

STATE OF NEW YORK

666--A

2023-2024 Regular Sessions

IN SENATE

January 5, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law and the civil practice law and rules, in relation to licensing consumer debt collectors

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

Section 1. The banking law is amended by adding a new article 7 to read as follows:

ARTICLE VII

LICENSED CONSUMER DEBT COLLECTORS

Section 295. Definitions.

296. License required; entities exempt.

297. Application for license; fees.

298. Surety bond required.

299. Examination; books and records; reports.

300. Prohibited acts.

301. Regulations; minimum standards.

302. Application for acquisition of control of a consumer debt collector.

303. Suspension and revocation.

304. Bad actors.

305. Penalties.

306. Preemption.

§ 295. Definitions. As used in this article:

1. "Affiliated company" means a consumer debt collector operating under the control of a licensee, provided that the affiliated company shares common facilities, management, and operations with the licensee

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

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1 and the affiliated company does not engage in any collection activities
2 other than debt buying or debt collection for the licensee.

3 2. "Applicant" means a consumer debt collector who has filed an appli-
4 cation to obtain a license under this article.

5 3. "Communication" and "communicate" means the conveying of informa-
6 tion regarding a consumer debt directly or indirectly to any person
7 through any medium.

8 4. "Consumer debt" means any obligation of a natural person for the
9 payment of money or its equivalent which arises out of a transaction
10 which was primarily for personal, family, or household purposes. The
11 term includes an obligation of a natural person who is a co-maker,
12 endorser, guarantor or surety of such a transaction.

13 5. "Consumer debtor" means any natural person who owes or is asserted
14 to owe any consumer debt.

15 6. "Consumer debt collector" means any person who engages in a busi-
16 ness, a principal purpose of which is consumer debt buying, or regularly
17 collecting or attempting to collect, directly or indirectly, consumer
18 debts: (a) owed or due or asserted to be owed or due to another person;
19 or (b) obtained by or assigned to such person that are in default when
20 obtained or acquired by such person. The term includes any creditor who,
21 in the process of collecting its own consumer debts, and uses any name
22 other than its own which would reasonably indicate that a third person
23 is collecting or attempting to collect a consumer debt.

24 7. "Control" means the possession, direct or indirect, of the power to
25 direct or cause the direction of the management and policies of a
26 person, whether through the ownership of voting securities, by contract,
27 except a commercial contract for goods or non-management services, or
28 otherwise. Control shall be presumed to exist if any person directly or
29 indirectly owns, controls or holds with the power to vote ten percent or
30 more of the voting securities of any other person.

31 8. "Creditor" means any person to whom a consumer debt is owed, due or
32 asserted to be due or owed, or any assignee for value of said person.

33 9. "Licensee" means a consumer debt collector that possesses one or
34 more licenses pursuant to this article.

35 10. "Person" means a natural person or any entity, including but not
36 limited to any partnership, corporation, limited liability company,
37 branch, agency, association, organization, any similar entity or any
38 combination of the foregoing acting in concert.

39 § 296. License required; entities exempt. 1. No person shall act with-
40 in this state as a consumer debt collector, directly or indirectly,
41 without first obtaining a license from the superintendent. A consumer
42 debt collector is acting within this state if it is physically located
43 in New York or if it is seeking to collect from any consumer debtor that
44 resides within this state.

45 2. No creditor, or the state or municipality of the state, may utilize
46 the services of a consumer debt collector to collect from a consumer
47 debtor that resides within this state unless the consumer debt collector
48 is licensed by the superintendent.

49 3. No person shall accept payments from consumer debtors on behalf of
50 a consumer debt collector acting within this state unless such consumer
51 debt collector is licensed by the superintendent.

52 4. The requirements of subdivisions one, two and three of this section
53 shall not apply to:

54 (a) any officer or employee of a licensed consumer debt collector when
55 attempting to collect on behalf of such consumer debt collector;

1 (b) any officer or employee of a creditor while in the name of the
2 creditor collecting debts for such creditor;

3 (c) any public officer acting in their official capacity;

4 (d) a person who is principally engaged in the business of servicing
5 loans or accounts which are not delinquent for the owners thereof when
6 in addition to requesting payment from delinquent consumer debtors, the
7 person provides other services including receipt of payment, accounting,
8 record-keeping, data processing services and remitting, for loans or
9 accounts which are current as well as those which are delinquent;

10 (e) any person while serving or making a bona fide attempt to serve
11 legal process on any other person in connection with the judicial
12 enforcement of any debt;

