

STATE OF NEW YORK

2829--B

Cal. No. 547

2019-2020 Regular Sessions

IN SENATE

January 29, 2019

Introduced by Sens. THOMAS, ADDABBO, BIAGGI, BROOKS, COMRIE, GAUGHRAN, GOUNARDES, KENNEDY, KRUEGER, LIU, MARTINEZ, MONTGOMERY, PARKER, PERSAUD, RAMOS, SALAZAR, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business law and the executive law, in relation to debt collection notices

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

Section 1. The general business law is amended by adding a new section 601-b to read as follows:

§ 601-b. Debt collection notice to consumers. 1. (a) As used in this section, "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 consumer debts: (i) owed or due or asserted to be owed or due to another; or (ii) obtained by, or assigned to, such person, firm or corporation, that are in default when obtained or acquired by such person, firm or corporation.

(b) Debt collection agencies shall not include: (i) any person subject to (A) serving, filing, or conveying formal legal pleadings, discovery requests, judgments or other documents pursuant to the applicable rules of procedure; (B) communicating in, or at the direction of, a court of law or in depositions or settlement conferences or other communications in connection with a pending legal action to collect a debt on behalf of a client; or (C) collecting on or enforcing a money judgment;

(ii) any attorney-at-law or law firm collecting a debt in such capacity on behalf of and in the name of a client through legal activities

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

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1 such as prosecution of lawsuits to reduce debts to judgments, but not
2 any attorney-at-law or law firm which regularly engages in activities
3 traditionally associated with debt collection, including but not limited
4 to, sending demand letters or making collection telephone calls;

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

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

13 2. Each and every debt collection agency shall include in its initial
14 correspondence on a past due debt to a consumer, or on a separate form
15 included with such initial correspondence, the following written state-
16 ment labeled "Consumer Rights", in a clear and conspicuous manner, and
17 in a form identical or substantially similar to the following:

18 "Consumer's Rights

19 As a consumer who owes or may owe a consumer debt, you are given
20 protection and rights by the New York and federal laws regulating debt
21 collection procedures. You should be aware of your rights.

22 1. A debt collector cannot contact you with such frequency, at unusual
23 hours, or in a manner that can be expected to abuse or harass you. A
24 debt collector cannot use false or misleading statements when attempting
25 to collect a debt, such as collecting more than amount owed, or threaten
26 to garnish your wages or levy your bank account without first being
27 awarded a judgment by a court. A debt collector cannot contact you after
28 you have requested in writing that they cease communications, except to
29 acknowledge receipt of your letter.

30 2. A debt collector cannot threaten to contact your employer regarding
31 a debt prior to obtaining a final judgment against you unless such
32 contact is directly related to wage garnishments.

33 3. A debt collector cannot use a communication which appears to be
34 authorized, issued, or approved by a government agency or attorney when
35 it is not.

36 4. A debt collector cannot disclose or threaten to disclose informa-
37 tion affecting your reputation for creditworthiness if the collector
38 knows or has reason to know the information is false. A debt collector
39 also cannot attempt or threaten to enforce a right when it knows or has
40 reason to know the right does not exist.

41 For more information about your rights under state and federal debt
42 collection procedures law, contact the Consumer Protection Division of
43 the New York State Department of State at (insert the current telephone
44 number or internet website established by the consumer protection divi-
45 sion for receiving inquiries from consumers). You may also contact the
46 New York State Attorney General at (insert the current telephone number
47 established by the department of law for receiving inquiries from
48 consumers) or (insert the current address of the website of the depart-
49 ment of law), or the New York State Department of Financial Services at
50 (insert the current telephone number or internet website established by
51 the Department of Financial Services).

52 If you live in New York City, you may be entitled to additional
53 protections under the laws and rules of the city of New York. For infor-
54 mation about your rights under city law, contact the New York City
55 department of consumer affairs at 311 or www.NYC.gov/dca.

1 The notice required by this subdivision shall be printed or written in
2 at least ten point bold type.

3 § 2. Subdivision 1 of section 602 of the general business law, as
4 added by chapter 753 of the laws of 1973, is amended to read as follows:

5 1. Except as otherwise provided by law, any person who [~~shall violate~~]
6 violates the terms of section six hundred one of this article [~~shall be~~]
7 is guilty of a misdemeanor, and each such violation shall be deemed a
8 separate offense. A violation by any person of section six hundred one-b
9 of this article, if such violation constitutes the first such offense by
10 such person, is punishable by a civil penalty not to exceed two hundred
11 fifty dollars. The second offense and any offense committed thereafter
12 are punishable by a civil penalty not to exceed five hundred dollars.

13 § 3. Subparagraphs 14 and 15 of paragraph (a) of subdivision 3 of
14 section 94-a of the executive law, as added by section 21 of part A of
15 chapter 62 of the laws of 2011, are amended to read as follows:

16 (14) cooperate with and assist consumers in class actions in proper
17 cases; [~~and~~]

18 (15) create an internet website or webpage pursuant to section three
19 hundred ninety-c of the general business law; and

20 (16) create an internet website or webpage that includes the "Consum-
21 er's Rights" form established pursuant to subdivision two of section six
22 hundred one-b of the general business law. Such website or webpage shall
23 also include, but not limited to, a sample initial debt collection
24 dispute letter, a sample debt collection cease and desist letter, and
25 the current contact information for the attorney general and the federal
26 trade commission.

27 § 4. This act shall take effect on the first of January next succeed-
28 ing the date on which it shall have become a law.