

4817

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

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The legislature hereby finds the pres-  
2 ence of consumer-related problems with respect to the practices of debt  
3 collection agencies. Federal and state laws regulate how debt collectors  
4 may communicate with debtors and prohibit the use of certain threaten-  
5 ing, deceptive and unfair collection practices. Despite these legal  
6 protections, the number of consumer complaints regarding debt collection  
7 practices continue to rise. Consumer complaints received by the Federal  
8 Trade Commission regarding third-party debt collectors grew for the  
9 tenth consecutive year in 2007, and consumers filed with the Commission  
10 more complaints against third-party collectors than against any other  
11 specific industry. While the majority of those engaged in the business  
12 of debt collection are honest and ethical in their dealings, there is a  
13 minority of unscrupulous collection agencies in operation that practice  
14 abusive tactics. Due to the sensitive nature of the information used in  
15 the course of such agency's everyday business, and the vulnerable posi-  
16 tion consumers find themselves in when dealing with these agencies, it  
17 is incumbent upon this legislature to protect the interests, reputations  
18 and fiscal well-being of the citizens of this state against those agen-  
19 cies who would abuse their privilege of operation. Therefore, it is  
20 herein declared that the state should license debt collection agencies.  
21 S 2. The general business law is amended by adding a new article  
22 29-HHH to read as follows:  
23 ARTICLE 29-HHH  
24 DEBT COLLECTION AGENCIES  
25 SECTION 604-K. DEFINITIONS.

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

LBD06743-05-9

1 604-L. DEBT COLLECTION AGENCIES.  
2 604-M. SURETY BONDING REQUIREMENT.  
3 604-N. PENALTIES.  
4 604-O. APPLICABILITY.

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

7 1. (A) "DEBT COLLECTION AGENCY" SHALL MEAN A PERSON, FIRM OR CORPO-  
8 RATION ENGAGED IN BUSINESS, THE PRINCIPAL PURPOSE OF WHICH IS TO REGU-  
9 LARLY COLLECT OR ATTEMPT TO COLLECT DEBTS: (I) OWED OR DUE OR ASSERTED  
10 TO BE OWED OR DUE TO ANOTHER; OR (II) OBTAINED BY, OR ASSIGNED TO, SUCH  
11 PERSON, FIRM OR CORPORATION, THAT ARE IN DEFAULT WHEN OBTAINED OR  
12 ACQUIRED BY SUCH PERSON, FIRM OR CORPORATION.

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

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

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

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

25 (V) ANY ATTORNEY-AT-LAW OR LAW FIRM COLLECTING A DEBT IN SUCH CAPACITY  
26 ON BEHALF OF AND IN THE NAME OF A CLIENT THROUGH LEGAL ACTIVITIES SUCH  
27 AS THE FILING AND PROSECUTION OF LAWSUITS TO REDUCE DEBTS TO JUDGMENTS,  
28 BUT NOT ANY ATTORNEY-AT-LAW OR LAW FIRM WHO REGULARLY ENGAGES IN ACTIV-  
29 ITIES TRADITIONALLY ASSOCIATED WITH DEBT COLLECTION, INCLUDING BUT NOT  
30 LIMITED TO, SENDING DEMAND LETTERS OR MAKING COLLECTION TELEPHONE CALLS;

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

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

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

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

48 2. "CONSUMER" MEANS ANY NATURAL PERSON OBLIGATED OR ALLEGEDLY OBLI-  
49 GATED TO PAY ANY DEBT.

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

55 4. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

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

1 6. "SECRETARY" MEANS THE SECRETARY OF STATE.

