ANY INTEREST IN A DEBT SHALL CAUSE THE CONSUMER TO:

26 (I) LOSE ANY CLAIM OR DEFENSE TO PAYMENT OF THE DEBT; OR

27 (II) BECOME SUBJECT TO ANY PRACTICE PROHIBITED BY THIS ARTICLE;

28 (G) THE FALSE REPRESENTATION OR IMPLICATION MADE IN ORDER TO DISGRACE
29 THE CONSUMER THAT THE CONSUMER COMMITTED ANY CRIME OR OTHER CONDUCT;

30 (H) THE FALSE REPRESENTATION OR IMPLICATION THAT ACCOUNTS HAVE BEEN
31 TURNED OVER TO INNOCENT PURCHASERS FOR VALUE;

32 (I) COMMUNICATING OR THREATENING TO COMMUNICATE TO ANY PERSON CREDIT
33 INFORMATION WHICH IS KNOWN OR WHICH SHOULD BE KNOWN TO BE FALSE, INCLUD-
34 ING THE FAILURE TO COMMUNICATE A DISPUTED DEBT'S STATUS AS DISPUTED;

35 (J) THE FALSE REPRESENTATION OR IMPLICATION THAT DOCUMENTS ARE LEGAL
36 PROCESS;

37 (K) THE USE OF ANY FALSE REPRESENTATION OR DECEPTIVE MEANS TO COLLECT
38 OR ATTEMPT TO COLLECT ANY DEBT OR TO OBTAIN INFORMATION CONCERNING A
39 CONSUMER;

40 (L) THE USE OR DISTRIBUTION OF ANY WRITTEN COMMUNICATION WHICH SIMU-
41 LATES OR IS FALSELY REPRESENTED TO BE A DOCUMENT AUTHORIZED, ISSUED, OR
42 APPROVED BY ANY COURT, OFFICIAL OR AGENCY OF THE UNITED STATES, THE
43 STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR WHICH CREATES A FALSE
44 IMPRESSION AS TO ITS SOURCE, AUTHORIZATION, OR APPROVAL;

45 (M) THE FALSE REPRESENTATION OR IMPLICATION THAT DOCUMENTS ARE NOT
46 LEGAL PROCESS FORMS AND DO NOT REQUIRE ACTION BY THE CONSUMER;

47 (N) THE FALSE REPRESENTATION OR IMPLICATION THAT A DEBT COLLECTOR
48 OPERATES OR IS EMPLOYED BY A CONSUMER REPORTING AGENCY AS DEFINED BY 15
49 USC 1681A(F);

50 (O) COMMUNICATING OR THREATENING TO COMMUNICATE TO ANY PERSON CREDIT
51 INFORMATION WHICH IS KNOWN OR WHICH SHOULD BE KNOWN TO BE FALSE, INCLUD-
52 ING THE FAILURE TO COMMUNICATE A DISPUTED DEBT'S STATUS AS DISPUTED;

53 (P) EXCEPT AS OTHERWISE PROVIDED UNDER SUBDIVISION ONE OF THIS SECTION
54 AND EXCEPT FOR ANY COMMUNICATION WHICH IS REQUIRED BY LAW OR CHOSEN FROM
55 AMONG ALTERNATIVES OF WHICH ONE IS REQUIRED BY LAW, OR ANY FORMAL PLEAD-
56 ING IN CONNECTION WITH ANY LEGAL ACTION, THE FAILURE TO DISCLOSE CLEARLY

1 IN ALL COMMUNICATIONS MADE TO COLLECT A DEBT OR TO OBTAIN INFORMATION
2 ABOUT A CONSUMER, THAT THE DEBT COLLECTOR IS ATTEMPTING TO COLLECT A
3 DEBT AND THAT ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE; OR
4 (Q) THE USE OF ANY BUSINESS, COMPANY, OR ORGANIZATION NAME OTHER THAN
5 THE TRUE NAME OF THE DEBT COLLECTOR'S BUSINESS, COMPANY, OR ORGANIZA-
6 TION.

