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

6875--B

2011-2012 Regular Sessions

I N A S S E M B L Y

April 5, 2011

Introduced by M. of A. LENTOL, SCHROEDER, LUPARDO, CERETTO, P. LOPEZ, ZEBROWSKI -- Multi-Sponsored by -- M. of A. McENENY, RA -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the civil practice law and rules and the general business law, in relation to prohibited debt collection practices

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

Section 1. Subparagraph (i) of paragraph 3 of subdivision (a) of rule 5224 of the civil practice law and rules, as amended by chapter 452 of the laws of 2006, the opening paragraph as amended by chapter 552 of the laws of 2006, is amended to read as follows:

(i) information subpoenas, served on an individual or entity other than the judgment debtor, may be served on an individual, corporation, partnership or sole proprietorship only if the judgment creditor or the judgment creditor's attorney has a reasonable belief that the party receiving the subpoena has in their possession information about the debtor that will assist the creditor in collecting his or her judgment. Any information subpoena served pursuant to this subparagraph shall contain a certification signed by the judgment creditor or his or her attorney stating the following: I HEREBY CERTIFY THAT THIS INFORMATION SUBPOENA COMPLIES WITH RULE 5224 OF THE CIVIL PRACTICE LAW AND RULES AND SECTION 601 OF THE GENERAL BUSINESS LAW THAT I HAVE A REASONABLE BELIEF THAT THE PARTY RECEIVING THIS SUBPOENA HAS IN THEIR POSSESSION INFORMATION ABOUT THE DEBTOR THAT WILL ASSIST THE CREDITOR IN COLLECTING THE JUDGMENT. By signing the certification, the judgment creditor or attorney certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,

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

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that the individual or entity receiving the subpoena has relevant information about the debtor.

S 2. Subdivision 9 of section 601 of the general business law, as added by chapter 753 of the laws of 1973, is amended and a new subdivision 10 is added to read as follows:

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

10. IF SUCH PRINCIPAL CREDITOR OR AGENT SENDS MORE THAN FIFTY INFORMATION SUBPOENAS PER MONTH, FAIL TO KEEP COMPLETE RECORDS CONCERNING ALL INFORMATION SUBPOENAS SENT BY SUCH PRINCIPAL CREDITOR OR AGENT. SUCH RECORDS SHALL BE MAINTAINED FOR FIVE YEARS. CONTEMPORANEOUS RECORDS SHALL BE KEPT THAT SET FORTH WITH SPECIFICITY THE GROUNDS FOR SUCH PRINCIPAL CREDITOR OR AGENT'S REASONABLE BELIEF, WHICH MUST BE CERTIFIED AND ACCOMPANY EACH INFORMATION SUBPOENA PURSUANT TO RULE FIFTY-TWO HUNDRED TWENTY-FOUR OF THE CIVIL PRACTICE LAW AND RULES, THAT THE PARTY RECEIVING THE SUBPOENA HAS IN ITS POSSESSION INFORMATION ABOUT THE DEBTOR THAT WILL ASSIST THE CREDITOR IN COLLECTING HIS OR HER JUDGEMENT. IN ADDITION TO ANY OTHER PENALTY THAT MY BE IMPOSED, FAILURE TO MAINTAIN RECORDS IN ACCORDANCE WITH THIS SUBDIVISION SHALL SUBJECT SUCH PRINCIPAL CREDITOR OR AGENT TO A CIVIL PENALTY OF NOT MORE THAN FIFTY DOLLARS PER SUBPOENA, UP TO A MAXIMUM OF FIVE THOUSAND DOLLARS PER VIOLATION, IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL.

S 3. Section 602 of the general business law is amended by adding a new subdivision 3 to read as follows:

3. ANY AGGRIEVED PERSON OR ENTITY SERVED WITH MORE THAN FIFTY INFORMATION SUBPOENAS PER MONTH BY A PRINCIPAL CREDITOR OR HIS OR HER AGENT SHALL ALSO HAVE A CAUSE OF ACTION TO CHALLENGE COMPLIANCE WITH SUBDIVISION TEN OF SECTION SIX HUNDRED ONE OF THIS ARTICLE AND/OR THE CERTIFICATION REQUIREMENTS OF RULE FIFTY-TWO HUNDRED TWENTY-FOUR OF THE CIVIL PRACTICE LAW AND RULES. IN SUCH ACTION, A SUCCESSFUL PLAINTIFF SHALL BE AWARDED TEN DOLLARS FOR EACH INFORMATION SUBPOENA SERVED UPON SUCH PLAINTIFF WHERE IT IS SHOWN THAT THE REQUIRED CERTIFICATION FOR SUCH INFORMATION SUBPOENA WAS NOT MADE PURSUANT TO RULE FIFTY-TWO HUNDRED TWENTY-FOUR OF THE CIVIL PRACTICE LAW AND RULES, THAT THE REQUIRED RECORD FOR SUCH INFORMATION SUBPOENA WAS NOT MAINTAINED PURSUANT TO SUBDIVISION TEN OF SECTION SIX HUNDRED ONE OF THIS ARTICLE, OR THAT THE SPECIFIC GROUNDS FOR THE CERTIFICATION REQUIRED TO ACCOMPANY SUCH INFORMATION SUBPOENA PURSUANT TO RULE FIFTY-TWO HUNDRED TWENTY-FOUR OF THE CIVIL PRACTICE LAW AND RULES WERE NOT REASONABLE. A SUCCESSFUL PLAINTIFF MAY ALSO BE AWARDED COURT COSTS AND ATTORNEY FEES.

S 4. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to information subpoenas served on or after such date.