

# STATE OF NEW YORK

7099

## IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. KAVANAGH -- 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 and the civil practice law and rules, in relation to debt collection agencies

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

1 Section 1. Legislative intent. The legislature hereby finds the pres-  
2 ence of consumer-related problems with respect to the practices of debt  
3 collection agencies. Federal and state laws regulate how debt collectors  
4 may communicate with debtors and prohibit the use of certain threaten-  
5 ing, deceptive and unfair collection practices. Despite these legal  
6 protections, the number of consumer complaints regarding debt collection  
7 practices continue to rise. Consumer complaints received by the Federal  
8 Trade Commission regarding third-party debt collectors grew for the  
9 thirteenth consecutive year in 2010, and consumers filed with the  
10 Commission more complaints against third-party collectors than against  
11 any other specific industry. While the majority of those engaged in the  
12 business of debt collection are honest and ethical in their dealings,  
13 there is a minority of unscrupulous collection agencies in operation  
14 that practice abusive tactics. Due to the sensitive nature of the infor-  
15 mation used in the course of such agency's everyday business, and the  
16 vulnerable position consumers find themselves in when dealing with these  
17 agencies, it is incumbent upon this legislature to protect the inter-  
18 ests, reputations and fiscal well-being of the citizens of this state  
19 against those agencies who would abuse their privilege of operation.  
20 Therefore, it is herein declared that the state should license debt  
21 collection agencies.

22 § 2. The general business law is amended by adding a new article  
23 29-HHH to read as follows:

### ARTICLE 29-HHH

#### DEBT COLLECTION AGENCIES

##### Section 604-k. Definitions.

###### 604-1. Debt collection agencies.

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

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1           604-m. Surety bonding requirement.

2           604-n. Penalties.

3           604-o. Applicability.

4       § 604-k. Definitions. As used in this article, the following terms  
5 shall have the following meanings:

6       1. (a) "Debt collection agency" shall mean a person, firm or corpo-  
7 ration engaged in business, the principal purpose of which is to regu-  
8 larly collect or attempt to collect debts owed or due or asserted to be  
9 owed or due to another and shall also include a buyer of delinquent debt  
10 who seeks to collect such debt either directly or through the services  
11 of another by, including but not limited to, initiating or using legal  
12 processes or other means to collect or attempt to collect such debt.

13       (b) The term does not include: (i) any officer or employee of a credi-  
14 tor while, in the name of the creditor, collecting debts for such credi-  
15 tor;

16       (ii) any officer or employee of a debt collection agency;

17       (iii) any person while acting as a debt collection agency for another  
18 person, both of whom are related by common ownership or affiliated by  
19 corporate control, if the person acting as a debt collection agency does  
20 so only for persons to whom it is so related or affiliated and if the  
21 principal business of such person is not the collection of debts;

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

25       (v) any attorney-at-law or law firm collecting a debt in such capacity  
26 on behalf of and in the name of a client solely through activities that  
27 may only be performed by a licensed attorney, but not any attorney-at-  
28 law or law firm or part thereof who regularly engages in activities  
29 traditionally performed by debt collectors, including, but not limited  
30 to, contacting a debtor through the mail or via telephone with the  
31 purpose of collecting a debt or other activities as determined by rule  
32 of the secretary;

33       (vi) any person employed by a utility regulated under the provisions  
34 of the public service law, acting for such utility;

35       (vii) any person collecting or attempting to collect any debt owed or  
36 due or asserted to be owed or due another to the extent such activity:  
37 (A) is incidental to a bona fide fiduciary obligation or a bona fide  
38 escrow agreement; (B) concerns a debt which was originated by such  
39 person; or (C) concerns a debt which was not in default at the time it  
40 was obtained by such person as a secured party in a commercial credit  
41 transaction involving the creditor;

42       (viii) any officer or employee of the United States, any state thereof  
43 or any political subdivision of any state to the extent that collecting  
44 or attempting to collect any debt owed is in the performance of his or  
45 her official duties;

46       (ix) any non-profit organization which, at the request of consumers,  
47 performs bona fide consumer credit counseling and assists customers in  
48 the liquidation of their debts by receiving payments from such customers  
49 and distributing such amounts to creditors; or

50       (x) any person, firm or corporation engaged in business, the principal  
51 purpose of which is to regularly collect or attempt to collect debts  
52 owed or due or asserted to be owed or due to another person where the  
53 debt is enforced for child support, spousal support, maintenance or  
54 alimony, provided, however, that if such person, firm or corporation  
55 also regularly collects or attempts to collect debts other than those

1 enforced for child support, spousal support, maintenance or alimony,  
2 such person must comply with the requirements of this article.

