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

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I N S E N A T E

March 29, 2010

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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:

Section 1. The general business law is amended by adding a new section 391-q to read as follows:

S 391-Q. SERVICE PROVIDERS; USE OF CONSUMER CREDIT REPORTS. 1. AS USED IN THIS SECTION, THE TERM "SERVICE PROVIDER" SHALL INCLUDE, BUT NOT BE LIMITED TO, PUBLIC UTILITIES AND INSURANCE COMPANIES.

2. NO PERSON OR ENTITY ENGAGED IN THE BUSINESS OF PROVIDING ANY SERVICE IN THIS STATE SHALL RELY SOLELY UPON THE CONSUMER CREDIT REPORT, AS DEFINED IN SUBDIVISION (L) OF SECTION THREE HUNDRED EIGHTY-A OF THIS CHAPTER, OF ANY POTENTIAL CUSTOMER OR CUSTOMERS IN THE DETERMINATION OF WHAT RATES OR PRICES TO CHARGE A CUSTOMER OR CUSTOMERS. NOTHING HEREIN SHALL PROHIBIT A SERVICE PROVIDER FROM REVIEWING OR UTILIZING A CONSUMER CREDIT REPORT IN DETERMINING WHETHER AN APPLICANT MUST PROVIDE SURETY PRIOR TO PROVIDING SERVICES.

3. NO PERSON OR ENTITY ENGAGED IN THE BUSINESS OF PROVIDING ANY SERVICE IN THIS STATE SHALL SOLELY UTILIZE THE CONSUMER CREDIT REPORT, AS DEFINED IN SUBDIVISION (1) OF SECTION THREE HUNDRED EIGHTY-A OF THIS CHAPTER, OF ANY POTENTIAL CUSTOMER OR CUSTOMERS FOR THE PURPOSE OF REQUIRING THE POTENTIAL CUSTOMER OR CUSTOMERS TO PAY AN ADDITIONAL FEE OR HIGHER RATE FOR THE PROVISION OR CONTINUANCE OF THE PROVISION OF SERVICE. ANY DEPOSIT REQUIRED BY A SERVICE PROVIDER SHALL NOT EXCEED A MONTHLY PAYMENT AS REQUIRED BY SUCH SERVICE PROVIDER, OR IF THE CONSUMER'S MONTHLY PAYMENT IS VARIABLE, AN AVERAGE FOR SUCH CONSUMER'S MONTHLY BILLING.

4. ANY PERSON OR ENTITY FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE VIOLATED SUBDIVISION TWO OR THREE OF THIS SECTION SHALL BE SUBJECT

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

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TO A PENALTY OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION.

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

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

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

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

S 2. This act shall take effect immediately.