7 5. UNFAIR PRACTICES. A DEBT COLLECTOR SHALL NOT USE ANY UNFAIR OR
8 UNCONSCIONABLE MEANS TO COLLECT OR ATTEMPT TO COLLECT A DEBT. WITHOUT
9 LIMITATION OF THE FOREGOING, SUCH PROHIBITED CONDUCT INCLUDES:

10 (A) THE COLLECTION OF ANY AMOUNT (INCLUDING ANY INTEREST, FEE, CHARGE,
11 OR EXPENSE INCIDENTAL TO THE PRINCIPAL OBLIGATION) UNLESS SUCH AMOUNT IS
12 EXPRESSLY AUTHORIZED BY THE AGREEMENT CREATING THE DEBT;

13 (B) THE SOLICITATION OR USE BY A DEBT COLLECTOR OF ANY POSTDATED CHECK
14 OR OTHER POSTDATED PAYMENT INSTRUMENT FOR THE PURPOSE OF THREATENING OR
15 INSTITUTING CRIMINAL PROSECUTION;

16 (C) CAUSING CHARGES TO BE MADE TO ANY PERSON FOR COMMUNICATIONS BY
17 MISREPRESENTATION OF TRUE PURPOSE OF THE COMMUNICATION. SUCH CHARGES
18 INCLUDE COLLECT TELEPHONE CALLS, TELEGRAM AND WIRELESS TELEPHONE FEES;

19 (D) TAKING OR THREATENING TO TAKE ANY NONJUDICIAL ACTION TO EFFECT
20 DISPOSSESSION OR DISABLEMENT OF PROPERTY IF:

21 (I) THERE IS NO PRESENT RIGHT TO POSSESSION OF THE PROPERTY CLAIMED AS
22 COLLATERAL;

23 (II) THERE IS NO PRESENT INTENTION TO TAKE POSSESSION OF THE PROPERTY;
24 OR

25 (III) THE PROPERTY IS EXEMPT BY LAW FROM SUCH DISPOSSESSION OR DISA-
26 BLEMENT;

27 (E) COMMUNICATING WITH A CONSUMER REGARDING A DEBT BY POST CARD;

28 (F) USING ANY LANGUAGE OR SYMBOL, OTHER THAN THE DEBT COLLECTOR'S
29 ADDRESS, ON ANY ENVELOPE WHEN COMMUNICATING WITH A CONSUMER BY USE OF
30 THE MAILS OR BY TELEGRAM, OR ELECTRONIC COMMUNICATION COPIED TO A THIRD
31 PARTY EXCEPT THAT A DEBT COLLECTOR MAY USE HIS OR HER BUSINESS NAME OR
32 THE NAME OF A DEPARTMENT WITHIN HIS OR HER ORGANIZATION AS LONG AS ANY
33 NAME USED DOES NOT INDICATE THAT HE OR SHE IS IN THE BUSINESS OF DEBT
34 COLLECTION;

35 (G) COMMUNICATING WITH A CONSUMER REGARDING A DEBT WITHOUT IDENTIFYING
36 HIMSELF OR HERSELF AND HIS OR HER EMPLOYER OR COMMUNICATING IN WRITING
37 WITH A CONSUMER REGARDING A DEBT WITHOUT IDENTIFYING HIMSELF OR HERSELF
38 BY NAME AND ADDRESS; OR

39 (H) IF ANY CONSUMER OWES MULTIPLE DEBTS AND MAKES ANY SINGLE PAYMENT
40 TO ANY DEBT COLLECTOR WITH RESPECT TO SUCH DEBTS, SUCH DEBT COLLECTOR
41 MAY NOT APPLY SUCH PAYMENT TO ANY DEBT WHICH IS DISPUTED BY THE CONSUMER
42 AND, WHERE APPLICABLE, SHALL APPLY SUCH PAYMENT IN ACCORDANCE WITH THE
43 CONSUMER'S DIRECTIONS.

44 6. DECEPTIVE FORMS. IT IS UNLAWFUL FOR ANY PERSON TO DESIGN, COMPILE
45 AND FURNISH ANY FORM KNOWING THAT SUCH FORM WOULD BE USED TO CREATE THE
46 FALSE BELIEF IN A CONSUMER THAT A PERSON OTHER THAN THE CREDITOR OF SUCH
47 CONSUMER IS PARTICIPATING IN THE COLLECTION OF OR IN AN ATTEMPT TO
48 COLLECT A DEBT SUCH CONSUMER ALLEGEDLY OWES SUCH CREDITOR, WHEN IN FACT
49 SUCH PERSON IS NOT SO PARTICIPATING.