3 2. "Consumer" means any natural person obligated or allegedly obli-  
4 gated to pay any debt.

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

10 4. "Department" means the department of state.

11 5. "Division" means the division of criminal justice services.

12 6. "Secretary" means the secretary of state.

13 § 604-1. Debt collection agencies. 1. On or after October first, two  
14 thousand eighteen, no person shall act as a debt collection agency with-  
15 out first having obtained a license in accordance with the provisions of  
16 this article, and without first being in compliance with all other  
17 applicable laws, rules and regulations.

18 2. (a) All licenses issued pursuant to this article shall be valid for  
19 two years unless sooner suspended or revoked. The secretary shall estab-  
20 lish by regulation the expiration date of such licenses.

21 (b) The fee for a license or renewal thereof shall be five hundred  
22 dollars.

23 3. (a) Each person applying for a debt collection agency license or  
24 renewal thereof shall file an application in such form and detail as the  
25 secretary may prescribe and shall pay the fee required by this section.

26 (b) In addition to any other information required, the secretary shall  
27 require the following information, and shall, as appropriate, require  
28 such information not only of the applicant but also of any of its prin-  
29 cipals, partners, officers and directors, or any person or entity  
30 controlling an interest greater than ten percent:

31 (i) the name and residence address of the applicant;

32 (ii) the business name, if other than applicant;

33 (iii) the place, including the city, town or village, with the street  
34 and number, where the business is to be located;

35 (iv) the business telephone of the applicant;

36 (v) the length of time that the applicant has been a debt collection  
37 agency;

38 (vi) a statement indicating whether the applicant has:

39 (A) been convicted of any crime or is a debtor on any unpaid civil  
40 judgment relating to work as a debt collection agency; and

41 (B) at any time in the past been issued a license pursuant to this  
42 article, or has been issued a license for debt collection activities by  
43 any other state or local authority, and if so, whether such license was  
44 ever revoked or suspended;

45 (vii) a detailed description of the business practices or methods  
46 used, or intended to be used, by the applicant to confirm the validity  
47 of the debts it seeks to collect from consumers;

48 (viii) a summary of the applicant's record-keeping policy, including,  
49 but not limited to:

50 (A) the length of time the applicant maintains, or intends to main-  
51 tain, records pertaining to consumers; and

52 (B) the manner in which the applicant records and stores, or intends  
53 to record and store: consumer challenges to the validity of debt; bill-  
54 ing errors; payments made by a consumer; settlement agreements; informa-  
55 tion regarding parties responsible for debt; any statements made by a  
56 consumer alleging that the debt arose from identity theft; and any

1 statements made by a consumer stating that the consumer received statu-  
2 torily exempt income as defined in section fifty-two hundred twenty-two  
3 of the civil practice law and rules;

4 (ix) whether the applicant regularly sells, or intends to sell, debts.  
5 If the applicant sells, or intends to sell debts, such applicant shall  
6 be required to provide the secretary with a summary of the applicant's  
7 policy with respect to the information regarding a consumer's account  
8 that it transmits, or will transmit, to the purchaser of a debt; and

9 (x) a sworn statement by the applicant that the information set forth  
10 in the application is current and accurate.

11 (c) An applicant who is a non-resident of the state shall provide the  
12 name and address of a registered agent within the state or designate the  
13 secretary as his or her agent upon whom process or other notification  
14 may be served.

15 4. In determining whether to issue or renew a license, the secretary  
16 shall consider the character, competency and integrity of the applicant.  
17 The secretary may refuse to issue or renew a license to any person, firm  
18 or corporation whom he or she finds has: (a) been convicted of any crime  
19 defined in article one hundred fifty-five of the penal law or article  
20 twenty-two-A of this chapter or failed to pay any final civil judgment  
21 relating to work as a debt collection agency, if such refusal, in the  
22 judgment of the secretary, best promotes the interests of the people of  
23 this state; or

24 (b) violated article twenty-nine-H of this chapter or the federal Fair  
25 Debt Collection Practices Act (15 USC § 1692 et seq.).

26 All determinations by the secretary to issue or renew a license shall  
27 be made in accordance with subdivision sixteen of section two hundred  
28 ninety-six of the executive law and article twenty-three-A of the  
29 correction law.

