

8840

2009-2010 Regular Sessions

I N A S S E M B L Y

June 11, 2009

Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Consumer Affairs and Protection

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 ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 29-H of the general business law, as added by chapter 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.

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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 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; OR

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

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

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

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

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

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

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

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

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

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

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

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

23 S 602. CREDITOR RESPONSIBILITIES. EVERY CREDITOR OR HIS OR HER AGENT
24 SHALL SEND A NOTICE TO THE LAST KNOWN ADDRESS OF THE DEBTOR ADVISING THE
25 DEBTOR WHEN HIS OR HER DEBT IS BEING SOLD OR TRANSFERRED. A COPY OF THIS
26 NOTICE SHALL BE TRANSMITTED TO THE PERSON, FIRM, ORGANIZATION OR ENTITY
27 TO WHOM THE CREDITOR OR HIS OR HER AGENT HAS AGREED TO SELL OR TRANSFER
28 THE DEBT.

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

33 1. ACQUISITION OF LOCATION INFORMATION. ANY DEBT COLLECTOR COMMUNICAT-
34 ING WITH ANY PERSON OTHER THAN THE CONSUMER FOR THE PURPOSE OF ACQUIRING
35 LOCATION INFORMATION ABOUT THE CONSUMER IN ORDER TO COLLECT A DEBT
36 SHALL:

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

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

41 (C) NOT COMMUNICATE MORE THAN ONCE, UNLESS REQUESTED TO DO SO BY SUCH
42 PERSON OR UNLESS THE DEBT COLLECTOR REASONABLY BELIEVES THAT THE EARLIER
43 RESPONSE OF SUCH PERSON IS ERRONEOUS OR INCOMPLETE AND THAT SUCH PERSON
44 NOW HAS CORRECT OR COMPLETE LOCATION INFORMATION. FOR THE PURPOSES OF
45 THIS PARAGRAPH, THE DEBT COLLECTOR NEED NOT COUNT AS A COMMUNICATION
46 RETURNED UNOPENED MAIL OR A MESSAGE LEFT WITH A PARTY OTHER THAN THE
47 PERSON THE DEBT COLLECTOR IS ATTEMPTING TO REACH IN ORDER TO ACQUIRE
48 LOCATION INFORMATION ABOUT THE CONSUMER, AS LONG AS THE MESSAGE IS
49 LIMITED TO A TELEPHONE NUMBER, THE NAME OF THE DEBT COLLECTOR AND A
50 REQUEST THAT THE RECIPIENT TELEPHONE THE DEBT COLLECTOR;

51 (D) NOT COMMUNICATE BY POST CARD;

52 (E) NOT USE ANY LANGUAGE OR SYMBOL ON ANY ENVELOPE OR IN THE CONTENTS
53 OF ANY COMMUNICATION EFFECTED BY THE MAILS OR TELEGRAM THAT INDICATES
54 THAT THE DEBT COLLECTOR IS IN THE DEBT COLLECTION BUSINESS OR THAT THE
55 COMMUNICATION RELATES TO THE COLLECTION OF A DEBT, PROVIDED THAT A DEBT
56 COLLECTOR MAY USE HIS OR HER BUSINESS NAME OR THE NAME OF A DEPARTMENT

1 WITHIN HIS OR HER ORGANIZATION AS LONG AS ANY NAME USED DOES NOT CONNOTE
2 DEBT COLLECTION; AND
3 (F) IF THE DEBT COLLECTOR KNOWS THE CONSUMER IS REPRESENTED BY AN
4 ATTORNEY WITH REGARD TO THE SUBJECT DEBT AND IF THE DEBT COLLECTOR HAS
5 KNOWLEDGE OF THE ATTORNEY'S NAME AND ADDRESS OR CAN READILY ASCERTAIN
6 SUCH ATTORNEY'S NAME AND ADDRESS, NOT COMMUNICATE WITH ANY PERSON OTHER
7 THAN THAT ATTORNEY FOR THE PURPOSE OF ACQUIRING LOCATION INFORMATION
8 ABOUT THE CONSUMER UNLESS THE ATTORNEY FAILS TO PROVIDE THE CONSUMER'S
9 LOCATION WITHIN A REASONABLE PERIOD OF TIME AFTER A REQUEST FOR THE
10 CONSUMER'S LOCATION FROM THE DEBT COLLECTOR AND:

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

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

16 2. COMMUNICATION IN CONNECTION WITH DEBT COLLECTION.

