STATE OF NEW YORK

8099

2017-2018 Regular Sessions

IN ASSEMBLY

May 26, 2017

Introduced by M. of A. KAVANAGH, DINOWITZ, GOTTFRIED, JAFFEE, WEPRIN, SOLAGES -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to debt collection procedures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 29-H of the general business law, as added by chapter 753 of the laws of 1973, subdivision 9 of section 601 as amended and subdivision 10 of section 601 and subdivision 3 of section 602 as added by chapter 342 of the laws of 2011, is amended to read as follows:

ARTICLE 29-H

DEBT COLLECTION PROCEDURES

Section 600. Definitions.

601. Prohibited **creditor** practices.

602. [~~Violations and penalties~~] **Creditor responsibilities**.

603. [~~Severability~~] **Prohibited debt collection practices**.

603-a. Selling or transferring of debts.

603-b. Private right of action.

603-c. Violations and penalties.

603-d. Severability.

§ 600. Definitions. As used in this article, unless the context or subject matter otherwise requires: 1. "[~~Consumer claim~~] **Debt" or "consumer debt**" means any obligation **or alleged obligation** of a natural person for the payment of money [~~or its equivalent which is or is alleged to be in default and which arises~~] **arising** out of a **consumer** transaction wherein credit has been offered or extended to a natural person, and the money, property [~~or~~]**, insurance,** service **or services** which [~~was~~] **are** the subject of the transaction [~~was~~] **are** primarily for personal, family or household purposes**, whether or not such obligation has been reduced to a judgment**. The term includes an obligation of a

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

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natural person who is a co-maker, endorser, guarantor or surety as well as the natural person to whom such credit was originally extended.

2. "Debtor" means any natural person who owes or who is asserted to owe a [~~consumer claim~~] consumer debt.

3. "[~~Principal creditor~~] Creditor" means any person, firm, association, corporation, [~~or~~] organization [~~to whom~~] or other business entity that offers or extends credit, creating a consumer [~~claim is~~] debt owed, due or asserted to be due or owed, [~~or any assignee for value of said person, firm, corporation or organization~~] but such term does not include any person, association, firm, corporation, organization or other business entity to the extent that it receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

4. "Communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

5. "Consumer" means any natural person obligated or allegedly obligated to pay any debt arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

6. "Debt collector" means an individual, association, firm, corporation, organization or other business entity who, as part of his or her job, regularly collects or seeks to collect from a consumer a debt owed or due to another or alleged to be owed or due.

The term does not include:

(a) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(b) any officer or employee of the United States, any state 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;

(c) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(d) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(e) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector 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; or

(f) 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 (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person's secured party in a commercial credit transaction involving the creditor.

7. "Location information" means a consumer's place of abode and his or her telephone number at such place, or his or her place of employment.

8. "Verification of the debt" means a copy of the last bill or notice of collection sent from the creditor to the debtor, any judgment levied in conjunction with such debt, and, if applicable, a copy of the judg-

ment release and a copy of the written communication advising the debtor that his or her debt has been sold or transferred.

§ 601. Prohibited creditor practices. No [~~principal~~] creditor, as defined by this article, or his or her agent shall:

1. Simulate in any manner a law enforcement officer, or a representative of any governmental agency of the state of New York or any of its political subdivisions; or

2. Knowingly collect, attempt to collect, or assert a right to any collection fee, attorney's fee, court cost or expense unless such [~~changes~~] charges are justly due and legally chargeable against the debtor; or

3. Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false; or

4. Communicate or threaten to communicate the nature of a consumer [~~claim~~] debt to the debtor's employer prior to obtaining final judgment against the debtor. The provisions of this subdivision shall not prohibit a [~~principal~~] creditor from communicating with the debtor's employer to execute a wage assignment agreement if the debtor has consented to such an agreement; or

5. Disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact; or

6. Communicate with the debtor or any member of his or her family or household at any time other than between the hours of 8:00 A.M. and 9:00 P.M. local time or with such frequency [~~or at such unusual hours~~] or in such a manner as can reasonably be expected to abuse or harass the debtor; or

7. Threaten any action which the [~~principal~~] creditor in the usual course of his or her business does not in fact take; or

8. Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist; or

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~~] may 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.