30 5. Notice in writing in the manner and form prescribed by the depart-  
31 ment shall be given to the department at its offices in Albany within  
32 ten days of changes of name or address by licensed debt collection agen-  
33 cies. The fee for filing each change of name or address notice shall be  
34 ten dollars.

35 6. The fees established by this section shall not be refundable.

36 7. Each debt collection agency engaged in collecting debts shall  
37 communicate his or her license number upon the request of any interested  
38 party. Any advertisement, letterhead, receipt or other printed matter of  
39 a licensee must contain the license number assigned to the licensee by  
40 the department. Such license number shall be clearly and conspicuously  
41 displayed.

42 8. No person, firm or corporation shall: (a) present, or attempt to  
43 present, as his, her or its own, the license number of another;

44 (b) knowingly give false evidence of a material nature to the depart-  
45 ment for the purpose of procuring a license;

46 (c) falsely represent themselves to be a licensed debt collection  
47 agency;

48 (d) use or attempt to use a license which has expired;

49 (e) offer to perform or perform any collection of debts without having  
50 a current license as is required under this article; or

51 (f) represent in any manner that his, her or its license constitutes  
52 an endorsement of the quality of workmanship or competency of the debt  
53 collection agency.

54 9. Licenses issued to debt collection agencies shall not be transfera-  
55 ble or assignable.

1 10. The secretary shall issue each debt collection agency a unique  
2 license number.

3 11. The department shall maintain and publish a registry of all  
4 licensed debt collection agencies, which shall list and identify, all  
5 licensed debt collection agencies doing business in this state. The  
6 department shall make the registry available on its website.

7 12. (a) The secretary shall adopt such rules and regulations as he or  
8 she may determine are necessary for the administration and enforcement  
9 of this article, and shall provide written notification of the  
10 provisions of this article to all debt collection agencies licensed  
11 pursuant to this article.

12 (b) In addition to any other powers of the secretary, not in limita-  
13 tion thereof, he or she shall have the power to enforce the provisions  
14 of this article, to investigate any violation thereof, to investigate  
15 the business, business practices and business methods of any debt  
16 collection agency, and to conduct routine examinations of the financial  
17 solvency of any debt collection agency, if in the opinion of the secre-  
18 tary, such investigation or examination is warranted. Each debt  
19 collection agency shall be obliged, on request of the secretary of  
20 state, to supply such information, books, papers or records as may be  
21 required concerning his, her or its business, business practices or  
22 business methods, or proposed business practices or methods. Failure to  
23 comply with a lawful request of the secretary shall be a ground for  
24 denying an application for a license, or for revoking, suspending, or  
25 failing to renew a license issued under this article.

26 (c) The department shall have the power to revoke or suspend any  
27 license, or in lieu thereof to impose a fine not less than one hundred  
28 dollars nor more than two thousand dollars per violation or instance,  
29 payable to the department, or reprimand any licensee or deny an applica-  
30 tion for a license or renewal thereof upon proof:

31 (i) that the applicant or licensee has violated any of the provisions  
32 of this article or the rules and regulations promulgated pursuant to  
33 this article;

34 (ii) that the applicant or licensee has practiced fraud, deceit or  
35 misrepresentation;

36 (iii) that the applicant or licensee has made a material misstatement  
37 in the application for or renewal of his or her license; or

38 (iv) that the applicant or licensee has demonstrated incompetence or  
39 untrustworthiness in his or her actions.

40 13. The department shall before denying an application for a license  
41 or before revoking or suspending any license, or imposing any fine or  
42 reprimand, and at least fifteen days prior to the date set for the hear-  
43 ing, and upon due notice to the complainant or objector, notify in writ-  
44 ing the applicant, or the holder of such license, of any charge made and  
45 shall afford such applicant or licensee an opportunity to be heard in  
46 person or by counsel in reference thereto. Such written notice may be  
47 served personally to the applicant or licensee, or by certified mail to  
48 the last known business address of such applicant or licensee.

49 14. The hearing on such charges shall be at such time and place as the  
50 department shall prescribe and shall be conducted by such officer or  
51 person in the department as the secretary may designate, who shall have  
52 the power to subpoena and bring before the officer, or person so desig-  
53 nated, any person in this state and administer an oath to and take  
54 testimony of any person or cause his or her deposition to be taken. A  
55 subpoena issued under this section shall be regulated by the civil prac-  
56 tice law and rules. Such officer or person in the department designated



1 to take such testimony shall not be bound by common law or statutory  
2 rules of evidence or by technical or formal rules of procedure.

