STATE OF NEW YORK

429

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to regulation of debt collection; and to repeal article 29-H of such law relating thereto

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 Article 29-H of the general business law is REPEALED and a new article 29-H is added to read as follows:

ARTICLE 29-H

FAIR DEBT COLLECTION PRACTICES ACT

Section 600. Definitions.
601. Prohibited practices.
602. Creditors and debt collectors.
603. Enforcement.
603-a. Separability clause.

§ 600. Definitions. As used in this article unless the context requires otherwise the following terms shall have the following meanings:

1. "Person" means any natural person, corporation, sole proprietorship, business, trust, partnership, incorporated or unincorporated association, estate, co-operative or any other legal entity except any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt constitutes the performance of official duties.

2. "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the result of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

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

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3. "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

4. "Debt collector" means any person, firm, corporation or organization or any employee thereof engaged in any business a purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or alleged to be owed or due another, or any person, firm, corporation or organization or any employee thereof engaged in any business a purpose of which is locating or attempting to locate consumers.

5. "Creditor" means any person, firm, corporation or organization or any employee thereof to whom a debt is owed, due or alleged to be owed or due, or any assignee for value of said person, firm, corporation or organization.

6. "Debt collection" means any action, conduct or practice in connection with the collection of a debt.

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

8. "Verification" means a contract, receipt, order, writing or documentation which evidences the existence of a debt.

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

§ 601. Prohibited practices. 1. No debt collector or creditor shall collect or attempt to collect any debt by means of any threat, coercion or attempted coercion. This includes but is not limited to the following activities:

a. Using or threatening to use violence or any illegal means to cause harm to the person, reputation or property of any person; or

b. Accusing or threatening to accuse falsely any person of fraud or any crime, or any conduct which can reasonably be expected to disgrace such other person or in any way subject him or her to ridicule or contempt of society; or

c. Making or threatening to make any false accusations to another person, including any credit reporting agency, that a consumer has not paid a just debt; or

d. Threatening to sell or assign a debt with an attending representation or implication that as a result of such sale or assignment the consumer would be subjected to any action which could constitute a violation of this article; or

e. Threatening the non-payment of a debt will result in the arrest or criminal prosecution of any person; or

f. Disclosing or threatening to disclose information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that such information is false; or

g. Threatening any action which the debt collector or creditor in the usual course of its business does not in fact take; or

h. Claiming, attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist.

2. No debt collector or creditor shall oppress, harass or abuse any person in connection with the collection of or the attempt to collect a debt. This includes but is not limited to the following activities:

a. Using any obscene or profane language or any language which can reasonably be expected to abuse the hearer or reader; or

b. Making telephone calls without the meaningful disclosure of the debt collector's identity except as otherwise provided by this article; or

c. Causing any expense to any person for telephone calls, telegrams or other charges incurred through a medium of communication by concealment of the identity of the debt collector or creditor or the purposes of the communication; or

d. Causing a telephone to ring repeatedly or continuously in a manner that can reasonably be expected to annoy, harass or needlessly disturb any person; or

e. Communicating with any person with such frequency or in such a manner as can reasonably be expected to constitute an annoyance or an unwarranted disturbance of such person; or

f. Communicating or attempting to communicate with any person at any unusual time or place, or at any time or place which can reasonably be expected to be inconvenient for such person. In the absence of an indication to the contrary, it shall be presumed that telephone communications received before eight o'clock A.M. and after nine o'clock P.M. are inconvenient.

3. No debt collector or creditor shall unlawfully publicize information relating to any alleged debt or consumer. This includes but is not limited to the following activities:

a. Communicating with the consumer's employer or anyone else employed by that employer regarding the debt with the exception that the following communication shall be permissible:

(i) by the creditor or his or her attorney when the communication is for the sole purpose of executing a wage garnishment after the debt has been reduced to judgment and to the extent it is reasonably necessary to actually execute such wage garnishment;

(ii) by the creditor or his or her attorney when the communication is for the sole purpose of executing a wage assignment obtained pursuant to article three-A of the personal property law and to the extent it is reasonably necessary to execute such wage assignment;

(iii) for the sole purpose of obtaining location information as defined by subdivision six of this section; and

(iv) where the consumer or his or her attorney has consented to such communication in writing after the debt has been incurred;

b. Disclosing any information regarding a consumer's debt by publishing or posting any list of consumers except as permitted by the act of Congress known as the "Fair Credit Reporting Act" or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal process;

c. Communicating for the purpose of debt collection with a consumer by postcard; or

d. Use of any language or symbol by a debt collector, other than his or her address, on any envelope when communicating with any person for the purpose of debt collection by use of the mails or by telegram except that he may use his business name if such name does not specify that he or she is in the debt collection business.

