

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-l. Debt collection agencies.

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

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604-m. Surety bonding requirement.

604-n. Penalties.

604-o. Applicability.

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

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

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

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

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

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

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

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

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

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

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

(x) any person, firm or corporation engaged in business, the principal purpose of which is to regularly collect or attempt to collect debts owed or due or asserted to be owed or due to another person where the debt is enforced for child support, spousal support, maintenance or alimony, provided, however, that if such person, firm or corporation 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.

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

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

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

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

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

§ 604-n. Penalties. 1. Wherever 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 by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin or 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 section, 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 any such proceeding, 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, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not less than one hundred dollars nor more than ten thousand dollars for each violation. 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. Any person who has been the subject of an attempt to collect a debt by a debt collection agency that is not licensed pursuant to this article may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or three 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.