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

5389--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general obligations law, in relation to the regulation of non-recourse civil litigation advance contracts

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

Section 1. Article 5 of the general obligations law is amended by adding a new title 8 to read as follows:

TITLE 8

NON-RECOURSE CIVIL LITIGATION ADVANCE CONTRACTS

SECTION 5-801. NON-RECOURSE CIVIL LITIGATION ADVANCE CONTRACTS.

S 5-801. NON-RECOURSE CIVIL LITIGATION ADVANCE CONTRACTS. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "NON-RECOURSE CIVIL LITIGATION ADVANCE" MEANS A TRANSACTION OR AGREEMENT WHEREIN A COMPANY MAKES A PAYMENT OF MONEY TO A CONSUMER WHO EITHER HAS COMMENCED IN THE MANNER PROVIDED BY LAW, OR MAY COMMENCE A CIVIL ACTION OR PROCEEDING FOR MONEY DAMAGES BEFORE A COURT OF COMPETENT JURISDICTION IN THIS STATE, IN EXCHANGE FOR THE RIGHT TO COLLECT MONIES DUE PURSUANT TO THE TERMS OF THE CONTRACT BETWEEN THE CONSUMER AND THE COMPANY.

(B) "COMPANY" MEANS ANY PERSON, PARTNERSHIP, CORPORATION OR OTHER BUSINESS ENTITY WHICH ENTERS INTO A NON-RECOURSE CIVIL LITIGATION ADVANCE TRANSACTION CONTRACT WITH A CONSUMER.

(C) "CONSUMER" MEANS A PERSON OR ENTITY WHO IS BOTH (I) REPRESENTED BY AN ATTORNEY ADMITTED TO PRACTICE IN THIS STATE AT THE TIME OF ANY CONTRACT ENTERED INTO WITH A COMPANY; AND (II) HAS COMMENCED, IN THE MANNER PROVIDED BY LAW, OR MAY COMMENCE A CIVIL ACTION OR PROCEEDING FOR MONEY DAMAGES BEFORE A COURT OF COMPETENT JURISDICTION IN THIS STATE, IN

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

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EXCHANGE FOR THE RIGHT TO COLLECT MONIES DUE PURSUANT TO THE TERMS OF THE CONTRACT BETWEEN A CONSUMER AND THE COMPANY.

2. ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, ALL CONTRACTS ENTERED INTO FOR A NON-RECOURSE CIVIL LITIGATION ADVANCE SHALL COMPLY WITH SECTION 5-702 OF THIS CHAPTER, AS WELL AS THE FOLLOWING REQUIREMENTS:

(A) ALL CONTRACTS SHALL BE COMPLETELY FILLED IN AND CONTAIN THE FOLLOWING DISCLOSURES ON THE FRONT PAGE IN AT LEAST TWELVE-POINT BOLD TYPE, APPROPRIATELY HEADED:

(I) THE TOTAL DOLLAR AMOUNT TO BE ADVANCED TO THE CONSUMER;

(II) AN ITEMIZATION OF ANY ONE-TIME FEES BROKEN OUT ITEM BY ITEM (E.G. APPLICATION, PROCESSING, ATTORNEY REVIEW, BROKER OR SIMILAR CHARGES);

(III) THE TOTAL DOLLAR AMOUNT TO BE REPAID TO THE COMPANY BY THE CONSUMER, IN SIX-MONTH INTERVALS FOR THIRTY-SIX MONTHS, AND INCLUDING ALL FEES AS WELL AS ANY MINIMUM MONTHLY REQUIRED PAYMENT AMOUNT; AND

(IV) THE PERCENTAGE FEE OR RATE OF RETURN, STATED ON AN ANNUALIZED BASIS, INCLUDING FREQUENCY OF COMPOUNDING.

