

8372

2011-2012 Regular Sessions

I N   A S S E M B L Y

June 15, 2011

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

AN ACT to amend the general business law, in relation to the operations of credit services businesses

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

1     Section 1. Section 458-a of the general business law is amended by  
2 adding a new subdivision 3 to read as follows:

3     3. THIS ARTICLE SHALL BE CONSTRUED LIBERALLY TO ACHIEVE THESE  
4 PURPOSES.

5     S 2. Section 458-b of the general business law, as added by chapter  
6 386 of the laws of 1986, is amended to read as follows:

7     S 458-b. Definitions. As used in this article:

8     1. "Credit services business" means any person who sells, provides, or  
9 performs, or represents that he can or will sell, provide or perform, a  
10 service for the express or implied purpose of improving a consumer's  
11 credit record, history, or rating or providing advice or assistance to a  
12 consumer with regard to the consumer's credit record history or rating  
13 in return for the payment of a fee OR OTHER VALUABLE CONSIDERATION.

14     "Credit services business" does not include any of the following:

15     (a) Any type B not-for-profit corporation licensed pursuant to article  
16 twelve-c of the banking law.

17     (b) Any person admitted to practice law in this state where the person  
18 renders services within the course and scope of his or her practice as  
19 an attorney at law.

20     (C) ANY PERSON HOLDING A LICENSE TO MAKE LOANS OR EXTENSIONS OF CREDIT  
21 PURSUANT TO THE LAWS OF THIS STATE OR THE UNITED STATES WHO IS SUBJECT  
22 TO REGULATION AND SUPERVISION WITH RESPECT TO THE MAKING OF THOSE LOANS  
23 OR EXTENSIONS OF CREDIT BY AN OFFICIAL OR AGENCY OF THIS STATE OR THE  
24 UNITED STATES AND WHOSE BUSINESS IS THE MAKING OF THOSE LOANS OR EXTEN-  
25 SIONS OF CREDIT.

26     (D) ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN ASSOCI-  
27 ATION, OR CREDIT UNION, WHETHER INCORPORATED, CHARTERED, OR ORGANIZED  
28 UNDER THE LAWS OF THIS STATE OR ANY OTHER STATE OR THE UNITED STATES, OR

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

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1 ANY OPERATING SUBSIDIARY OF ANY SUCH BANK, TRUST COMPANY, SAVINGS BANK,  
2 SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION.

3 2. "Consumer" means any natural person who is solicited to purchase or  
4 who purchases the services of a credit services business.

5 3. "EXTENSION OF CREDIT" MEANS THE RIGHT TO DEFER PAYMENT OF DEBT OR  
6 TO INCUR DEBT AND DEFER ITS PAYMENT, OFFERED OR GRANTED PRIMARILY FOR  
7 PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

8 4. "Person" includes an individual, corporation, partnership, joint  
9 venture, or any business entity.

10 [4.] 5. The terms "consumer reporting agency", "consumer report",  
11 "investigative consumer report", "file", and "adverse information" shall  
12 have the meanings ascribed to each by section three hundred eighty-a of  
13 this chapter.

14 S 3. Section 458-c of the general business law, as added by chapter  
15 386 of the laws of 1986, is amended to read as follows:

16 S 458-c. Information statement; procedure. 1. Prior to the execution  
17 of a contract between a consumer and a credit services business, the  
18 credit services business shall provide the consumer an information  
19 statement in writing, on a separate sheet, containing the information  
20 required by section four hundred fifty-eight-d of this chapter. The  
21 consumer shall acknowledge receipt of such information statement by  
22 placing his OR HER signature on the face thereof. The credit services  
23 business shall maintain on file [or], microfilm OR ELECTRONIC MEDIA for  
24 a period of two years from the date of such acknowledgement an exact  
25 copy of such information statement.