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

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

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

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

15 (B) IN ADDITION TO ANY OTHER INFORMATION REQUIRED, THE SECRETARY SHALL  
16 REQUIRE THE FOLLOWING INFORMATION:

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

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

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

21 (IV) THE BUSINESS TELEPHONE OF THE APPLICANT;

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

24 (VI) A STATEMENT INDICATING WHETHER THE APPLICANT HAS:

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

27 (B) AT ANY TIME IN THE PAST BEEN ISSUED A LICENSE PURSUANT TO THIS  
28 ARTICLE, AND IF SO, WHETHER SUCH LICENSE WAS EVER REVOKED OR SUSPENDED;

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

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

34 (A) THE LENGTH OF TIME THE APPLICANT MAINTAINS, OR INTENDS TO MAIN-  
35 TAIN, RECORDS PERTAINING TO CONSUMERS; AND

36 (B) THE MANNER IN WHICH THE APPLICANT RECORDS AND STORES, OR INTENDS  
37 TO RECORD AND STORE: CONSUMER CHALLENGES TO THE VALIDITY OF DEBT; BILL-  
38 ING ERRORS; PAYMENTS MADE BY A CONSUMER; SETTLEMENT AGREEMENTS; INFORMA-  
39 TION REGARDING PARTIES RESPONSIBLE FOR DEBT; AND ANY STATEMENTS MADE BY  
40 A CONSUMER ALLEGING THAT THE DEBT AROSE FROM IDENTITY THEFT;

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

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

48 (XI) A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH PRINCIPAL AND  
49 OFFICER OF THE APPLICANT RECORDED IN SUCH A MANNER AS MAY BE SPECIFIED  
50 BY THE DEPARTMENT TOGETHER WITH A FINGERPRINT FEE, IN SUCH AMOUNT AS  
51 SHALL BE DETERMINED BY THE DEPARTMENT, FOR THE COST OF THE DIVISION'S  
52 FULL SEARCH AND RETAIN PROCEDURES. BEFORE APPROVING AN APPLICATION, IT  
53 SHALL BE THE DUTY OF THE DEPARTMENT TO FORWARD ONE COPY OF SUCH FINGER-  
54 PRINTS TO THE DIVISION. UPON RECEIPT OF SUCH FINGERPRINTS, THE DIVISION  
55 SHALL, PURSUANT TO ITS FULL SEARCH AND RETAIN PROCEDURES, FORWARD TO THE  
56 DEPARTMENT A REPORT WITH RESPECT TO THE APPLICANT'S PREVIOUS CRIMINAL

1 HISTORY, IF ANY, OR A STATEMENT THAT THE APPLICANT HAS NO PREVIOUS CRIM-  
2 INAL HISTORY. IF ADDITIONAL COPIES OF FINGERPRINTS ARE REQUIRED, THE  
3 APPLICANT SHALL FURNISH THEM UPON REQUEST.

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

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

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

19 5. NOTICE IN WRITING IN THE MANNER AND FORM PRESCRIBED BY THE DEPART-  
20 MENT SHALL BE GIVEN TO THE DEPARTMENT AT ITS OFFICES IN ALBANY WITHIN  
21 TEN DAYS OF CHANGES OF NAME OR ADDRESS BY LICENSED DEBT COLLECTION AGEN-  
22 CIES. THE FEE FOR FILING EACH CHANGE OF NAME OR ADDRESS NOTICE SHALL BE  
23 TEN DOLLARS.

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

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

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

33 (B) KNOWINGLY GIVE FALSE EVIDENCE OF A MATERIAL NATURE TO THE DEPART-  
34 MENT FOR THE PURPOSE OF PROCURING A LICENSE;

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

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

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

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

43 9. LICENSES ISSUED TO DEBT COLLECTION AGENCIES SHALL NOT BE TRANSFERA-  
44 BLE OR ASSIGNABLE.

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

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

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

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

15 (C) THE DEPARTMENT SHALL HAVE THE POWER TO REVOKE OR SUSPEND ANY  
16 LICENSE, OR IN LIEU THEREOF TO IMPOSE A FINE NOT EXCEEDING TWO THOUSAND  
17 DOLLARS PAYABLE TO THE DEPARTMENT, OR REPRIMAND ANY LICENSEE OR DENY AN  
18 APPLICATION FOR A LICENSE OR RENEWAL THEREOF UPON PROOF:

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

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

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

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

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

37 14. THE HEARING ON SUCH CHARGES SHALL BE AT SUCH TIME AND PLACE AS THE  
38 DEPARTMENT SHALL PRESCRIBE AND SHALL BE CONDUCTED BY SUCH OFFICER OR  
39 PERSON IN THE DEPARTMENT AS THE SECRETARY OF STATE MAY DESIGNATE, WHO  
40 SHALL HAVE THE POWER TO SUBPOENA AND BRING BEFORE THE OFFICER, OR PERSON  
41 SO DESIGNATED, ANY PERSON IN THIS STATE AND ADMINISTER AN OATH TO AND  
42 TAKE TESTIMONY OF ANY PERSON OR CAUSE HIS OR HER DEPOSITION TO BE TAKEN.  
43 A SUBPOENA ISSUED UNDER THIS SECTION SHALL BE REGULATED BY THE CIVIL  
44 PRACTICE LAW AND RULES. SUCH OFFICER OR PERSON IN THE DEPARTMENT DESIG-  
45 NATED TO TAKE SUCH TESTIMONY SHALL NOT BE BOUND BY COMMON LAW OR STATU-  
46 TORY RULES OF EVIDENCE OR BY TECHNICAL OR FORMAL RULES OF PROCEDURE.

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

54 16. THE DEPARTMENT, ACTING BY THE OFFICE OR PERSON DESIGNATED TO  
55 CONDUCT THE HEARING PURSUANT TO SUBDIVISION THIRTEEN OF THIS SECTION OR  
56 BY SUCH OTHER OFFICER OR PERSON IN THE DEPARTMENT AS THE SECRETARY OF

1 STATE MAY DESIGNATE, SHALL HAVE THE POWER TO SUSPEND THE LICENSE OF ANY  
2 LICENSEE WHO HAS BEEN CONVICTED IN THIS STATE OR ANY OTHER STATE OR  
3 TERRITORY OF A FELONY OR OF ANY MISDEMEANOR FOR A PERIOD NOT EXCEEDING  
4 THIRTY DAYS PENDING A HEARING AND A DETERMINATION OF CHARGES MADE  
5 AGAINST HIM OR HER. IF SUCH HEARING IS ADJOURNED AT THE REQUEST OF THE  
6 LICENSEE, OR BY REASON OF ANY ACT OR OMISSION BY HIM OR HER OR ON HIS OR  
7 HER BEHALF, SUCH SUSPENSION MAY BE CONTINUED FOR THE ADDITIONAL PERIOD  
8 OF SUCH ADJOURNMENT.

9 17. THE ACTION OF THE DEPARTMENT IN GRANTING OR REFUSING TO GRANT OR  
10 TO RENEW A LICENSE UNDER THIS ARTICLE OR IN REVOKING OR SUSPENDING OR  
11 REFUSING TO REVOKE OR SUSPEND SUCH A LICENSE OR IMPOSING ANY FINE OR  
12 REPRIMAND SHALL BE SUBJECT TO REVIEW BY A PROCEEDING INSTITUTED UNDER  
13 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES AT THE  
14 INSTANCE OF THE APPLICANT FOR SUCH LICENSE, THE HOLDER OF A LICENSE SO  
15 REVOKED, SUSPENDED, FINED OR REPRIMANDED.

16 18. FOR THE PURPOSE OF THIS ARTICLE, LICENSEES MAY BE HELD RESPONSIBLE  
17 FOR STATEMENTS, REPRESENTATIONS, PROMISES OR ACTS OF THEIR EMPLOYEES OR  
18 THEIR AGENTS WITHIN THE SCOPE OF THEIR AUTHORITY; PROVIDED, HOWEVER,  
19 THAT LICENSEES SHALL NOT BE HELD RESPONSIBLE FOR STATEMENTS, REPRESENTA-  
20 TIONS, PROMISES OR ACTS WHICH ARE CONTRARY TO INSTRUCTIONS OR WHICH  
21 CONSTITUTE GROSS NEGLIGENCE OR INTENTIONAL TORTS UNLESS SPECIFICALLY  
22 AUTHORIZED BY THE LICENSEE.