50 7. VALIDATION OF DEBTS. THE FOLLOWING VALIDATION PROCEDURES SHALL BE
51 FOLLOWED BY DEBT COLLECTORS:

52 (A) WITHIN FIVE DAYS AFTER THE INITIAL COMMUNICATION WITH A CONSUMER
53 IN CONNECTION WITH THE COLLECTION OF ANY DEBT, A DEBT COLLECTOR SHALL,
54 UNLESS THE FOLLOWING INFORMATION IS CONTAINED IN THE INITIAL COMMUNI-
55 CATION OR THE CONSUMER HAS PAID THE DEBT, SEND THE CONSUMER A CLEAR
56 WRITTEN NOTICE TITLED "DEBTOR'S RIGHTS," WHICH SHALL CONTAIN:

1 (I) THE DELINEATED AMOUNTS OF THE ORIGINAL DEBT, ANY INTEREST AND
2 PENALTIES ACCRUED, AND THE TOTAL DEBT DUE AT THE TIME OF THE NOTICE,

3 (II) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE CREDITOR TO WHOM
4 THE DEBT IS OWED, OR SUCH CREDITOR'S AGENT, AND THE NAME, ADDRESS AND
5 TELEPHONE NUMBER OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT
6 DEBT COLLECTOR,

7 (III) THE DATE THE DEBT WAS DEEMED IN DEFAULT,

8 (IV) A STATEMENT THAT UNLESS THE CONSUMER, WITHIN THIRTY DAYS AFTER
9 RECEIPT OF THE NOTICE, DISPUTES THE VALIDITY OF THE DEBT, OR ANY PORTION
10 THEREOF, THE DEBT WILL BE ASSUMED VALID BY THE DEBT COLLECTOR, AND

11 (V) A STATEMENT THAT, IF THE CONSUMER NOTIFIES THE DEBT COLLECTOR IN
12 WRITING WITHIN THE THIRTY-DAY PERIOD AT THE ADDRESS DESIGNATED BY THE
13 DEBT COLLECTOR IN THE NOTICE, THAT THE DEBT, OR ANY PORTION THEREOF IS
14 DISPUTED, THE DEBT COLLECTOR WILL OBTAIN VERIFICATION OF THE DEBT
15 AGAINST THE CONSUMER AND A COPY OF SUCH VERIFICATION WILL BE MAILED TO
16 THE CONSUMER BY THE DEBT COLLECTOR.

17 (B) IF THE CONSUMER NOTIFIES THE DEBT COLLECTOR IN WRITING WITHIN THE
18 THIRTY DAY PERIOD DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION THAT
19 THE DEBT, OR ANY PORTION THEREOF IS DISPUTED, OR IF NOTICE OF SUCH
20 DISPUTE IS GIVEN TO THE DEBT COLLECTOR IN ACCORDANCE WITH THIS ARTICLE,
21 THE DEBT COLLECTOR SHALL NOT ATTEMPT TO COLLECT THE AMOUNT IN DISPUTE
22 UNTIL THE DEBT COLLECTOR OBTAINS AND MAILS TO THE CONSUMER VERIFICATION
23 OF THE DEBT. A DEBT COLLECTOR THAT RECEIVES SUCH WRITTEN NOTICE SHALL
24 PROVIDE A COPY THEREOF TO THE OWNER OF THE DEBT.

25 (C) THE DEBT COLLECTOR SHALL MAINTAIN FOR ONE YEAR FROM THE DATE THE
26 DEBTOR'S RIGHTS NOTICE WAS MAILED, DOCUMENTATION OF THE DATE SUCH NOTICE
27 WAS MAILED, THE DATE THE RESPONSE, IF ANY, WAS RECEIVED AND ANY ACTION
28 TAKEN FOLLOWING SUCH RESPONSE.

29 (D) THE FAILURE OF A CONSUMER TO DISPUTE THE VALIDITY OF A DEBT UNDER
30 THIS SECTION SHALL NOT BE CONSTRUED BY ANY COURT AS AN ADMISSION OF
31 LIABILITY BY THE CONSUMER.

32 (E) THE SENDING OR DELIVERY OF ANY FORM OR NOTICE WHICH DOES NOT
33 RELATE TO DEBT COLLECTION AND IS EXPRESSLY REQUIRED BY THE INTERNAL
34 REVENUE CODE OF 1986, TITLE V OF THE GRAMM-LEACH-BLILEY ACT, OR ANY
35 PROVISION OF FEDERAL OR STATE LAW RELATING TO NOTICE OF DATA SECURITY
36 BREACH OR PRIVACY, OR ANY REGULATION PRESCRIBED UNDER ANY SUCH PROVISION
37 OF LAW, SHALL NOT BE TREATED AS AN INITIAL COMMUNICATION IN CONNECTION
38 WITH DEBT COLLECTION FOR PURPOSES OF THIS SECTION.