17 (A) WITHOUT THE PRIOR WRITTEN CONSENT OF THE CONSUMER GIVEN DIRECTLY
18 TO THE DEBT COLLECTOR AFTER THE INSTITUTION OF DEBT COLLECTION PROCE-
19 DURES, OR WITHOUT PERMISSION OF A COURT OF COMPETENT JURISDICTION, A
20 DEBT COLLECTOR SHALL NOT COMMUNICATE WITH THE CONSUMER IN CONNECTION
21 WITH THE COLLECTION OF ANY DEBT:

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

25 (II) AT THE CONSUMER'S PLACE OF EMPLOYMENT. IF THE DEBT COLLECTOR HAS
26 RECEIVED CONSENT FROM THE CONSUMER TO COMMUNICATE WITH THE CONSUMER AT
27 THE CONSUMER'S PLACE OF EMPLOYMENT, THE DEBT COLLECTOR MAY COMMUNICATE
28 WITH THE CONSUMER, UNLESS THE DEBT COLLECTOR KNOWS OR HAS REASON TO KNOW
29 THAT THE CONSUMER'S EMPLOYER OR SUPERVISOR PROHIBITS THE CONSUMER FROM
30 RECEIVING SUCH A COMMUNICATION, OR

31 (III) WITH EXCESSIVE FREQUENCY. IN THE ABSENCE OF KNOWLEDGE OF CIRCUM-
32 STANCES TO THE CONTRARY, A DEBT COLLECTOR SHALL ASSUME THAT MORE THAN
33 TWICE DURING A SEVEN-CALENDAR-DAY PERIOD IS EXCESSIVELY FREQUENT. IN
34 MAKING ITS CALCULATION, THE DEBT COLLECTOR NEED NOT INCLUDE ANY COMMUNI-
35 CATION BETWEEN A CONSUMER AND THE DEBT COLLECTOR WHICH IS IN RESPONSE TO
36 AN ORAL OR WRITTEN COMMUNICATION FROM THE CONSUMER, OR RETURNED UNOPENED
37 MAIL, OR A MESSAGE LEFT WITH A PARTY OTHER THAN ONE WHO IS RESPONSIBLE
38 FOR THE DEBT AS LONG AS THE MESSAGE IS LIMITED TO A TELEPHONE NUMBER,
39 THE NAME OF THE DEBT COLLECTOR AND A REQUEST THAT ONE WHO IS RESPONSIBLE
40 FOR THE DEBT TELEPHONE THE DEBT COLLECTOR; OR ANY COMMUNICATION WHICH IS
41 REQUIRED BY LAW OR CHOSEN FROM AMONG ALTERNATIVES OF WHICH ONE IS
42 REQUIRED BY LAW.

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

54 (C) AFTER INSTITUTION OF DEBT COLLECTION, A DEBT COLLECTOR SHALL NOT
55 COMMUNICATE WITH A CONSUMER WITH RESPECT TO A DEBT IF THE CONSUMER HAS
56 NOTIFIED THE DEBT COLLECTOR IN WRITING THAT THE CONSUMER REFUSES TO PAY

