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.

LBD01314-09-9

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

(iii) 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; or

(iv) 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.

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

"Consumer's Rights

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

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

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

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

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

For more information about your rights under state and federal debt collection procedures law, contact the Consumer Protection Division of the New York State Department of State at (insert the current telephone number or internet website established by the consumer protection division for receiving inquiries from consumers). You may also contact the New York State Attorney General at (insert the current telephone number established by the department of law for receiving inquiries from consumers) or (insert the current address of the website of the department of law), or the New York State Department of Financial Services at (insert the current telephone number or internet website established by the Department of Financial Services).

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

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

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

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

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

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

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

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

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