23 19. (A) ANY PERSON, FIRM OR CORPORATION THAT OPERATES AS A DEBT  
24 COLLECTION AGENCY WITHOUT BEING LICENSED SHALL BE REQUIRED TO PAY A  
25 CIVIL PENALTY TO THE DEPARTMENT IN THE SUM OF ONE HUNDRED DOLLARS PER  
26 ATTEMPT TO COLLECT A DEBT IN VIOLATION OF THIS SECTION. HOWEVER, ANY  
27 SUCH PERSON, FIRM OR CORPORATION AGAINST WHOM SUCH PENALTY HAS BEEN  
28 ASSESSED MAY AVOID ALL BUT FIVE HUNDRED DOLLARS OF SUCH PENALTY BY  
29 OBTAINING A LICENSE AS REQUIRED BY THIS SECTION, PROVIDED THAT APPLICA-  
30 TION FOR SUCH LICENSE IS MADE NOT MORE THAN TEN DAYS AFTER THE IMPOSI-  
31 TION OF SUCH PENALTY AND THE DEBT COLLECTION AGENCY HAS NEVER RECEIVED A  
32 PRIOR FINE OR FAILURE TO REGISTER IN NEW YORK OR IN ANY OTHER STATE THAT  
33 REQUIRES LICENSURE.

34 (B) IN ADDITION TO ANY OTHER PENALTIES, IF A PERSON IS FOUND TO HAVE  
35 COMMITTED REPEATED, MULTIPLE OR PERSISTENT VIOLATION OF ANY PROVISION OF  
36 THIS ARTICLE, SUCH PERSON MAY BE RESPONSIBLE FOR THE COST OF THE DEPART-  
37 MENT'S INVESTIGATION.

38 S 604-M. SURETY BONDING REQUIREMENT. 1. AS A CONDITION OF OBTAINING A  
39 LICENSE PURSUANT TO THIS ARTICLE, EVERY DEBT COLLECTION AGENCY APPLICANT  
40 WHO IS APPLYING FOR A LICENSE AND EMPLOYS BETWEEN ONE AND FOUR INDIVID-  
41 UALS ENGAGED IN THE COLLECTION OF DEBTS SHALL OBTAIN AND CONTINUE IN  
42 FULL FORCE AND EFFECT A BOND, CONTRACT OF INDEMNITY, OR IRREVOCABLE  
43 LETTER OF CREDIT, PAYABLE TO THE PEOPLE OF THE STATE OF NEW YORK, IN THE  
44 AMOUNT OF TEN THOUSAND DOLLARS.

45 2. AS A CONDITION TO OBTAINING A LICENSE PURSUANT TO THIS ARTICLE,  
46 EVERY DEBT COLLECTION AGENCY APPLICANT WHO IS APPLYING FOR A LICENSE AND  
47 EMPLOYS BETWEEN FIVE AND NINE INDIVIDUALS ENGAGED IN THE COLLECTION OF  
48 DEBTS SHALL OBTAIN AND CONTINUE IN FULL FORCE AND EFFECT A BOND,  
49 CONTRACT OF INDEMNITY, OR IRREVOCABLE LETTER OF CREDIT, PAYABLE TO THE  
50 PEOPLE OF THE STATE OF NEW YORK, IN THE AMOUNT OF TWENTY-FIVE THOUSAND  
51 DOLLARS.

52 3. AS A CONDITION TO OBTAINING A LICENSE PURSUANT TO THIS ARTICLE,  
53 EVERY DEBT COLLECTION AGENCY APPLICANT WHO IS APPLYING FOR A LICENSE AND  
54 EMPLOYS TEN OR MORE INDIVIDUALS ENGAGED IN THE COLLECTION OF DEBTS SHALL  
55 OBTAIN AND CONTINUE IN FULL FORCE AND EFFECT A BOND, CONTRACT OF INDEM-

1 NITY, OR IRREVOCABLE LETTER OF CREDIT, PAYABLE TO THE PEOPLE OF THE  
2 STATE OF NEW YORK, IN THE AMOUNT OF FIFTY THOUSAND DOLLARS.

