

7398

I N S E N A T E

April 7, 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:

1 Section 1. The general business law is amended by adding a new section
2 393-e to read as follows:
3 S 393-E. 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 SERVICE PROVIDER IN THIS STATE SHALL RELY SOLELY UPON THE
7 CONSUMER CREDIT REPORT, AS DEFINED IN SUBDIVISION (L) OF SECTION THREE
8 HUNDRED EIGHTY-A OF THIS CHAPTER, OF ANY POTENTIAL CUSTOMER OR CUSTOMERS
9 IN THE DETERMINATION OF WHAT RATES OR PRICES TO CHARGE A CUSTOMER OR
10 CUSTOMERS. NOTHING IN THIS SECTION SHALL PROHIBIT A SERVICE PROVIDER
11 FROM REVIEWING OR UTILIZING A CONSUMER CREDIT REPORT IN DETERMINING
12 WHETHER AN APPLICANT MUST PROVIDE SURETY PRIOR TO PROVIDING SERVICES.
13 3. NO SERVICE PROVIDER IN THIS STATE SHALL SOLELY UTILIZE THE CONSUMER
14 CREDIT REPORT, AS DEFINED IN SUBDIVISION (1) OF SECTION THREE HUNDRED
15 EIGHTY-A OF THIS CHAPTER, OF ANY POTENTIAL CUSTOMER OR CUSTOMERS FOR THE
16 PURPOSE OF REQUIRING THE POTENTIAL CUSTOMER OR CUSTOMERS TO PAY AN ADDI-
17 TIONAL FEE OR HIGHER RATE FOR THE PROVISION OR CONTINUANCE OF THE
18 PROVISION OF SERVICE. ANY DEPOSIT REQUIRED BY A SERVICE PROVIDER SHALL
19 NOT EXCEED A MONTHLY PAYMENT AS REQUIRED BY SUCH SERVICE PROVIDER, OR IF
20 THE CONSUMER'S MONTHLY PAYMENT IS VARIABLE, AN AVERAGE FOR SUCH CONSUM-
21 ER'S MONTHLY BILLING.
22 4. ANY SERVICE PROVIDER FOUND BY A COURT OF COMPETENT JURISDICTION TO
23 HAVE VIOLATED SUBDIVISION TWO OR THREE OF THIS SECTION SHALL BE SUBJECT
24 TO A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOU-
25 SAND DOLLARS FOR EACH SUCH VIOLATION.

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

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

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

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

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

18 S 2. This act shall take effect on the thirtieth day after it shall
19 have become a law.