(B) THE CONTRACT SHALL PROVIDE THAT THE CONSUMER MAY CANCEL THE CONTRACT WITHIN FIVE BUSINESS DAYS FOLLOWING THE CONSUMER'S RECEIPT OF FUNDS, WITHOUT PENALTY OR FURTHER OBLIGATION. THE CONTRACT SHALL CONTAIN THE FOLLOWING NOTICE WRITTEN IN A CLEAR AND CONSPICUOUS MANNER, ALSO IN AT LEAST TWELVE-POINT BOLDFACE TYPE: "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM (INSERT NAME OF COMPANY).". THE CONTRACT ALSO SHALL SPECIFY THAT IN ORDER FOR THE CANCELLATION TO BE EFFECTIVE, THE CONSUMER MUST EITHER RETURN TO THE COMPANY THE FULL AMOUNT OF DISBURSED FUNDS BY DELIVERING THE COMPANY'S UNCASHED CHECK TO THE OFFICE ADDRESS OF THE COMPANY, WITHIN FIVE BUSINESS DAYS OF THE DISBURSEMENT OF FUNDS, OR MAIL A NOTICE OF CANCELLATION AND INCLUDE IN THAT MAILING A RETURN OF THE FULL AMOUNT OF DISBURSED FUNDS IN THE FORM OF THE COMPANY'S CHECK, OR A REGISTERED OR CERTIFIED CHECK OR MONEY ORDER, BY INSURED, REGISTERED OR CERTIFIED UNITED STATES MAIL, POSTMARKED WITHIN FIVE BUSINESS DAYS OF RECEIVING FUNDS FROM THE COMPANY, AT THE ADDRESS SPECIFIED IN THE CONTRACT FOR SUCH CANCELLATION.

(C) THE CONTRACT SHALL ADDITIONALLY CONTAIN THE FOLLOWING STATEMENT IN AT LEAST TWELVE-POINT BOLDFACE TYPE: "THE COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE SUCH DECISIONS REMAIN SOLELY WITH THE CONSUMER AND THE CONSUMER'S ATTORNEY."

(D) THE CONTRACT SHALL CONTAIN THE INITIALS OF THE CONSUMER ON EACH PAGE.

(E) THE CONTRACT SHALL ALSO CONTAIN THE FOLLOWING STATEMENT IN AT LEAST TWELVE-POINT BOLDFACE TYPE LOCATED IMMEDIATELY ABOVE THE PLACE ON THE CONTRACT WHERE THE CONSUMER'S SIGNATURE IS REQUIRED: "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. DEPENDING ON YOUR CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX BENEFIT PLANNING AND/OR A FINANCIAL PROFESSIONAL."

(F) THE CONTRACT SHALL CONTAIN A WRITTEN CERTIFICATION BY THE CONSUMER'S ATTORNEY OF RECORD THAT HE OR SHE HAS RECEIVED THE CONTRACT AND EXPLAINED TO THE CONSUMER ITS TERMS, INCLUDING THE ANNUALIZED RATE OF RETURN APPLIED TO CALCULATE THE AMOUNT TO BE PAID BY THE CONSUMER.

(G) FOR FRENCH AND SPANISH SPEAKING CONSUMERS, THE CONTRACT SHALL ALSO BE WRITTEN IN THE SAME LANGUAGE IN WHICH THE TERMS HAVE BEEN DISCUSSED,

AS BETWEEN THE COMPANY AND THE CONSUMER. FOR CONSUMERS WHOSE PRIMARY LANGUAGE IS NEITHER ENGLISH, FRENCH, NOR SPANISH, THE PRINCIPAL TERMS OF THE CONTRACT SHALL BE TRANSLATED IN WRITING INTO THE CONSUMER'S NATIVE LANGUAGE; THE CONSUMER AND THE COMPANY SHALL SIGN THE TRANSLATED DOCUMENT, AND THE TRANSLATOR SHALL SIGN A NOTARIZED AFFIDAVIT OR AFFIRMATION CONFIRMING THAT THE TERMS OF THE CONTRACT HAVE BEEN PRESENTED TO THE CONSUMER IN THE CONSUMER'S NATIVE LANGUAGE AND ACKNOWLEDGED BY THE CONSUMER, IN WRITING.

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