1 A DEBT OR WISHES THE DEBT COLLECTOR TO CEASE FURTHER COMMUNICATION WITH
2 THE CONSUMER WITH RESPECT TO THAT DEBT, EXCEPT:
3 (I) TO ADVISE THE CONSUMER THAT THE DEBT COLLECTOR'S FURTHER EFFORTS
4 ARE BEING TERMINATED;
5 (II) TO NOTIFY THE CONSUMER THAT THE DEBT COLLECTOR MAY INVOKE SPECI-
6 FIED REMEDIES WHICH ARE ORDINARILY INVOKED BY SUCH DEBT COLLECTOR;
7 (III) WHERE APPLICABLE, TO NOTIFY THE CONSUMER THAT THE DEBT COLLECTOR
8 INTENDS TO INVOKE A SPECIFIED REMEDY, OR
9 (IV) TO RESPOND TO EACH SUBSEQUENT COMMUNICATION FROM THE CONSUMER.
10 (D) FOR THE PURPOSE OF THIS SUBDIVISION THE TERM "CONSUMER" INCLUDES
11 THE CONSUMER'S PARENT (IF THE CONSUMER IS A MINOR), GUARDIAN, EXECUTOR,
12 ADMINISTRATOR, AND SPOUSE (UNLESS THE DEBT COLLECTOR KNOWS OR HAS REASON
13 TO KNOW THAT THE CONSUMER IS LEGALLY SEPARATED FROM OR NO LONGER LIVING
14 WITH HIS OR HER SPOUSE), PROVIDED THAT SUCH INDIVIDUALS ARE OBLIGATED TO
15 PAY THE DEBT, OR AN INDIVIDUAL AUTHORIZED BY THE CONSUMER TO MAKE
16 PURCHASES AGAINST THE ACCOUNT WHICH IS THE SUBJECT OF THE COLLECTION
17 EFFORTS. A REQUEST THAT THE DEBT COLLECTOR CEASE FURTHER COMMUNICATION,
18 PROVIDED FOR UNDER THIS SUBDIVISION, IF MADE BY THE CONSUMER'S SPOUSE OR
19 AN INDIVIDUAL AUTHORIZED BY THE CONSUMER TO MAKE PURCHASES AGAINST THE
20 ACCOUNT, ONLY AFFECTS THE DEBT COLLECTOR'S ABILITY TO COMMUNICATE
21 FURTHER WITH THE PERSON MAKING THE REQUEST.
22 3. HARASSMENT OR ABUSE. A DEBT COLLECTOR SHALL NOT HARASS, OPPRESS OR
23 ABUSE ANY PERSON IN CONNECTION WITH THE COLLECTION OF A DEBT. WITHOUT
24 LIMITING THE GENERAL APPLICATION OF THE FOREGOING, THE FOLLOWING CONDUCT
25 IS PROHIBITED:
26 (A) THE USE OR THREAT OF VIOLENCE OR OTHER CRIMINAL MEANS TO HARM THE
27 PHYSICAL PERSON, REPUTATION, OR PROPERTY OF ANY PERSON;
28 (B) THE USE OF OBSCENE OR PROFANE LANGUAGE OR LANGUAGE THE NATURAL
29 CONSEQUENCE OF WHICH IS TO ABUSE THE RECIPIENT OF THE COMMUNICATION;
30 (C) THE ADVERTISEMENT FOR SALE OF ANY DEBT TO COERCE PAYMENT OF THE
31 DEBT;
32 (D) CAUSING A TELEPHONE TO RING OR ENGAGING ANY PERSON IN TELEPHONE
33 CONVERSATION REPEATEDLY OR CONTINUOUSLY WITH INTENT TO ANNOY, ABUSE, OR
34 HARASS ANY PERSON AT THE CALLED NUMBER;
35 (E) THE PUBLICATION OF A LIST OF CONSUMERS WHO ALLEGEDLY REFUSE TO PAY
36 DEBTS, EXCEPT TO ANOTHER EMPLOYEE OF THE DEBT COLLECTOR'S EMPLOYER OR TO
37 A CONSUMER REPORTING AGENCY OR TO PERSONS MEETING THE REQUIREMENTS OF 15
38 USC 1681A(F) OR 15 USC 1681B(3); OR
39 (F) EXCEPT AS PROVIDED BY SUBDIVISION ONE OF THIS SECTION, THE PLACE-
40 MENT OF TELEPHONE CALLS WITHOUT MEANINGFUL DISCLOSURE OF THE CALLER'S
41 IDENTITY.
42 4. FALSE OR MISLEADING REPRESENTATIONS. A DEBT COLLECTOR SHALL NOT
43 MAKE ANY FALSE, DECEPTIVE, OR MISLEADING REPRESENTATION OR MEANS IN
44 CONNECTION WITH THE COLLECTION OF ANY DEBT. WITHOUT LIMITING THE GENERAL
45 APPLICATION OF THE FOREGOING, THE FOLLOWING CONDUCT IS PROHIBITED:
46 (A) THE FALSE REPRESENTATION OR IMPLICATION THAT THE DEBT COLLECTOR IS
47 VOUCHERED FOR, BONDED BY, OR AFFILIATED WITH THE UNITED STATES OR ANY
48 STATE, INCLUDING THE USE OF ANY BADGE, UNIFORM OR FACSIMILE THEREOF;
49 (B) THE FALSE REPRESENTATION OF:
50 (I) THE CHARACTER, AMOUNT, OR LEGAL STATUS OF ANY DEBT, OR
51 (II) ANY SERVICES RENDERED OR COMPENSATION WHICH MAY BE LAWFULLY
52 RECEIVED BY ANY DEBT COLLECTOR FOR THE COLLECTION OF A DEBT;
53 (C) THE FALSE REPRESENTATION OR IMPLICATION THAT ANY INDIVIDUAL IS AN
54 ATTORNEY OR ANY COMMUNICATION IS FROM AN ATTORNEY;
55 (D) THE REPRESENTATION OR IMPLICATION THAT NONPAYMENT OF ANY DEBT WILL
56 RESULT IN THE ARREST OR IMPRISONMENT OF ANY PERSON OR THE SEIZURE,