26 2. IN ADDITION TO THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION,  
27 IN ANY ORAL COMMUNICATION DURING WHICH A CONSUMER PAYS OR AGREES TO PAY  
28 FOR THE SERVICES OF A CREDIT SERVICES BUSINESS, BEFORE THE CONSUMER PAYS  
29 OR AGREES TO PAY FOR SUCH SERVICES, WHICHEVER OCCURS FIRST, THE CREDIT  
30 SERVICES BUSINESS SHALL ORALLY DISCLOSE IN A CLEAR AND CONSPICUOUS  
31 MANNER TO THE CONSUMER THE FOLLOWING STATEMENTS OR SUBSTANTIALLY SIMILAR  
32 STATEMENTS:

33 (A) YOU HAVE THE RIGHT TO OBTAIN A FREE COPY OF YOUR CREDIT REPORT  
34 ONCE EVERY TWELVE MONTHS FROM EACH OF THE NATIONWIDE CREDIT REPORTING  
35 AGENCIES;

36 (B) YOU MAY, ON YOUR OWN, DISPUTE INACCURATE INFORMATION IN YOUR CRED-  
37 IT REPORT BY CONTACTING A CREDIT REPORTING AGENCY DIRECTLY;

38 (C) NEITHER YOU NOR ANY BUSINESS OR ORGANIZATION HAS THE RIGHT TO HAVE  
39 ACCURATE, CURRENT, AND VERIFIABLE INFORMATION REMOVED FROM YOUR CREDIT  
40 REPORT; AND

41 (D) YOU HAVE THE RIGHT TO CANCEL YOUR CONTRACT WITH ANY CREDIT  
42 SERVICES BUSINESS FOR ANY REASON WITHIN FIVE BUSINESS DAYS FROM THE DATE  
43 YOU SIGN THE CONTRACT.

44 S 4. Section 458-d of the general business law, as added by chapter  
45 386 of the laws of 1986, is amended to read as follows:

46 S 458-d. Information statement; contents. The information statement  
47 shall be printed in at least ten point type and shall include the  
48 following[:

49 "RIGHT TO REVIEW YOUR FILE"

50 "The Federal Fair Credit Reporting Act gives you the right to know  
51 what your credit file contains, and the consumer reporting agency must  
52 provide someone to help you interpret the data. The New York Fair Credit  
53 Reporting Act gives you the right to receive an actual copy of your  
54 credit report. You will be required to identify yourself to the consum-

1 er reporting agency and you may be charged a small fee. There is no fee,  
2 however, if you have been turned down for credit, employment, or insur-  
3 ance because of information contained in a report within the preceding  
4 thirty days."

5 "INCORRECT INFORMATION"

6 "Consumer reporting agencies are required to follow reasonable proce-  
7 dures to ensure that subscribing creditors report information accurate-  
8 ly. However, mistakes may occur.

9 When you notify the consumer reporting agency in writing that you  
10 dispute the accuracy of information, it must reinvestigate and modify or  
11 remove inaccurate data. The consumer reporting agency may not charge any  
12 fee for this service. Any pertinent data you have concerning an error  
13 should be given to the consumer reporting agency.

14 If reinvestigation does not resolve the dispute to your satisfaction,  
15 you may enter a statement of one hundred words or less in your file,  
16 explaining why you think the record is inaccurate.

17 The consumer reporting agency must include your statement about  
18 disputed data -- or a coded version of it -- with any reports it issues  
19 about you. New York law also provides that, at your request, the consum-  
20 er reporting agency must notify any person who has received a report in  
21 the previous year that an error existed and furnish such person with the  
22 corrected information."

23 "TIME LIMITS ON ADVERSE DATA"

24 "Most kinds of information in your file may be reported for a period  
25 of seven years. If you have declared personal bankruptcy, however, that  
26 fact may be reported for ten years.

27 After seven years or ten years, the information can't be disclosed by  
28 a credit reporting agency unless you are being investigated for a credit  
29 application of \$50,000 or more, for an application to purchase life  
30 insurance of \$50,000 or more, or for employment at an annual salary of  
31 \$25,000 or more." ] NOTICE. PARAGRAPH HEADINGS SHALL BE CAPITALIZED AND  
32 PRINTED IN FOURTEEN POINT BOLD TYPE.