4. No debt collector or creditor shall collect or attempt to collect a debt or obtain or attempt to obtain information concerning a consumer by any fraudulent, deceptive, false, or misleading representation or means. This includes but is not limited to the following activities:

a. The use, by any debt collector, creditor or any employee of any debt collector or creditor in any communication for the purpose of debt collection of any name that is not such person's actual name; provided that such person may use a name other than his or her actual name if he or she uses the same name in all communications for the purpose of debt collection and if such person or his or her employer has that name on

file so that the true identity of the debt collector can be ascertained; or

b. Except as otherwise provided by subdivision six of this section to obtain location information, failing to disclose in all written communications that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose; or

c. Falsely representing that the debt collector or creditor has in his or her possession information or something of value for the consumer; or

d. Failing to disclose the name of the person to whom the debt is owed at the time of making any demand for money; or

e. Falsely representing the character, extent, amount or legal status of a debt; or

f. Falsely representing or implying that any debt collector or creditor is vouched for, bonded by, affiliated with, or an instrumentality, agent or official of any agency of the federal government or any state or local government; or

g. Using, distributing or selling any written communication which implies, simulates, or is falsely represented to be authorized, issued or approved by a court, a government official, a government or an attorney at law; or

h. Falsely representing that a debt or an alleged debt has been or may be increased by the addition of attorney's fees, interest, collection fees, or any other fees or charges; or

i. Falsely representing the status or true nature of the services rendered or the compensation which may be lawfully received by the debt collector or creditor for the collection of a debt; or

j. Communicating with any person in connection with debt collection or in an effort to obtain information about a consumer in the name of, or in a manner which can reasonably be implied to be from, an attorney at law when it is not; or

k. Falsely representing that the debt collector or creditor is employed by, or is affiliated with, a credit bureau or a credit reporting agency as defined by 15 U.S.C., § 1681a(f); or

l. Falsely stating, representing or implying that the sale or assignment of a debt shall cause the consumer to lose any claim or defense to payment of the debt.

5. No debt collector or creditor shall collect or attempt to collect any debt in any of the following ways:

a. Collecting or attempting to collect from the consumer all or any part of the debt collector's or creditor's fee or charge for services rendered, or collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt, unless such expense is expressly authorized by contract or law; or

b. Communicating for the purpose of debt collection with anyone other than the consumer's attorney, except as otherwise provided by this article, if the debt collector or creditor knows the consumer is represented by such attorney with respect to such debt and has knowledge of or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable time to a communication from the debt collector or creditor, or the attorney consents in writing to direct communication with the consumer. This subdivision shall not prohibit service of process on a consumer as permitted by article three of the civil practice law and rules; or

c. Using, distributing, selling, or preparing for use any written communication that violates or fails to conform to the postal laws and regulations of the United States; or

d. Communicating or attempting to communicate with the consumer at his or her place of employment after the consumer has requested that he not be contacted at his or her place of employment; or

e. Except as otherwise provided by subdivision six of this section, communicating in connection with debt collection with any person after such person has notified the debt collector or creditor in writing that he or she wishes the debt collector or creditor to cease all further communications with him or her or communicating with the consumer after such consumer has notified the debt collector or creditor that he or she refuses to pay the debt. This subdivision shall not prohibit a debt collector or creditor from communicating with the consumer once, in writing, to advise him or her that certain specified action will be taken or to advise the consumer that further collection activity is being terminated. This subdivision shall not prohibit any communications required by law; or

f. Communication by a debt collector with a consumer by telephone or in person prior to three business days after a debt collector has sent its initial written communication to the consumer, which written communication shall comply with subdivision seven of this section.

6. Any debt collector or creditor communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

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

b. Not state that the consumer owes any debt; and

c. Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector or creditor reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information; and

d. Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegraph that indicates that the sender is in the debt collection business or that the communication relates to the collection of a debt; and

e. After the debt collector or creditor knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable time to communication from the debt collector.

7. The initial written communication from a debt collector to a consumer for the purpose of debt collection shall, unless the consumer has paid the debt, include on the face of the communication:

a. The amount of the debt; and

b. The name of the creditor to whom the debt is owed if not the same as the debt collector; and

c. 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 to be valid by the debt collector; and

d. A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer if one has in fact been rendered and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

e. A statement that, upon the consumer's written request within the thirty-day period, the debt collector will mail him or her the name and address of the original creditor, if different from the current creditor; and

f. The authority, if any, of the debt collector to initiate a lawsuit to collect the debt on behalf of the creditor.

8. If the consumer notifies the debt collector within the thirty-day period described in subdivision seven of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the original creditor and a copy of such verification or judgment or name and address of the original creditor is provided to the consumer by the debt collector.

9. The initial written communication from a creditor to a consumer in connection with the collection of any debt not within the scope of 15 U.S.C. § 1666 (et seq.) or article thirty-four of this chapter for the purpose of debt collection, shall, unless the consumer has paid the debt, include:

a. The amount of the debt; and

b. The name of the original creditor if not the same as the current creditor; and

c. A statement that if the consumer notifies the creditor within thirty days after receipt of the notice that the debt, or any portion thereof, is disputed, the creditor will provide the consumer with verification of the debt or a copy of a judgment against the consumer, if one has in fact been rendered.