1 GARNISHMENT, ATTACHMENT, OR SALE OF ANY PROPERTY OR WAGES OF ANY PERSON
2 UNLESS SUCH ACTION IS LAWFUL AND THE DEBT COLLECTOR OR CREDITOR INTENDS
3 TO PURSUE SUCH ACTION;
4 (E) THE THREAT TO TAKE ANY ACTION THAT CANNOT LEGALLY BE TAKEN OR THAT
5 IS NOT INTENDED TO BE TAKEN;
6 (F) THE FALSE REPRESENTATION OR IMPLICATION THAT A SALE, REFERRAL, OR
7 OTHER TRANSFER OF ANY INTEREST IN A DEBT SHALL CAUSE THE CONSUMER TO:
8 (I) LOSE ANY CLAIM OR DEFENSE TO PAYMENT OF THE DEBT; OR
9 (II) BECOME SUBJECT TO ANY PRACTICE PROHIBITED BY THIS ARTICLE;
10 (G) THE FALSE REPRESENTATION OR IMPLICATION MADE IN ORDER TO DISGRACE
11 THE CONSUMER THAT THE CONSUMER COMMITTED ANY CRIME OR OTHER CONDUCT;
12 (H) THE FALSE REPRESENTATION OR IMPLICATION THAT ACCOUNTS HAVE BEEN
13 TURNED OVER TO INNOCENT PURCHASERS FOR VALUE;
14 (I) COMMUNICATING OR THREATENING TO COMMUNICATE TO ANY PERSON CREDIT
15 INFORMATION WHICH IS KNOWN OR WHICH SHOULD BE KNOWN TO BE FALSE, INCLUD-
16 ING THE FAILURE TO COMMUNICATE A DISPUTED DEBT'S STATUS AS DISPUTED;
17 (J) THE FALSE REPRESENTATION OR IMPLICATION THAT DOCUMENTS ARE LEGAL
18 PROCESS;
19 (K) THE USE OF ANY FALSE REPRESENTATION OR DECEPTIVE MEANS TO COLLECT
20 OR ATTEMPT TO COLLECT ANY DEBT OR TO OBTAIN INFORMATION CONCERNING A
21 CONSUMER;
22 (L) THE USE OR DISTRIBUTION OF ANY WRITTEN COMMUNICATION WHICH SIMU-
23 LATES OR IS FALSELY REPRESENTED TO BE A DOCUMENT AUTHORIZED, ISSUED, OR
24 APPROVED BY ANY COURT, OFFICIAL OR AGENCY OF THE UNITED STATES, THE
25 STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR WHICH CREATES A FALSE
26 IMPRESSION AS TO ITS SOURCE, AUTHORIZATION, OR APPROVAL;
27 (M) THE FALSE REPRESENTATION OR IMPLICATION THAT DOCUMENTS ARE NOT
28 LEGAL PROCESS FORMS AND DO NOT REQUIRE ACTION BY THE CONSUMER;
29 (N) THE FALSE REPRESENTATION OR IMPLICATION THAT A DEBT COLLECTOR
30 OPERATES OR IS EMPLOYED BY A CONSUMER REPORTING AGENCY AS DEFINED BY 15
31 USC 1681A(F);
32 (O) 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 (P) EXCEPT AS OTHERWISE PROVIDED UNDER SUBDIVISION ONE OF THIS SECTION
36 AND EXCEPT FOR ANY COMMUNICATION WHICH IS REQUIRED BY LAW OR CHOSEN FROM
37 AMONG ALTERNATIVES OF WHICH ONE IS REQUIRED BY LAW, THE FAILURE TO
38 DISCLOSE CLEARLY IN ALL COMMUNICATIONS MADE TO COLLECT A DEBT OR TO
39 OBTAIN INFORMATION ABOUT A CONSUMER, THAT THE DEBT COLLECTOR IS ATTEMPT-
40 ING TO COLLECT A DEBT AND THAT ANY INFORMATION OBTAINED WILL BE USED FOR
41 THAT PURPOSE; OR
42 (Q) THE USE OF ANY BUSINESS, COMPANY, OR ORGANIZATION NAME OTHER THAN
43 THE TRUE NAME OF THE DEBT COLLECTOR'S BUSINESS, COMPANY, OR ORGANIZA-
44 TION.