33 "IMPORTANT NOTICE REGARDING CREDIT SERVICES"

34 "YOU HAVE A RIGHT TO DISPUTE INACCURATE INFORMATION IN YOUR CREDIT  
35 REPORT BY CONTACTING A CREDIT REPORTING AGENCY DIRECTLY. HOWEVER,  
36 NEITHER YOU NOR ANY BUSINESS OR ORGANIZATION HAS THE RIGHT TO HAVE ACCU-  
37 RATE, CURRENT, AND VERIFIABLE INFORMATION REMOVED FROM YOUR CREDIT  
38 REPORT. MOST KINDS OF INFORMATION MAY BE REPORTED FOR A PERIOD OF SEVEN  
39 YEARS. IF YOU HAVE DECLARED PERSONAL BANKRUPTCY, HOWEVER, THAT FACT MAY  
40 BE REPORTED FOR TEN YEARS."

41 "RIGHT TO REVIEW YOUR CREDIT REPORT"

42 "YOU HAVE A RIGHT TO OBTAIN A FREE COPY OF YOUR CREDIT REPORT ONCE  
43 EVERY TWELVE MONTHS FROM EACH OF THE NATIONWIDE CREDIT REPORTING AGEN-  
44 CIES. TO REQUEST YOUR FREE ANNUAL CREDIT REPORT, YOU MAY GO TO  
45 WWW.ANNUALCREDITREPORT.COM, OR CALL 877-322-8228, OR COMPLETE THE ANNUAL  
46 CREDIT REPORT REQUEST FORM AND MAIL IT TO: ANNUAL CREDIT REPORT REQUEST  
47 SERVICE, P.O. BOX 105281, ATLANTA, GA 30348-5281. YOU CAN OBTAIN ADDI-  
48 TIONAL COPIES OF YOUR CREDIT REPORT FROM A CREDIT REPORTING AGENCY, FOR  
49 WHICH YOU MAY BE CHARGED A REASONABLE FEE. THERE IS NO FEE, HOWEVER, IF  
50 YOU HAVE BEEN TURNED DOWN FOR CREDIT, EMPLOYMENT, INSURANCE, OR A RENTAL  
51 DWELLING BECAUSE OF INFORMATION IN YOUR CREDIT REPORT WITHIN THE PRECED-  
52 ING SIXTY DAYS. THE CREDIT REPORTING AGENCY MUST PROVIDE SOMEONE TO HELP

1 YOU INTERPRET THE INFORMATION IN YOUR CREDIT FILE. YOU ARE ENTITLED TO  
2 RECEIVE A FREE COPY OF YOUR CREDIT REPORT IF YOU ARE UNEMPLOYED AND  
3 INTEND TO APPLY FOR EMPLOYMENT IN THE NEXT SIXTY DAYS, IF YOU ARE A  
4 RECIPIENT OF PUBLIC WELFARE ASSISTANCE, OR IF YOU HAVE REASON TO BELIEVE  
5 THAT THERE IS INACCURATE INFORMATION IN YOUR CREDIT REPORT DUE TO FRAUD.

6 "INCORRECT INFORMATION"

7 "CREDIT REPORTING AGENCIES ARE REQUIRED TO FOLLOW REASONABLE PROCE-  
8 DURES TO ENSURE THAT THE INFORMATION THEY REPORT IS ACCURATE. HOWEVER,  
9 MISTAKES MAY OCCUR."

10 "YOU MAY, ON YOUR OWN, NOTIFY A CREDIT REPORTING AGENCY IN WRITING  
11 THAT YOU DISPUTE THE ACCURACY OF INFORMATION IN YOUR CREDIT FILE. THE  
12 CREDIT REPORTING AGENCY MUST THEN REINVESTIGATE AND MODIFY OR REMOVE  
13 INACCURATE OR INCOMPLETE INFORMATION. THE CREDIT REPORTING AGENCY MAY  
14 NOT CHARGE ANY FEE FOR THIS SERVICE. ANY PERTINENT INFORMATION AND  
15 COPIES OF ALL DOCUMENTS YOU HAVE CONCERNING AN ERROR SHOULD BE GIVEN TO  
16 THE CREDIT REPORTING AGENCY."

