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

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER, 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, HOYT, JACOBS, LIFTON, LUPARDO, MAGEE, MAGNARELLI, PAULIN, PERRY, PRETLOW, SCARBOROUGH, TOWNS, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the executive 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 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;

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

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(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 OF AT LEAST THE FOLLOWING ITEMS, IN SUBSTANTIALLY THE FOLLOWING FORM, TO BE CLEARLY AND CONSPICUOUSLY LABELED "DEBTOR'S BILL OF RIGHTS":

DEBTOR'S BILL OF RIGHTS

AS A DEBTOR WHO OWES OR MAY OWE A CONSUMER CLAIM, YOU ARE GIVEN SOME PROTECTION AND RIGHTS BY THE NEW YORK AND FEDERAL LAWS REGULATING DEBT COLLECTION PROCEDURES. YOU SHOULD BE AWARE OF YOUR RIGHTS AND NOT PERMIT YOUR RIGHTS TO BE VIOLATED. SOME, NOT ALL, OF THE MORE IMPORTANT PROTECTIONS ARE HIGHLIGHTED BELOW.

1. A DEBT COLLECTOR MAY CONTACT YOU OR ANY MEMBER OF YOUR FAMILY OR HOUSEHOLD DIRECTLY. HOWEVER, THEY MAY NOT CONTACT YOU WITH SUCH FREQUENCY, AT UNUSUAL HOURS, OR IN A MANNER THAT CAN BE EXPECTED TO ABUSE OR HARASS YOU. THEY ALSO CANNOT THREATEN ACTION WHICH THEY DO NOT TAKE IN THE USUAL COURSE OF BUSINESS.

2. A DEBT COLLECTOR MAY NOT THREATEN TO CONTACT YOUR EMPLOYER REGARDING A DEBT PRIOR TO OBTAINING A FINAL JUDGMENT AGAINST YOU. HOWEVER, A DEBT COLLECTOR MAY CONTACT YOUR EMPLOYER TO EXECUTE A WAGE ASSIGNMENT AGREEMENT IF YOU, THE DEBTOR, HAVE AGREED TO THE ASSIGNMENT.

3. A DEBT COLLECTOR CANNOT USE A COMMUNICATION WHICH APPEARS TO BE AUTHORIZED, ISSUED, OR APPROVED BY A GOVERNMENT AGENCY OR ATTORNEY WHEN IT IS NOT.

4. A DEBT COLLECTOR CANNOT DISCLOSE OR THREATEN TO DISCLOSE INFORMATION AFFECTING YOUR REPUTATION FOR CREDITWORTHINESS IF THE COLLECTOR KNOWS OR HAS REASON TO KNOW THE INFORMATION IS FALSE. A DEBT COLLECTOR ALSO CANNOT ATTEMPT OR THREATEN TO ENFORCE A RIGHT WHEN IT KNOWS OR HAS REASON TO KNOW THE RIGHT DOES NOT EXIST.

FOR MORE INFORMATION ABOUT YOUR RIGHTS UNDER STATE AND FEDERAL DEBT COLLECTION PROCEDURES LAW, CONTACT THE NEW YORK STATE CONSUMER PROTECTION BOARD AT (INSERT THE CURRENT TELEPHONE NUMBER ESTABLISHED BY THE STATE CONSUMER PROTECTION BOARD FOR RECEIVING INQUIRIES FROM CONSUMERS) OR (INSERT THE CURRENT ADDRESS OF THE WEBSITE OR WEBPAGE CREATED PURSUANT TO PARAGRAPH L OF SUBDIVISION THREE OF SECTION FIVE HUNDRED FIFTY-THREE OF THE EXECUTIVE 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. Subdivision 3 of section 553 of the executive law is amended by adding a new paragraph l to read as follows:

L. ESTABLISH 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 TRADE COMMISSION.

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