45 5. UNFAIR PRACTICES. A DEBT COLLECTOR SHALL NOT USE ANY UNFAIR OR
46 UNCONSCIONABLE MEANS TO COLLECT OR ATTEMPT TO COLLECT A DEBT. WITHOUT
47 LIMITATION OF THE FOREGOING, SUCH PROHIBITED CONDUCT INCLUDES:
48 (A) THE COLLECTION OF ANY AMOUNT (INCLUDING ANY INTEREST, FEE, CHARGE,
49 OR EXPENSE INCIDENTAL TO THE PRINCIPAL OBLIGATION) UNLESS SUCH AMOUNT IS
50 EXPRESSLY AUTHORIZED BY THE AGREEMENT CREATING THE DEBT;
51 (B) THE SOLICITATION OR USE BY A DEBT COLLECTOR OF ANY POSTDATED CHECK
52 OR OTHER POSTDATED PAYMENT INSTRUMENT FOR THE PURPOSE OF THREATENING OR
53 INSTITUTING CRIMINAL PROSECUTION;
54 (C) CAUSING CHARGES TO BE MADE TO ANY PERSON FOR COMMUNICATIONS BY
55 MISREPRESENTATION OF TRUE PURPOSE OF THE COMMUNICATION. SUCH CHARGES
56 INCLUDE COLLECT TELEPHONE CALLS, TELEGRAM AND WIRELESS TELEPHONE FEES;

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

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

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

(III) THE PROPERTY IS EXEMPT BY LAW FROM SUCH DISPOSSESSION OR DISABLEMENT;

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

(F) USING ANY LANGUAGE OR SYMBOL, OTHER THAN THE DEBT COLLECTOR'S ADDRESS, ON ANY ENVELOPE WHEN COMMUNICATING WITH A CONSUMER BY USE OF THE MAILED OR BY TELEGRAM, EXCEPT THAT A DEBT COLLECTOR MAY USE HIS OR HER BUSINESS NAME OR THE NAME OF A DEPARTMENT WITHIN HIS OR HER ORGANIZATION AS LONG AS ANY NAME USED DOES NOT INDICATE THAT HE OR SHE IS IN THE BUSINESS OF DEBT COLLECTION;

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

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

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

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

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

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

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

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

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

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

(B) IF THE CONSUMER NOTIFIES THE DEBT COLLECTOR IN WRITING WITHIN THE THIRTY DAY PERIOD DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION THAT THE DEBT, OR ANY PORTION THEREOF IS DISPUTED, THE DEBT COLLECTOR SHALL

1 NOT ATTEMPT TO COLLECT THE AMOUNT IN DISPUTE UNTIL THE DEBT COLLECTOR
2 OBTAINS AND MAILED TO THE CONSUMER VERIFICATION OF THE DEBT.