17 "IF THE CREDIT REPORTING AGENCY'S REINVESTIGATION DOES NOT RESOLVE THE  
18 DISPUTE TO YOUR SATISFACTION, YOU MAY SEND A BRIEF STATEMENT TO THE  
19 CREDIT REPORTING AGENCY, TO BE KEPT IN YOUR REPORT, EXPLAINING WHY YOU  
20 THINK THE RECORD IS INACCURATE. THE CREDIT REPORTING AGENCY MUST INCLUDE  
21 A SUMMARY OF YOUR STATEMENT ABOUT DISPUTED INFORMATION WITH ANY REPORT  
22 IT ISSUES ABOUT YOU."

23 "YOUR RIGHTS REGARDING CREDIT SERVICES BUSINESSES"

24 "YOU HAVE THE RIGHT TO CANCEL YOUR CONTRACT WITH ANY CREDIT SERVICES  
25 BUSINESS FOR ANY REASON WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU  
26 SIGNED IT."

27 "YOU HAVE A RIGHT TO SUE A CREDIT SERVICES BUSINESS THAT MISLEADS YOU  
28 OR VIOLATES NEW YORK STATE OR FEDERAL LAWS THAT PROHIBIT DECEPTIVE PRAC-  
29 TICES."

30 "THE FEDERAL TRADE COMMISSION AND THE NEW YORK ATTORNEY GENERAL REGU-  
31 LATE CREDIT REPORTING AGENCIES AND CREDIT SERVICES BUSINESSES. FOR MORE  
32 INFORMATION, CONTACT THE FEDERAL TRADE COMMISSION AT (INSERT THE CURRENT  
33 TELEPHONE NUMBER ESTABLISHED BY THE FEDERAL TRADE COMMISSION FOR RECEIV-  
34 ING INQUIRIES FROM CONSUMERS) OR (INSERT THE CURRENT ADDRESS OF THE  
35 WEBSITE OF THE FEDERAL TRADE COMMISSION). YOU MAY ALSO CONTACT THE NEW  
36 YORK ATTORNEY GENERAL AT (INSERT THE CURRENT TELEPHONE NUMBER ESTAB-  
37 LISHED BY THE DEPARTMENT OF LAW FOR RECEIVING INQUIRIES FROM CONSUMERS)  
38 OR (INSERT THE CURRENT ADDRESS OF THE WEBSITE OF THE DEPARTMENT OF  
39 LAW)."

40 S 5. Section 458-e of the general business law, as added by chapter  
41 386 of the laws of 1986, is amended to read as follows:

42 S 458-e. Advance fees prohibited. It is hereby declared to be an  
43 unfair and deceptive trade practice and unlawful for a credit services  
44 business to: 1. receive or collect from a consumer any fee OR OTHER  
45 VALUABLE CONSIDERATION in advance of the performance of those services  
46 specified in the contract as required by section four hundred fifty-  
47 eight-f of this chapter; OR

48 2. FAIL TO PERFORM THE AGREED SERVICES WITHIN SIX MONTHS FOLLOWING THE  
49 DATE THE CONSUMER SIGNS THE CONTRACT FOR THOSE SERVICES.

50 S 6. Section 458-f of the general business law, as added by chapter  
51 386 of the laws of 1986, is amended to read as follows:

52 S 458-f. Contracts; requirements and contents. 1. Every contract  
53 between a consumer and a credit services business shall be in writing,  
54 shall be dated, shall contain the street address of the credit services  
55 business and the consumer, and shall be signed by the consumer and cred-  
56 it services business. Each contract shall contain the following:

(a) A complete and detailed statement of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including a list of the adverse information appearing on the consumer's credit report that will be modified, a description of the precise nature of each modification, and the estimated date by which each modification will occur. A copy of the consumer's current credit report issued by a consumer credit reporting agency shall be annexed to the contract with the adverse entries proposed to be modified clearly marked.