10. If the consumer notifies the creditor within the thirty-day period described in subdivision nine of this section that the debt, or any portion thereof, is disputed the creditor shall cease debt collection with respect to the debt, or any disputed portion thereof, until the creditor provides the consumer verification of the debt or a copy of a judgment.

11. 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.

12. The initial communication from a debt collector or a creditor to a consumer in connection with the collection of any debt shall include the following in at least ten point type either on the face of such communication or on a separate piece of paper provided at the same time as such communication:

"Your rights as a consumer debtor. The New York 'fair debt collection practices act' provides protection to debtors from abusive or illegal debt collection practices.

Some of these protections include:

a. Calling you before 8 o'clock A.M. or after 9 o'clock P.M. unless the debt collector knows that communication at that time is convenient;

b. Calling you at your job if you tell the debt collector not to do so;

c. Using abusive or harassing or deceptive methods to collect a debt; and

d. Continuing to communicate with you after you have told the debt collector in writing to stop or that you refuse to pay the debt. By exercising this right, the debt will not necessarily be eliminated and you may still be sued by the creditor to recover the debt.

If you believe that a debt collector has attempted to collect a debt in an unlawful manner, contact the state attorney general's office, the federal trade commission, your local consumer protection agency or a private attorney. You have the right to sue a debt collector that violates the law and if you are successful you can recover money damages and your attorney's fees. This lawsuit can be brought in any court including small claims court."

13. All written notices required to be provided by this article shall be written in both English and Spanish where the recipient of such notices resides in a city in the state with a population of one million or more.

§ 602. Creditors and debt collectors. 1. Multiple debts. If any consumer owes multiple debts and makes any single payment to any debt collector or creditor not within the scope of 15 U.S.C. § 1666 or article thirty-four of this chapter, with respect to such debts, such debt collector or creditor shall not apply such payment to any debt which is disputed by the debtor if the debtor has notified the debt collector or creditor of such dispute as provided by section six hundred one of this article and where applicable shall apply such payment in accordance with the consumer's directions.

2. Venue. Any creditor who brings any legal action on a debt against a consumer shall do so in the county in which such consumer signed the contract sued upon or in the county in which the consumer resides at the commencement of the action.

3. Bona fide error. No person shall be guilty of a violation of paragraph b or d of subdivision five or paragraph c or e of subdivision six of section six hundred one of this article or subdivision one of this section if the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid such error and any evidence of such bona fide error shall only be raised as an affirmative defense in any action brought to enforce this article.

§ 603. Enforcement. 1. Attorney general enforcement. Whenever there shall be a violation of this article an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In such action or proceeding, the attorney general may apply for a civil penalty of not less than fifty dollars and not more than five thousand dollars per violation, and, where appropriate, for restitution and damages to aggrieved consumers; and the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

2. Private right of action. Any debt collector or creditor who violates any provision of this article with respect to any individual shall be liable in any court of competent jurisdiction, including small claims court, to such individual in an amount equal to:

a. Such person's damages sustained as a result of such violation or fifty dollars whichever is greater, for each violation; and

b. Such additional punitive damages as the court may allow; and

c. Such person's costs and attorney's fees.

In an action brought by any person to enforce this article, the court may, subject to its jurisdiction, issue an injunction to restrain or prevent any violation of this article or any continuance of any such violation.

3. Other remedies. This article shall not annul, alter, affect or exempt any person subject to the provisions of this article from complying with the laws, ordinances, rules or regulations of any locality or other governmental body, relating to debt collection practices, except to the extent that such laws, ordinances, rules or regulations are inconsistent with any provision of this article, but no such law, ordinance, rule or regulation shall be considered inconsistent, if it affords greater protection to the consumer. This article shall not annul, alter or affect the rights of any person against any creditor or debt collector.

4. Limits on creditor liability for acts of debt collector. In any action pursuant to the provisions of this article a creditor shall be liable for the acts of a debt collector authorized to or engaged in debt collection with respect to a debt owed or alleged to be owed to the creditor if:

a. The creditor has knowledge or reason to believe that the debt collector engages in those acts or practices which are in violation of this article; or

b. The creditor has authorized the debt collector to engage in debt collection with respect to the debt without taking reasonable steps to ascertain that there is no reason to believe that the debt collector engages in those acts or practices which are in violation of this article. Reasonable steps shall include reviewing the formal written communications of the debt collector, and reviewing reports of consumer complaints against the debt collector prepared by the Better Business Bureau or other consumer protection agencies.

§ 603-a. Separability clause. If any part or provision of this article or the application thereof to any person or circumstances be adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

§ 2. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.