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

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2011-2012 Regular Sessions

I N  A S S E M B L Y

June 15, 2011

Introduced by M. of A. DINOWITZ, CLARK, ORTIZ, MILLMAN, ROBINSON, J. RIVERA, GABRYSZAK, N. RIVERA, JAFFEE -- Multi-Sponsored by -- M. of A. AUBRY, BRENNAN, COOK, CYMBROWITZ, ENGLEBRIGHT, FARRELL, GLICK, GOTTFRIED, HOOPER, JACOBS, LIFTON, LUPARDO, MAGEE, MAGNARELLI, PAULIN, PERRY, PRETLOW, SCARBOROUGH, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the financial services law, in relation to debt collection notices

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 601-a to read as follows:

S 601-A. DEBT COLLECTION NOTICE TO CONSUMERS. 1. AS USED IN THIS SECTION, THE FOLLOWING TERM SHALL HAVE THE FOLLOWING MEANING:

"DEBT COLLECTION AGENCY" SHALL MEAN A PERSON, FIRM OR CORPORATION ENGAGED IN BUSINESS, THE PRINCIPAL PURPOSE OF WHICH IS TO REGULARLY COLLECT OR ATTEMPT TO COLLECT DEBTS: (I) OWED OR DUE OR ASSERTED TO BE OWED OR DUE TO ANOTHER; OR (II) OBTAINED BY, OR ASSIGNED TO, SUCH PERSON, FIRM OR CORPORATION, THAT ARE IN DEFAULT WHEN OBTAINED OR ACQUIRED BY SUCH PERSON, FIRM OR CORPORATION.

THE TERM DOES NOT INCLUDE: (I) ANY OFFICER OR EMPLOYEE OF A CREDITOR WHILE, IN THE NAME OF THE CREDITOR, COLLECTING DEBTS FOR SUCH CREDITOR;

(II) ANY PERSON WHILE ACTING AS A DEBT COLLECTION AGENCY FOR ANOTHER PERSON, BOTH OF WHOM ARE RELATED BY COMMON OWNERSHIP OR AFFILIATED BY CORPORATE CONTROL, IF THE PERSON ACTING AS A DEBT COLLECTION AGENCY DOES

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

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SO ONLY FOR PERSONS TO WHOM IT IS SO RELATED OR AFFILIATED AND IF THE PRINCIPAL BUSINESS OF SUCH PERSON IS NOT THE COLLECTION OF DEBTS;

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

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

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

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

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

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

2. EACH AND EVERY DEBT COLLECTION AGENCY SHALL INCLUDE IN EACH INITIAL CORRESPONDENCE ON A PAST DUE DEBT TO A DEBTOR A CLEAR AND CONSPICUOUS WRITTEN STATEMENT, IN SUBSTANTIALLY THE FOLLOWING FORM, TO BE CLEARLY AND CONSPICUOUSLY LABELED "CONSUMER RIGHTS":

CONSUMER RIGHTS

AS A CONSUMER WHO OWES OR MAY OWE A CONSUMER DEBT, YOU ARE GIVEN CERTAIN PROTECTIONS AND RIGHTS BY NEW YORK AND FEDERAL LAWS REGULATING DEBT COLLECTION PROCEDURES. YOU SHOULD BE AWARE OF YOUR RIGHTS AND SHOULD NOT PERMIT YOUR RIGHTS TO BE VIOLATED. FOR MORE INFORMATION ABOUT YOUR RIGHTS UNDER STATE AND FEDERAL DEBT COLLECTION PROCEDURES LAW, CONTACT THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES AT (INSERT THE CURRENT TELEPHONE NUMBER ESTABLISHED BY THE DEPARTMENT OF FINANCIAL SERVICES FOR RECEIVING INQUIRIES FROM CONSUMERS) OR (INSERT THE CURRENT ADDRESS OF THE WEBSITE OR WEBPAGE CREATED PURSUANT TO PARAGRAPH EIGHT OF SUBDIVISION (C) OF SECTION THREE HUNDRED ONE OF THE FINANCIAL SERVICES LAW). YOU MAY ALSO CONTACT THE NEW YORK STATE ATTORNEY GENERAL AT (INSERT THE CURRENT TELEPHONE NUMBER ESTABLISHED BY THE DEPARTMENT OF LAW FOR RECEIVING INQUIRIES FROM CONSUMERS) OR (INSERT THE CURRENT ADDRESS OF THE WEBSITE OF THE DEPARTMENT OF LAW).

THE NOTICE REQUIRED BY THIS SUBDIVISION SHALL BE PRINTED OR WRITTEN IN AT LEAST TEN POINT BOLD TYPE.

S 2. Subdivision 1 of section 602 of the general business law, as added by chapter 753 of the laws of 1973, is amended to read as follows:

1. Except as otherwise provided by law, any person who [shall violate] VIOLATES the terms OF SECTION SIX HUNDRED ONE of this article [shall be]

IS guilty of a misdemeanor, and each such violation shall be deemed a separate offense. A VIOLATION BY ANY PERSON OF SECTION SIX HUNDRED ONE-A OF THIS ARTICLE, IF SUCH VIOLATION CONSTITUTES THE FIRST SUCH OFFENSE BY SUCH PERSON, IS PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS. THE SECOND OFFENSE AND ANY OFFENSE COMMITTED THEREAFTER ARE PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS.

S 3. Paragraphs 6 and 7 of subsection (c) of section 301 of the financial services law, as added by section 1 of part A of chapter 62 of the laws of 2011, are amended and a new paragraph 8 is added to read as follows:

(6) providing technical assistance to local governments and not-for-profits in the development of consumer protection measures with respect to financial products and services; [and]

(7) continuing and expanding the detection, investigation and prevention of insurance fraud[.]; AND

(8) ESTABLISHING A WEBSITE OR WEBPAGE THAT INCLUDES, BUT IS NOT LIMITED TO, INFORMATION REGARDING THE PROTECTION AND RIGHTS AFFORDED TO CONSUMERS UNDER STATE AND FEDERAL LAWS REGULATING DEBT COLLECTION PROCEDURES, A SAMPLE INITIAL DEBT COLLECTION DISPUTE LETTER, A SAMPLE DEBT COLLECTION CEASE AND DESIST LETTER, AND THE CURRENT CONTACT INFORMATION FOR THE ATTORNEY GENERAL AND THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.