(b) A statement in at least ten point type as follows:

"Under New York law no fee may be collected in advance of performance of the services specified in this contract."

2. The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily detachable, and which shall contain in at least [ten] TWELVE point type the following:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within [three] FIVE days from the date the contract is signed.

"To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to \_\_\_\_\_ at

(name of seller)

\_\_\_\_\_  
(address of seller)

\_\_\_\_\_  
(Place of business)

not later than midnight \_\_\_\_\_.

(date)

"I hereby cancel this transaction."

\_\_\_\_\_  
(purchaser's signature)

\_\_\_\_\_  
(date)

3. A copy of the fully completed contract and all other documents shall be given to the [buyer] CONSUMER at the time the contract is signed.

4. ANY CONSUMER SHALL HAVE THE RIGHT TO CANCEL A CONTRACT WITH A CREDIT SERVICES BUSINESS WITHOUT PENALTY OR OBLIGATION BY NOTIFYING THE CREDIT SERVICES BUSINESS OF THE CONSUMER'S INTENTION TO DO SO AT ANY TIME BEFORE MIDNIGHT OF THE FIFTH BUSINESS DAY WHICH BEGINS AFTER THE DATE ON WHICH THE CONTRACT OR AGREEMENT BETWEEN THE CONSUMER AND THE CREDIT SERVICES BUSINESS IS EXECUTED OR WOULD, BUT FOR THIS SECTION, BECOME ENFORCEABLE AGAINST THE PARTIES.

5. NO SERVICES MAY BE PROVIDED UNDER THE CONTRACT BEFORE THE END OF THE FIVE BUSINESS DAYS BEGINNING ON THE DATE THE CONTRACT IS SIGNED.

S 7. Section 458-h of the general business law, as added by chapter 386 of the laws of 1986, subdivision 3 as added by chapter 725 of the laws of 1991, is amended to read as follows:

S 458-h. Deceptive acts prohibited. It is hereby declared to be an unfair and deceptive trade practice and unlawful for a credit services [company] BUSINESS to:

1. Misrepresent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner: the nature of the services to be performed; the time within which services will be performed; the ability to improve a consumer's credit report or credit rating; the amount or type of credit a consumer can expect to receive as

1 a result of the performance of the services offered; the qualifications,  
2 training or experience of its personnel.

3 2. Make or counsel or advise any consumer to make any statement which  
4 is untrue or misleading and which is known, or which by the exercise of  
5 reasonable care should be known, to be untrue or misleading, to a  
6 consumer credit reporting agency or to any person who has extended cred-  
7 it to a consumer or to whom a consumer is applying for an extension of  
8 credit, with respect to a consumer's credit worthiness, credit standing,  
9 or credit capacity.

10 3. Represent directly or indirectly in its advertising, promotional  
11 materials, sales presentation, or in any manner that it can procure or  
12 obtain a credit card for a consumer unless that credit services [compa-  
13 ny] BUSINESS has authority to issue the credit card being advertised.

14 4. CHARGE OR RECEIVE ANY MONEY OR OTHER VALUABLE CONSIDERATION FOR  
15 REFERRAL OF THE CONSUMER TO A RETAIL SELLER OR OTHER CREDIT GRANTOR WHO  
16 WILL OR MAY EXTEND CREDIT TO THE CONSUMER, IF EITHER OF THE FOLLOWING  
17 APPLIES:

18 (A) THE CREDIT THAT IS OR WILL BE EXTENDED TO THE CONSUMER (I) IS UPON  
19 SUBSTANTIALLY THE SAME TERMS AS THOSE AVAILABLE TO THE GENERAL PUBLIC OR  
20 (II) IS UPON SUBSTANTIALLY THE SAME TERMS THAT WOULD HAVE BEEN EXTENDED  
21 TO THE CONSUMER WITHOUT THE ASSISTANCE OF THE CREDIT SERVICES BUSINESS.