§ 602. Creditor responsibilities. Every creditor or his or her agent shall send a notice to the last known address of the debtor advising the debtor when his or her debt is being sold or transferred, prior to or contemporaneous with the sale of the debt. A copy of this notice shall be transmitted to the person, firm, organization or entity to whom the

creditor or his or her agent has agreed to sell or transfer the debt, along with a copy of any notice in regard to the debt provided to the creditor in accordance with paragraph (b) of subdivision seven of section six hundred three of this article. A creditor shall provide a copy of such notice to any debt collector hired to collect such debt.

§ 603. Prohibited debt collection practices. It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following:

1. Acquisition of location information. Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer in order to collect a debt shall:

(a) identify himself or herself, state that he or she is confirming or correcting location information about the consumer, and, only if expressly requested, identify his or her employer;

(b) not state or imply that such consumer owes any debt;

(c) not communicate with any such person more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information. For the purposes of this paragraph, the debt collector need not count as a communication returned unopened mail or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the recipient telephone the debt collector;

(d) not communicate by post card;

(e) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt, provided that a debt collector may use his or her business name or the name of a department within his or her organization as long as any name used does not connote debt collection; and

(f) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that he or she is not authorized to accept process for the consumer, or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

2. Communication in connection with debt collection. (a) Without the prior written consent of the consumer given directly to the debt collector after the institution of debt collection procedures, or without permission of a court of competent jurisdiction, a debt collector shall not communicate with the consumer in connection with the collection of any debt:

(i) orally, at any time other than between the hours of 8:00 A.M. and 9:00 P.M. local time or any unusual place known, or which should be known, to be inconvenient to the consumer;

(ii) at the consumer's place of employment. If the debt collector has received consent from the consumer to communicate with the consumer at the consumer's place of employment, the debt collector may communicate with the consumer, unless the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer from receiving such a communication, or

(iii) with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law.

(b) In order to collect a debt, and except as provided by subdivision one of this section, without the prior written consent of the consumer given directly to the debt collector after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his or her attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or attorney of the debt collector.

(c) After institution of debt collection, a debt collector shall not communicate with a consumer with respect to a debt if the consumer has notified the debt collector in writing that the consumer refuses to pay a debt or wishes the debt collector to cease further communication with the consumer with respect to that debt, except:

(i) to advise the consumer that the debt collector's further efforts are being terminated;

(ii) to notify the consumer that the debt collector may invoke specified remedies which are ordinarily invoked by such debt collector;

(iii) where applicable, to notify the consumer that the debt collector intends to invoke a specified remedy, or

(iv) to respond to each subsequent communication from the consumer.

(d) For the purpose of this subdivision the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, and spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector cease further communication, provided for under this subdivision, if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request.

3. Harassment or abuse. A debt collector shall not harass, oppress or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is prohibited:

(a) the use or threat of violence or other criminal means to harm the physical person, reputation, or property of any person;

(b) the use of obscene or profane language or language the natural consequence of which is to abuse the recipient of the communication;

(c) the advertisement for sale of any debt to coerce payment of the debt;

(d) causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(e) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC 1681a(f) or 15 USC 1681b(3); or

(f) except as provided by subdivision one of this section, the placement of telephone calls without meaningful disclosure of the caller's identity.

4. False or misleading representations. A debt collector shall not make any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is prohibited:

(a) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform or facsimile thereof;

(b) the false representation of:

(i) the character, amount, or legal status of any debt, or

(ii) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

(c) the false representation or implication that any individual is an attorney or any communication is from an attorney;

(d) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(e) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(f) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

(ii) become subject to any practice prohibited by this article;

(g) the false representation or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(h) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(i) communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate a disputed debt's status as disputed;

(j) the false representation or implication that documents are legal process;

(k) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(l) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official or agency of the United States, the state or any political subdivision thereof, or which creates a false impression as to its source, authorization, or approval;

(m) the false representation or implication that documents are not legal process forms and do not require action by the consumer;

(n) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 USC 1681a(f);

(o) communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate a disputed debt's status as disputed;

(p) except as otherwise provided under subdivision one of this section and except for any communication which is required by law or chosen from among alternatives of which one is required by law, or any formal pleading in connection with any legal action, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose; or