3 4. SUCH SURETY BOND, CONTRACT OF INDEMNITY, OR IRREVOCABLE LETTER OF  
4 CREDIT SHALL BE CONDITIONED THAT THE APPLICANT WILL COMPLY WITH THIS  
5 ARTICLE, ARTICLE TWENTY-NINE-H, AND ARTICLE TWENTY-NINE-HH OF THIS CHAP-  
6 TER AND PAY ALL FINES IMPOSED, OR INVESTIGATORY COSTS REQUIRED TO BE  
7 PAID, PURSUANT TO SUCH ARTICLES.

8 5. RECOVERY AGAINST ANY SURETY BOND, CONTRACT OF INDEMNITY, OR IRREV-  
9 OCABLE LETTER OF CREDIT MAY BE MADE BY THE ATTORNEY GENERAL ON BEHALF OF  
10 THE PEOPLE OF THE STATE OF NEW YORK. THE TOTAL LIABILITY IMPOSED ON THE  
11 SURETY BOND UNDER THIS SECTION FOR ALL BREACHES OF THE BOND CONDITION IS  
12 LIMITED TO THE FACE AMOUNT OF THE BOND. SUCH LIABILITY IS LIMITED TO THE  
13 AMOUNT OF THE PENALTY OR INVESTIGATORY COSTS. IN NO EVENT WILL THE SURE-  
14 TY ON A BOND BE LIABLE FOR TOTAL CLAIMS IN EXCESS OF THE BOND AMOUNT,  
15 REGARDLESS OF THE NUMBER OR NATURE OF CLAIMS MADE AGAINST THE BOND OR  
16 THE NUMBER OF YEARS THE BOND REMAINED IN FORCE.

17 6. ANY SURETY ISSUING A BOND PURSUANT TO THIS SECTION AND ANY LICENSEE  
18 SHALL BE REQUIRED TO PROVIDE THIRTY DAYS NOTICE TO THE SECRETARY OF  
19 STATE PRIOR TO THE EFFECTIVE DATE OF CANCELLATION OF THE BOND. THE FAIL-  
20 URE TO MAINTAIN SUCH A BOND SHALL OPERATE TO REVOKE THE LICENSE OF THE  
21 DEBT COLLECTION AGENCY UPON NOTICE AND HEARING.

22 S 604-N. PENALTIES. WHEREVER THERE SHALL BE A VIOLATION OF THIS ARTI-  
23 CLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF  
24 THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURIS-  
25 DICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE  
26 TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE  
27 CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFAC-  
28 TION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED  
29 THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE,  
30 ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF  
31 THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY  
32 SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL  
33 AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE  
34 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-  
35 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS  
36 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT LESS  
37 THAN ONE HUNDRED DOLLARS NOR MORE THAN TEN THOUSAND DOLLARS FOR EACH  
38 VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTOR-  
39 NEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE  
40 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-  
41 TICE LAW AND RULES.

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

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

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

55 (e) License to do business. Where the plaintiff's cause of action  
56 against a consumer arises from the plaintiff's conduct of a business

1 which is required by state or local law to be licensed by the department  
2 of consumer affairs of the city of New York, the Suffolk county depart-  
3 ment of consumer affairs, the Westchester county department of consumer  
4 affairs/weight-measures, the county of Rockland, the county of Putnam  
5 [or], the Nassau county department of consumer affairs OR THE DEPARTMENT  
6 OF STATE PURSUANT TO ARTICLE TWENTY-NINE-HHH OF THE GENERAL BUSINESS  
7 LAW, the complaint shall allege, as part of the cause of action, that  
8 plaintiff is duly licensed and shall contain the name and number, if  
9 any, of such license and the governmental agency which issued such  
10 license; provided, however, that where the plaintiff does not have a  
11 license at the commencement of the action the plaintiff may, subject to  
12 the provisions of rule thirty hundred twenty-five of this article, amend  
13 the complaint with the name and number of an after-acquired license and  
14 the name of the governmental agency which issued such license or move  
15 for leave to amend the complaint in accordance with such provisions. The  
16 failure of the plaintiff to comply with this subdivision will permit the  
17 defendant to move for dismissal pursuant to paragraph seven of subdivi-  
18 sion (a) of rule thirty-two hundred eleven of this chapter.

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