22 (B) THE MONEY OR CONSIDERATION IS PAID BY THE CREDIT GRANTOR OR IS  
23 DERIVED FROM THE CONSUMER'S PAYMENTS TO THE CREDIT GRANTOR FOR COSTS,  
24 FEES, FINANCE CHARGES, OR PRINCIPAL.

25 5. MAKE, OR COUNSEL OR ADVISE A CONSUMER TO MAKE, A STATEMENT THAT IS  
26 UNTRUE OR MISLEADING AND THAT IS KNOWN, OR THAT BY THE EXERCISE OF  
27 REASONABLE CARE SHOULD BE KNOWN, TO BE UNTRUE OR MISLEADING, TO A CREDIT  
28 REPORTING AGENCY OR TO A PERSON WHO HAS EXTENDED CREDIT TO A CONSUMER OR  
29 TO WHOM A CONSUMER IS APPLYING FOR AN EXTENSION OF CREDIT, SUCH AS  
30 STATEMENTS CONCERNING A CONSUMER'S IDENTIFICATION, HOME ADDRESS, CREDIT-  
31 WORTHINESS, CREDIT STANDING, OR CREDIT CAPACITY.

32 6. REMOVE, OR ASSIST OR ADVISE THE CONSUMER TO REMOVE, ADVERSE INFOR-  
33 MATION FROM THE CONSUMER'S CREDIT RECORD WHICH IS ACCURATE AND NOT OBSO-  
34 LETE.

35 7. CREATE, OR ASSIST OR ADVISE THE CONSUMER TO CREATE, A NEW CREDIT  
36 RECORD BY USING A DIFFERENT NAME, ADDRESS, SOCIAL SECURITY NUMBER, OR  
37 EMPLOYEE IDENTIFICATION NUMBER.

38 8. FAIL TO MAINTAIN AN AGENT FOR SERVICE OF A PROCESS IN THIS STATE.

39 9. SUBMIT A CONSUMER'S DISPUTE TO A CONSUMER CREDIT REPORTING AGENCY  
40 WITHOUT THE CONSUMER'S KNOWLEDGE.

41 10. USE A CONSUMER CREDIT REPORTING AGENCY'S TELEPHONE SYSTEM OR  
42 TOLL-FREE TELEPHONE NUMBER TO REPRESENT THE CALLER AS THE CONSUMER IN  
43 SUBMITTING A DISPUTE OF A CONSUMER OR REQUESTING DISCLOSURE WITHOUT  
44 PRIOR AUTHORIZATION OF THE CONSUMER.

45 11. DIRECTLY OR INDIRECTLY EXTEND CREDIT TO A CONSUMER.

46 12. REFER A CONSUMER TO A CREDIT GRANTOR THAT IS RELATED TO THE CREDIT  
47 SERVICES BUSINESS BY A COMMON OWNERSHIP, MANAGEMENT, OR CONTROL, INCLUD-  
48 ING A COMMON OWNER, DIRECTOR, OR OFFICER.

49 13. REFER A CONSUMER TO A CREDIT GRANTOR FOR WHICH THE CREDIT SERVICES  
50 BUSINESS PROVIDES, OR ARRANGES FOR A THIRD PARTY TO PROVIDE, SERVICES  
51 RELATED TO THE EXTENSION OF CREDIT SUCH AS UNDERWRITING, BILLING,  
52 PAYMENT PROCESSING, OR DEBT COLLECTION.

53 14. PROVIDE A CREDIT GRANTOR WITH AN ASSURANCE THAT A PORTION OF AN  
54 EXTENSION OF CREDIT TO A CONSUMER REFERRED BY THE CREDIT SERVICES BUSI-  
55 NESS WILL BE REPAID, INCLUDING PROVIDING A GUARANTY, LETTER OF CREDIT,

1 OR AGREEMENT TO ACQUIRE A PART OF THE CREDIT GRANTOR'S FINANCIAL INTER-  
2 EST IN THE EXTENSION OF CREDIT.

3 15. USE A SCHEME, DEVICE, OR CONTRIVANCE TO EVADE THE PROHIBITIONS  
4 CONTAINED IN THIS ARTICLE.