39 (F) IF THE CONSUMER NOTIFIES THE DEBT COLLECTOR IN WRITING AFTER THE
40 THIRTY-DAY PERIOD DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION THAT
41 THE DEBT, OR ANY PORTION THEREOF IS DISPUTED, THE DEBT COLLECTOR SHALL
42 OBTAIN VERIFICATION OF THE DEBT, AND MAIL SUCH VERIFICATION TO THE
43 CONSUMER. THE DEBT COLLECTOR MAY CONTINUE TO ATTEMPT TO COLLECT THE
44 AMOUNT IN DISPUTE.

45 S 603-A. SELLING OR TRANSFERRING OF DEBTS. EVERY DEBT PURCHASER OR HIS
46 OR HER AGENT SHALL SEND A NOTICE TO THE LAST KNOWN ADDRESS OF THE DEBTOR
47 ADVISING THE DEBTOR WHEN THE DEBT PURCHASER SELLS OR TRANSFERS THE DEBT,
48 PRIOR TO OR CONTEMPORANEOUS WITH THE SALE OF THE DEBT. A COPY OF SUCH
49 NOTICE SHALL BE TRANSMITTED TO THE PERSON, FIRM, ORGANIZATION OR ENTITY
50 TO WHOM THE DEBT PURCHASER OR HIS OR HER AGENT HAS AGREED TO SELL OR
51 TRANSFER THE DEBT ALONG WITH A COPY OF ANY NOTICE IN REGARD TO THE DEBT
52 PROVIDED TO THE DEBT PURCHASER IN ACCORDANCE WITH PARAGRAPH (B) OF
53 SUBDIVISION SEVEN OF SECTION SIX HUNDRED THREE OF THIS ARTICLE. A DEBT
54 PURCHASER SHALL PROVIDE A COPY OF SUCH NOTICE TO ANY DEBT COLLECTOR
55 HIRED TO COLLECT SUCH DEBT.

1 S 603-B. PRIVATE RIGHT OF ACTION. (A) NOTWITHSTANDING ANY RIGHT OF
2 ACTION GRANTED TO ANY GOVERNMENTAL BODY PURSUANT TO THIS ARTICLE, ANY
3 PERSON WHO HAS BEEN INJURED BY REASON OF VIOLATION OF THIS ARTICLE MAY
4 BRING AN ACTION AGAINST ANY PERSON OR PERSONS, TO ENJOIN SUCH UNLAWFUL
5 ACT, AND TO RECOVER AN AMOUNT EQUAL TO (1) ANY ACTUAL DAMAGE SUSTAINED
6 BY SUCH PERSON AS A RESULT OF SUCH FAILURE, AND (2) SUCH ADDITIONAL
7 DAMAGES AS THE COURT MAY ALLOW BUT NOT EXCEEDING TWO THOUSAND FIVE
8 HUNDRED DOLLARS, AND REASONABLE ATTORNEY'S FEES.

9 (B) INTENT. A DEBT COLLECTOR MAY NOT BE HELD LIABLE IN ANY ACTION
10 BROUGHT UNDER THIS ARTICLE, ABSENT ACTUAL DAMAGE TO THE CONSUMER, IF THE
11 DEBT COLLECTOR SHOWS BY A PREPONDERANCE OF EVIDENCE THAT THE VIOLATION
12 WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR NOTWITHSTANDING
13 THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID ANY SUCH
14 ERROR.

15 (C) LIMITATIONS. AN ACTION TO ENFORCE ANY LIABILITY CREATED BY THIS
16 ARTICLE MAY BE BROUGHT IN ANY OTHER COURT OF COMPETENT JURISDICTION,
17 WITHIN TWO YEARS FROM THE DATE ON WHICH THE VIOLATION OCCURS.

18 S [602] 603-C. Violations and penalties. 1. Except as otherwise
19 provided by law, any person who [shall violate] VIOLATES the terms of
20 this article [shall be] IS guilty of a misdemeanor, and each such
21 violation shall be deemed a separate offense.

22 2. The attorney general or the district attorney of any county may
23 bring an action in the name of the people of the state to restrain or
24 prevent any violation of this article or any continuance of any such
25 violation.

26 S [603] 603-D. Severability. If any provision of this article or the
27 application thereof to any person or circumstances is held invalid the
28 invalidity thereof shall not affect other provisions or applications of
29 the article which can be given effect without the invalid provision or
30 application, and to this [and] END the provisions of this article are
31 severable.

32 S 2. This act shall take effect on the first of January next succeed-
33 ing the date on which it shall have become a law, provided, however,
34 that section 602, subdivision 7 of section 603 and section 603-a of the
35 general business law, as added by this act, shall apply only to debts
36 incurred on or after the effective date of such sections.