3 15. In the event that the department shall deny the application for,  
4 or revoke or suspend any such license, or impose any fine or reprimand,  
5 its determination shall be in writing and officially signed. The  
6 original of such determinations, when so signed, shall be filed in the  
7 office of the department and copies thereof shall be mailed to the  
8 applicant or licensee and to the complainant within two days after such  
9 filing.

10 16. The department, acting by the office or person designated to  
11 conduct the hearing pursuant to subdivision thirteen of this section or  
12 by such other officer or person in the department as the secretary of  
13 state may designate, shall have the power to suspend the license of any  
14 licensee who has been convicted in this state or any other state or  
15 territory of a felony or of any misdemeanor for a period not exceeding  
16 thirty days pending a hearing and a determination of charges made  
17 against him or her. If such hearing is adjourned at the request of the  
18 licensee, or by reason of any act or omission by him or her or on his or  
19 her behalf, such suspension may be continued for the additional period  
20 of such adjournment.

21 17. The action of the department in granting or refusing to grant or  
22 to renew a license under this article or in revoking or suspending or  
23 refusing to revoke or suspend such a license or imposing any fine or  
24 reprimand shall be subject to review by a proceeding instituted under  
25 article seventy-eight of the civil practice law and rules at the  
26 instance of the applicant for such license, the holder of a license so  
27 revoked, suspended, fined or reprimanded.

28 18. For the purpose of this article, licensees may be held responsible  
29 for statements, representations, promises or acts of their employees or  
30 their agents within the scope of their authority; provided, however,  
31 that licensees shall not be held responsible for statements, representa-  
32 tions, promises or acts which are contrary to instructions or which  
33 constitute gross negligence or intentional torts unless specifically  
34 authorized by the licensee.

35 19. (a) Any person, firm or corporation that operates as a debt  
36 collection agency without a license shall be required to pay a civil  
37 penalty to the department of not more than five hundred dollars per  
38 attempt to collect a debt in violation of this section.

39 (b) In addition to any other penalties, if a person is found to have  
40 committed repeated, multiple or persistent violations of any provision  
41 of this article, such person may be responsible for the cost of the  
42 department's investigation.

43 § 604-m. Surety bonding requirement. 1. As a condition of obtaining a  
44 license pursuant to this article, every debt collection agency applicant  
45 who is applying for a license and employs between one and four individ-  
46 uals engaged in the collection of debts shall obtain and continue in  
47 full force and effect a bond, contract of indemnity, or irrevocable  
48 letter of credit in the amount of ten thousand dollars to be filed with  
49 the secretary.

50 2. As a condition to obtaining a license pursuant to this article,  
51 every debt collection agency applicant who is applying for a license and  
52 employs between five and nine individuals engaged in the collection of  
53 debts shall obtain and continue in full force and effect a bond,  
54 contract of indemnity, or irrevocable letter of credit in the amount of  
55 twenty-five thousand dollars to be filed with the secretary.

1 3. As a condition to obtaining a license pursuant to this article,  
2 every debt collection agency applicant who is applying for a license and  
3 employs between ten and twenty individuals engaged in the collection of  
4 debts shall obtain and continue in full force and effect a bond,  
5 contract of indemnity, or irrevocable letter of credit in the amount of  
6 fifty thousand dollars to be filed with the secretary.

7 4. As a condition to obtaining a license pursuant to this article,  
8 every debt collection agency applicant who is applying for a license and  
9 employs twenty or more individuals engaged in the collection of debts  
10 shall obtain and continue in full force and effect a bond, contract of  
11 indemnity, or irrevocable letter of credit, in the amount of seventy-  
12 five thousand dollars to be filed with the secretary.

13 5. Such surety bond, contract of indemnity, or irrevocable letter of  
14 credit shall be conditioned that the applicant will comply with this  
15 article, article twenty-nine-H, and article twenty-nine-HH of this chap-  
16 ter and pay all civil penalties, fines, or other obligations imposed by  
17 the secretary or a court of law, investigatory costs required to be  
18 paid, or any final judgment against the licensee pursuant to such arti-  
19 cles.

20 6. The total liability imposed on the surety bond under this section  
21 for all breaches of the bond condition is limited to the face amount of  
22 the bond. Such liability is limited to the amount of the penalty or  
23 investigatory costs. In no event will the surety on a bond be liable for  
24 total claims in excess of the bond amount, regardless of the number or  
25 nature of claims made against the bond or the number of years the bond  
26 remained in force.