5 S 8. Section 458-i of the general business law, as added by chapter  
6 386 of the laws of 1986, is amended to read as follows:

7 S [458-i.] 458-J. Action for recovery of damages by consumer. Any  
8 consumer injured by a violation of this article or by the breach by the  
9 credit services business of a contract which has been entered into  
10 pursuant to section four hundred fifty-eight-f of this chapter may bring  
11 an action for recovery of damages. Judgment shall be entered in favor of  
12 a consumer in an amount not to exceed three times the actual damages,  
13 but in no case less than the amount paid by the [buyer] CONSUMER to the  
14 credit services business. The court may award reasonable attorney's fees  
15 to a prevailing plaintiff.

16 S 9. Section 458-k of the general business law is renumbered 458-m and  
17 section 458-j of the general business law, as added by chapter 386 of  
18 the laws of 1986, is amended to read as follows:

19 S [458-j.] 458-K. Enforcement by attorney general. In addition to the  
20 other remedies provided, whenever there shall be a violation of this  
21 article, application may be made by the attorney general in the name of  
22 the people of the state of New York to a court or justice having juris-  
23 diction by a special proceeding to issue an injunction, and upon notice  
24 to the defendant of not less than five days, to enjoin and restrain the  
25 continuance of such violations; and if it shall appear to the satisfac-  
26 tion of the court or justice that the defendant has, in fact, violated  
27 this article, an injunction may be issued by such court or justice,  
28 enjoining and restraining any further violation, without requiring proof  
29 that any person has, in fact, been injured or damaged thereby. In any  
30 such proceeding, the court may make allowances to the attorney general  
31 as provided in paragraph six of subdivision (a) of section eighty-three  
32 hundred three of the civil practice law and rules, and direct restitu-  
33 tion. Whenever the court shall determine that a violation of this arti-  
34 cle has occurred, the court may impose a civil penalty of not more than  
35 [one] TWO thousand FIVE HUNDRED dollars for each violation. In  
36 connection with any such proposed application, the attorney general is  
37 authorized to take proof and make a determination of the relevant facts  
38 and to issue subpoenas in accordance with the civil practice law and  
39 rules.

40 S 10. The general business law is amended by adding two new sections  
41 458-j and 458-l to read as follows:

42 S 458-J. ASSISTING AND FACILITATING. IT IS HEREBY DECLARED TO BE  
43 UNLAWFUL FOR A PERSON TO PROVIDE SUBSTANTIAL ASSISTANCE OR SUPPORT TO  
44 ANY CREDIT SERVICES BUSINESS WHEN THAT PERSON KNOWS OR CONSCIOUSLY  
45 AVOIDS KNOWING THAT THE CREDIT SERVICES BUSINESS IS ENGAGED IN ANY ACT  
46 OR PRACTICE THAT VIOLATES THIS ARTICLE.

47 S 458-L. SUBSEQUENT VIOLATIONS. A SECOND OR SUBSEQUENT VIOLATION OF  
48 SECTIONS FOUR HUNDRED FIFTY-EIGHT-E OR FOUR HUNDRED FIFTY-EIGHT-H OF  
49 THIS ARTICLE SHALL BE A CLASS A MISDEMEANOR. EACH SUCH VIOLATION MAY BE  
50 PROSECUTED BY THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY IN THE COUN-  
51 TY IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED.

52 S 11. This act shall take effect on the ninetieth day after it shall  
53 have become a law; provided, however that effective immediately, the  
54 addition, amendment and/or repeal of any rule or regulation necessary  
55 for the implementation of this act on its effective date are authorized  
56 and directed to be made and completed on or before such effective date.