(q) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

5. Unfair practices. A debt collector shall not use any unfair or unconscionable means to collect or attempt to collect a debt. Without limitation of the foregoing, such prohibited conduct includes:

(a) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt;

(b) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(c) causing charges to be made to any person for communications by misrepresentation of true purpose of the communication. Such charges include collect telephone calls, telegram and wireless telephone fees;

(d) taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(e) communicating with a consumer regarding a debt by post card;

(f) using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, or electronic communication copied to a third party except that a debt collector may use his or her business name or the name of a department within his or her organization as long as any name used does not indicate that he or she is in the business of debt collection;

(g) communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address; or

(h) if any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

6. Deceptive forms. It is unlawful for any person to design, compile and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

7. Validation of debts. The following validation procedures shall be followed by debt collectors:

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a clear written notice titled "debtor's rights," which shall contain:

(i) the delineated amounts of the original debt, any interest and penalties accrued, and the total debt due at the time of the notice,

(ii) the name, address and telephone number of the creditor to whom the debt is owed, or such creditor's agent, and the name, address and telephone number of the original creditor, if different from the current debt collector,

(iii) the date the debt was deemed in default,

(iv) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector, and

(v) a statement that, if the consumer notifies the debt collector in writing within the thirty-day period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector will obtain verification of the debt against the consumer and a copy of such verification will be mailed to the consumer by the debt collector.

(b) If the consumer notifies the debt collector in writing within the thirty day period described in paragraph (a) of this subdivision that the debt, or any portion thereof is disputed, or if notice of such dispute is given to the debt collector in accordance with this article, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt. A debt collector that receives such written notice shall provide a copy thereof to the owner of the debt.

(c) The debt collector shall maintain for one year from the date the debtor's rights notice was mailed, documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response.

(d) The failure of a consumer to dispute the validity of a debt under this section shall not be construed by any court as an admission of liability by the consumer.

(e) The sending or delivery of any form or notice which does not relate to debt collection and is expressly required by the Internal Revenue Code of 1986, title V of the Gramm-Leach-Bliley Act, or any provision of federal or state law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

(f) If the consumer notifies the debt collector in writing after the thirty-day period described in paragraph (a) of this subdivision that the debt, or any portion thereof is disputed, the debt collector shall obtain verification of the debt, and mail such verification to the consumer. The debt collector may continue to attempt to collect the amount in dispute.

§ 603-a. Selling or transferring of debts. Every debt purchaser or his or her agent shall send a notice to the last known address of the debtor advising the debtor when the debt purchaser sells or transfers the debt, prior to or contemporaneous with the sale of the debt. A copy of such notice shall be transmitted to the person, firm, organization or entity to whom the debt purchaser or his or her agent has agreed to sell or transfer the debt along with a copy of any notice in regard to the debt provided to the debt purchaser in accordance with paragraph (b) of subdivision seven of section six hundred three of this article. A debt purchaser shall provide a copy of such notice to any debt collector hired to collect such debt.

§ 603-b. Private right of action. (a) Notwithstanding any right of action granted to any governmental body pursuant to this article, any person who has been injured by reason of violation of this article may bring an action against any person or persons, to enjoin such unlawful act, and to recover an amount equal to (1) any actual damage sustained by such person as a result of such failure, and (2) such additional damages as the court may allow but not exceeding two thousand five hundred dollars, and reasonable attorney's fees.

(b) Intent. A debt collector may not be held liable in any action brought under this article, absent actual damage to the consumer, if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(c) Limitations. An action to enforce any liability created by this article may be brought in any other court of competent jurisdiction, within two years from the date on which the violation occurs.

§ [~~602~~] 603-c. Violations and penalties. 1. Except as otherwise provided by law, any person who [~~shall violate~~] violates the terms of this article [~~shall be~~] is guilty of a misdemeanor, and each such violation shall be deemed a separate offense.

2. The attorney general or the district attorney of any county may bring an action in the name of the people of the state to restrain or prevent any violation of this article or any continuance of any such violation.

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.

§ [~~603~~] 603-d. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid the invalidity thereof shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this [~~and~~] end the provisions of this article are severable.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, provided, however, that section 602, subdivision 7 of section 603 and section 603-a of the general business law, as added by this act, shall apply only to debts incurred on or after the effective date of such sections.