27 7. Any surety issuing a bond pursuant to this section and any licensee  
28 shall be required to provide thirty days notice to the secretary prior  
29 to the effective date of cancellation of the bond. The failure to main-  
30 tain such a bond shall operate to revoke the license of the debt  
31 collection agency upon notice and hearing.

32 § 604-n. Penalties. 1. Wherever there shall be a violation of this  
33 article, an application may be made by the attorney general in the name  
34 of the people of the state of New York to a court or justice having  
35 jurisdiction by a special proceeding to issue an injunction, and upon  
36 notice to the defendant of not less than five days, to enjoin or  
37 restrain the continuance of such violation; and if it shall appear to  
38 the satisfaction of the court or justice that the defendant has, in  
39 fact, violated this section, an injunction may be issued by such court  
40 or justice, enjoining and restraining any further violation, without  
41 requiring proof that any person has, in fact, been injured or damaged  
42 thereby. In any such proceeding, the court may make allowances to the  
43 attorney general as provided in paragraph six of subdivision (a) of  
44 section eighty-three hundred three of the civil practice law and rules,  
45 and direct restitution. Whenever the court shall determine that a  
46 violation of this section has occurred, the court may impose a civil  
47 penalty of not less than one hundred dollars nor more than ten thousand  
48 dollars for each violation. In connection with any such proposed appli-  
49 cation, the attorney general is authorized to take proof and make a  
50 determination of the relevant facts and to issue subpoenas in accordance  
51 with the civil practice law and rules.

52 2. Any person who has been the subject of an attempt to collect a debt  
53 by a debt collection agency that is not licensed pursuant to this arti-  
54 cle may bring an action in his or her own name to enjoin such unlawful  
55 act or practice, an action to recover his or her actual damages or three  
56 thousand five hundred dollars, whichever is greater, or both such

1 actions. The court may, in its discretion, increase the award of damages  
2 to an amount not to exceed three times the actual damages up to ten  
3 thousand dollars, if the court finds the defendant willfully violated  
4 this article. In the case of any successful action to enforce the fore-  
5 going liability, the court may award the costs of the action together  
6 with reasonable attorney's fees.

7 § 604-o. Applicability. 1. Except as provided in subdivision two of  
8 this section, the provisions of this article shall exclusively govern  
9 the licensing of debt collection agencies notwithstanding the provisions  
10 of any other law to the contrary and further, no local law shall be  
11 enacted which shall require any fee or license for the licensure or  
12 registration of debt collection agencies.

13 2. The provisions of this article shall not be construed to limit in  
14 any way the authority of a political subdivision to enact, implement and  
15 continue to enforce local laws and regulations governing the licensure  
16 or registration of debt collection agencies that were in effect prior to  
17 the effective date of this article, or to enact, implement and enforce  
18 any amendments thereto.

19 § 3. Subdivision (e) of rule 3015 of the civil practice law and rules,  
20 as amended by chapter 21 of the laws of 2013, is amended to read as  
21 follows:

22 (e) License to do business. Where the plaintiff's cause of action  
23 against a consumer arises from the plaintiff's conduct of a business  
24 which is required by state or local law to be licensed by the department  
25 of consumer affairs of the city of New York, the Suffolk county depart-  
26 ment of consumer affairs, the Westchester county department of consumer  
27 affairs/weight-measures, the county of Rockland, the county of Putnam  
28 [~~ex~~], the Nassau county department of consumer affairs or the department  
29 of state pursuant to article twenty-nine-HHH of the general business  
30 law, the complaint shall allege, as part of the cause of action, that  
31 plaintiff was duly licensed at the time of services rendered and shall  
32 contain the name and number, if any, of such license and the govern-  
33 mental agency which issued such license. The failure of the plaintiff to  
34 comply with this subdivision will permit the defendant to move for  
35 dismissal pursuant to paragraph seven of subdivision (a) of rule thir-  
36 ty-two hundred eleven of this chapter.

37 § 4. This act shall take effect on the one hundred eightieth day after  
38 it shall have become a law; provided, however, that effective immediate-  
39 ly, the addition, amendment and/or repeal of any rule or regulation  
40 necessary for the implementation of this act on its effective date is  
41 authorized and directed to be made and completed on or before such  
42 effective date.