3 (C) THE DEBT COLLECTOR SHALL MAINTAIN FOR ONE YEAR FROM THE DATE THE
4 DEBTOR'S RIGHTS NOTICE WAS MAILED, RECORDS CONTAINING DOCUMENTATION OF
5 THE DATE SUCH NOTICE WAS MAILED, THE DATE THE RESPONSE, IF ANY, WAS
6 RECEIVED AND ANY ACTION TAKEN FOLLOWING SUCH RESPONSE.

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

10 (E) THE SENDING OR DELIVERY OF ANY FORM OR NOTICE WHICH DOES NOT
11 RELATE TO DEBT COLLECTION AND IS EXPRESSLY REQUIRED BY ANY PROVISION OF
12 FEDERAL OR STATE LAW RELATING TO NOTICE OF DATA SECURITY BREACH OR
13 PRIVACY, OR ANY REGULATION PRESCRIBED UNDER ANY SUCH PROVISION OF LAW,
14 SHALL NOT BE TREATED AS AN INITIAL COMMUNICATION IN CONNECTION WITH DEBT
15 COLLECTION FOR PURPOSES OF THIS SECTION.

16 (F) IF THE CONSUMER NOTIFIES THE DEBT COLLECTOR IN WRITING AFTER THE
17 THIRTY-DAY PERIOD DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION THAT
18 THE DEBT, OR ANY PORTION THEREOF IS DISPUTED, THE DEBT COLLECTOR SHALL
19 OBTAIN VERIFICATION OF THE DEBT, AND MAIL SUCH VERIFICATION TO THE
20 CONSUMER. THE DEBT COLLECTOR MAY CONTINUE TO ATTEMPT TO COLLECT THE
21 AMOUNT IN DISPUTE.

22 S 603-A. SELLING OR TRANSFERRING OF DEBTS. EVERY DEBT COLLECTOR OR HIS
23 OR HER AGENT SHALL SEND A NOTICE TO THE LAST KNOWN ADDRESS OF THE DEBTOR
24 ADVISING THE DEBTOR THAT HIS OR HER DEBT IS BEING SOLD OR TRANSFERRED. A
25 COPY OF SUCH NOTICE SHALL BE TRANSMITTED TO THE PERSON, FIRM, ORGANIZA-
26 TION OR ENTITY TO WHOM THE DEBT COLLECTOR OR HIS OR HER AGENT HAS AGREED
27 TO SELL OR TRANSFER THE DEBT.

28 S 603-B. PRIVATE RIGHT OF ACTION. NOTWITHSTANDING ANY RIGHT OF ACTION
29 GRANTED TO ANY GOVERNMENTAL BODY PURSUANT TO THIS ARTICLE, ANY PERSON
30 WHO HAS BEEN INJURED BY REASON OF VIOLATION OF THIS ARTICLE MAY BRING AN
31 ACTION AGAINST ANY PERSON OR PERSONS, OTHER THAN BANKING INSTITUTIONS AS
32 DEFINED IN SECTION NINE-F OF THE BANKING LAW, AND THEIR AFFILIATES, TO
33 ENJOIN SUCH UNLAWFUL ACT, AN ACTION TO RECOVER HIS OR HER ACTUAL
34 DAMAGES, ANY PUNITIVE DAMAGES AWARDED BY THE COURT, AND REASONABLE
35 ATTORNEY'S FEES.

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

40 2. The attorney general or the district attorney of any county may
41 bring an action in the name of the people of the state to restrain or
42 prevent any violation of this article or any continuance of any such
43 violation.

44 S [603] 603-D. Severability. If any provision of this article or the
45 application thereof to any person or circumstances is held invalid the
46 invalidity thereof shall not affect other provisions or applications of
47 the article which can be given effect without the invalid provision or
48 application, and to this [and] END the provisions of this article are
49 severable.

50 S 2. This act shall take effect on the first of January next succeed-
51 ing the date on which it shall have become a law, provided, however,
52 that subparagraphs (i), (ii), and (iii) of paragraph (a) of subdivision
53 7 of section 603 of the general business law shall apply to validation
54 procedures involving debts deemed in default on or after the effective
55 date of such section.