

STATE OF NEW YORK

9773

IN ASSEMBLY

February 6, 2018

Introduced by M. of A. TITONE -- 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 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.

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

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3. "~~Principal creditor~~ Creditor" means any person, firm, association, corporation, [ex] 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 judgment 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 1. Simulate in any manner a law enforcement officer, or a represen-
2 tative of any governmental agency of the state of New York or any of its
3 political subdivisions; or

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

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

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

17 5. Disclose or threaten to disclose information concerning the exist-
18 ence of a debt known to be disputed by the debtor without disclosing
19 that fact; or

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

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

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

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

33 10. If such [~~principal~~] creditor or agent sends more than fifty infor-
34 mation subpoenas per month, fail to keep complete records concerning all
35 information subpoenas sent by such [~~principal~~] creditor or agent. Such
36 records shall be maintained for five years. Contemporaneous records
37 shall be kept that set forth with specificity the grounds for such
38 [~~principal~~] creditor or agent's reasonable belief, which must be certi-
39 fied and accompany each information subpoena pursuant to rule fifty-two
40 hundred twenty-four of the civil practice law and rules, that the party
41 receiving the subpoena has in its possession information about the
42 debtor that will assist the creditor in collecting his or her judgement.
43 In addition to any other penalty that [~~my~~] may be imposed, failure to
44 maintain records in accordance with this subdivision shall subject such
45 [~~principal~~] creditor or agent to a civil penalty of not more than fifty
46 dollars per subpoena, up to a maximum of five thousand dollars per
47 violation, in an action brought by the attorney general.

48 § 602. Creditor responsibilities. Every creditor or his or her agent
49 shall send a notice to the last known address of the debtor advising the
50 debtor when his or her debt is being sold or transferred, prior to or
51 contemporaneous with the sale of the debt. A copy of this notice shall
52 be transmitted to the person, firm, organization or entity to whom the
53 creditor or his or her agent has agreed to sell or transfer the debt,
54 along with a copy of any notice in regard to the debt provided to the
55 creditor in accordance with paragraph (b) of subdivision seven of

1 section six hundred three of this article. A creditor shall provide a
2 copy of such notice to any debt collector hired to collect such debt.

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

7 1. Acquisition of location information. Any debt collector communicat-
8 ing with any person other than the consumer for the purpose of acquiring
9 location information about the consumer in order to collect a debt
10 shall:

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

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

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

26 (d) not communicate by post card;

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

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

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

44 (ii) fails to respond to the debt collector's inquiry about the attor-
45 ney's authority to accept process within a reasonable period of time
46 after the inquiry.

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

53 (i) orally, at any time other than between the hours of 8:00 A.M. and
54 9:00 P.M. local time or any unusual place known, or which should be
55 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:

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

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

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

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

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

14 (f) except as provided by subdivision one of this section, the place-
15 ment of telephone calls without meaningful disclosure of the caller's
16 identity.

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

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

24 (b) the false representation of:

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (l) the use or distribution of any written communication which simu-
54 lates or is falsely represented to be a document authorized, issued, or
55 approved by any court, official or agency of the United States, the

1 state or any political subdivision thereof, or which creates a false
2 impression as to its source, authorization, or approval;

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

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

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

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

18 (q) the use of any business, company, or organization name other than
19 the true name of the debt collector's business, company, or organiza-
20 tion.

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

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

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

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

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

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

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

39 (iii) the property is exempt by law from such dispossession or disa-
40 blement;

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

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

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

53 (h) if any consumer owes multiple debts and makes any single payment
54 to any debt collector with respect to such debts, such debt collector
55 may not apply such payment to any debt which is disputed by the consumer

1 and, where applicable, shall apply such payment in accordance with the
2 consumer's directions.

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

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

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

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

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

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

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

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

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

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

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

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

54 (f) If the consumer notifies the debt collector in writing after the
55 thirty-day period described in paragraph (a) of this subdivision that
56 the debt, or any portion thereof is disputed, the debt collector shall

1 obtain verification of the debt, and mail such verification to the
2 consumer. The debt collector may continue to attempt to collect the
3 amount in dispute.

4 § 603-a. Selling or transferring of debts. Every debt purchaser or his
5 or her agent shall send a notice to the last known address of the debtor
6 advising the debtor when the debt purchaser sells or transfers the debt,
7 prior to or contemporaneous with the sale of the debt. A copy of such
8 notice shall be transmitted to the person, firm, organization or entity
9 to whom the debt purchaser or his or her agent has agreed to sell or
10 transfer the debt along with a copy of any notice in regard to the debt
11 provided to the debt purchaser in accordance with paragraph (b) of
12 subdivision seven of section six hundred three of this article. A debt
13 purchaser shall provide a copy of such notice to any debt collector
14 hired to collect such debt.

15 § 603-b. Private right of action. (a) Notwithstanding any right of
16 action granted to any governmental body pursuant to this article, any
17 person who has been injured by reason of violation of this article may
18 bring an action against any person or persons, to enjoin such unlawful
19 act, and to recover an amount equal to (1) any actual damage sustained
20 by such person as a result of such failure, and (2) such additional
21 damages as the court may allow but not exceeding two thousand five
22 hundred dollars, and reasonable attorney's fees.

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

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

32 § [602] 603-c. Violations and penalties. 1. Except as otherwise
33 provided by law, any person who [~~shall violate~~] violates the terms of
34 this article [~~shall be~~] is guilty of a misdemeanor, and each such
35 violation shall be deemed a separate offense.

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

40 3. Any aggrieved person or entity served with more than fifty informa-
41 tion subpoenas per month by a [~~principal~~] creditor or his or her agent
42 shall also have a cause of action to challenge compliance with subdivi-
43 sion ten of section six hundred one of this article and/or the certif-
44 ication requirements of rule fifty-two hundred twenty-four of the civil
45 practice law and rules. In such action, a successful plaintiff shall be
46 awarded ten dollars for each information subpoena served upon such
47 plaintiff where it is shown that the required certification for such
48 information subpoena was not made pursuant to rule fifty-two hundred
49 twenty-four of the civil practice law and rules, that the required
50 record for such information subpoena was not maintained pursuant to
51 subdivision ten of section six hundred one of this article, or that the
52 specific grounds for the certification required to accompany such infor-
53 mation subpoena pursuant to rule fifty-two hundred twenty-four of the
54 civil practice law and rules were not reasonable. A successful plaintiff
55 may also be awarded court costs and attorney fees.

1 § [~~603~~] 603-d. Severability. If any provision of this article or the
2 application thereof to any person or circumstances is held invalid the
3 invalidity thereof shall not affect other provisions or applications of
4 the article which can be given effect without the invalid provision or
5 application, and to this [~~and~~] end the provisions of this article are
6 severable.

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