13 (f) any non-profit organization which, at the request of a consumer
14 debtor, performs bona fide consumer credit counseling and assists
15 customers in the liquidation of their debts by receiving payments from
16 such consumer debtors and distributing such amounts to creditors;

17 (g) any bank, trust company, savings banks, savings and loan associ-
18 ation, credit union, or foreign banking corporation, whether incorpo-
19 rated, chartered, organized or licensed under the laws of this state,
20 any other state, or the United States, any agency or division of the
21 federal government, or any insurer doing business under a license issued
22 under the insurance law;

23 (h) a subsidiary or affiliate of any bank, trust company, savings
24 banks, savings and loan association, credit union, or foreign banking
25 corporation, whether incorporated, chartered, organized or licensed
26 under the laws of this state, any other state, or the United States, any
27 agency or division of the federal government, or any insurer doing busi-
28 ness under a license issued under the insurance law, provided such
29 affiliate or subsidiary is not primarily engaged in the business of
30 purchasing and collecting upon delinquent debt, other than delinquent
31 consumer debt secured by real property;

32 (i) any person engaged in business, the principal purpose of which is
33 to regularly collect or attempt to collect debts owed or due or asserted
34 to be owed or due to another person where the debt is enforced for
35 child support, spousal support, maintenance or alimony, provided, howev-
36 er, that if such person also regularly collects or attempts to collect
37 debts other than those enforced for child support, spousal support,
38 maintenance or alimony, such person must comply with the requirements of
39 this article;

40 (j) any person while acting as a consumer debt collector for another
41 person, both of whom are related by common ownership or affiliated by
42 corporate control, if the person acting as a consumer debt collector
43 does so only for persons to whom it is so related or affiliated and if
44 the principal business of such person is not the collection of consumer
45 debts;

46 (k) any attorney-at-law or law firm collecting a debt in such capacity
47 on behalf of and in the name of a client solely through activities that
48 may only be performed by a licensed attorney, but not any attorney-at-
49 law or law firm or part thereof who regularly engages in activities
50 traditionally performed by consumer debt collectors, including, but not
51 limited to, contacting a consumer debtor through the mail or via tele-
52 phone with the purpose of collecting a consumer debt or other activities
53 as determined by rule of the superintendent;

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

1 (m) any person collecting or attempting to collect any consumer debt
2 owed or due or asserted to be owed or due another to the extent such
3 activity: (i) is incidental to a bona fide fiduciary obligation or a
4 bona fide escrow agreement; (ii) concerns a consumer debt which was
5 originated by such person; or (iii) concerns a consumer debt which was
6 not in default at the time it was obtained by such person as a secured
7 party in a commercial credit transaction involving the creditor; and

8 (n) any officer or employee of the United States, any state thereof or
9 any political subdivision of any state to the extent that collecting or
10 attempting to collect any debt owed is in the performance of his or her
11 official duties.

12 § 297. Application for license; fees. 1. (a) An application for a
13 license under this article shall be in writing, under oath, and in the
14 form prescribed by the superintendent and shall contain such information
15 related to the collection of consumer debts as the superintendent may
16 require. In addition to any other information required, the superinten-
17 dent shall require the following information, and shall, as appropri-
18 ate, require such information not only of the applicant but also of any
19 of its principals, partners, officers and directors, or any person or
20 entity controlling an interest greater than ten percent:

21 (i) the name and residence address of the applicant;
22 (ii) the business name, if other than the applicant;
23 (iii) the place, including the city, town or village, with the street
24 and number, where the business is to be located;

25 (iv) the business telephone of the applicant;
26 (v) the length of time that the applicant has been a consumer debt
27 collector;

28 (vi) a statement indicating whether the applicant has:
29 (A) been convicted of any crime or is a debtor on any unpaid civil
30 judgment relating to work as a consumer debt collector; and

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

35 (vii) a list of certifications issued to the consumer debt collector
36 by nonprofit trade associations;

37 (viii) unless the consumer debt collector is certified by a nonprofit
38 trade association recognized by the superintendent as having standards
39 that address the following requirements, a detailed description of the
40 business practices or methods used, or intended to be used, by the
41 applicant to confirm the validity of the debts it seeks to collect from
42 consumers;

43 (ix) unless the consumer debt collector is certified by a nonprofit
44 trade association recognized by the superintendent as having standards
45 that address the following requirements, a summary of the applicant's
46 record-keeping policy, including, but not limited to:

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

49 (B) the manner in which the applicant records and stores, or intends
50 to record and store: consumer challenges to the validity of debt; bill-
51 ing errors; payments made by a consumer; settlement agreements; infor-
52 mation regarding parties responsible for debt; any statements made by a
53 consumer alleging that the debt arose from identity theft; and any
54 statements made by a consumer stating that the consumer received statu-
55 torily exempt income as defined in section fifty-two hundred twenty-two
56 of the civil practice law and rules;

1 (x) whether the applicant regularly sells, or intends to sell, consum-
2 er debts. If the applicant sells, or intends to sell consumer debts,
3 such applicant shall be required to provide the superintendent with a
4 summary of the applicant's policy with respect to the information
5 regarding a consumer's account that it transmits, or will transmit, to
6 the purchaser of a consumer debt, unless the consumer debt collector is
7 certified by a nonprofit trade association recognized by the superinten-
8 dent as having standards that address this requirement;

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

11 (xii) the name of each affiliated company the applicant wishes to
12 include on the license.

13 (b) The superintendent may reject an application for a license or an
14 application for the renewal of a license if he or she is not satisfied
15 that the financial responsibility, character, reputation, integrity and
16 general fitness of the applicant and of the owners, partners or members
17 thereof, if the applicant be a partnership or association, and of the
18 officers and directors, if the applicant be a corporation, are such as
19 to command the confidence of the public and to warrant the belief that
20 the business for which the application for a license is filed will be
21 operated lawfully, honestly and fairly.

22 2. At the time of making the application for a license, the applicant
23 shall pay to the superintendent a fee as prescribed pursuant to section
24 eighteen-a of this chapter for each proposed location, for investigating
25 the application.

26 3. In addition to any other fee imposed on an applicant or licensee,
27 every licensee shall pay to the superintendent the sums provided to be
28 paid under the provisions of section two hundred six of the financial
29 services law.

30 4. The license shall be for a period of one year as of the first of
31 January each year, or such other date as determined by the superinten-
32 dent by regulation.

33 5. Each license shall plainly state the name of the licensee and the
34 city or town with the name of the street and number, if any, of the
35 place where the business is to be carried on. A licensee shall not
36 change the location where the business of the licensee is to be carried
37 on without first providing written notice to the superintendent. The
38 relocation notice shall be in writing setting forth the reason for the
39 relocation, and shall be accompanied by a relocation investigation fee
40 to be determined pursuant to section eighteen-a of this chapter.

41 6. The business shall at all times be conducted in the name of the
42 licensee as it appears on the license and in no other name, including a
43 shortened or abbreviated version thereof. The superintendent may permit
44 affiliated companies to be under a single license and subject to a
45 single examination as long as all of the affiliated company names are on
46 the license.

47 7. The license shall not be transferable nor assignable.

48 8. The superintendent may participate in a multi-state licensing
49 system for the sharing of regulatory information and for the licensing
50 and application, by electronic or other means, of entities engaged in
51 the business of consumer debt collection. The superintendent may estab-
52 lish requirements for participation by an applicant in a multi-state
53 licensing system which may vary from the provisions of this section. The
54 superintendent may require a background investigation of each applicant
55 for a consumer debt collector license by means of fingerprint, which
56 shall be submitted by all applicants simultaneously with an application

1 and which the superintendent may submit to the division of criminal
2 justice services and the federal bureau of investigation for state and
3 national criminal history record checks. If the applicant is a partner-
4 ship, association, corporation or other form of business organization,
5 the superintendent may require a background investigation for each
6 member or shareholder holding more than five percent ownership, board
7 director and principal officer of the applicant and any individual
8 acting as a manager of an office location. The applicant shall pay
9 directly to the multi-state licensing system any additional fees relat-
10 ing to participation in the multi-state licensing system.

11 9. The superintendent shall issue each consumer debt collector a
12 unique license number.

13 10. The department shall maintain and publish a registry of all
14 licensed consumer debt collectors, which shall list and identify, all
15 licensed consumer debt collectors doing business in this state. The
16 department shall make the registry available on its website.

17 11. Each consumer debt collector engaged in collecting consumer debts
18 shall communicate his or her license number upon the request of any
19 interested party. Any advertisement, letterhead, receipt or other
20 printed matter of a licensee must contain the license number assigned to
21 the licensee by the department. Such license number shall be clearly and
22 conspicuously displayed in no less than a ten-point font.

23 12. No person shall: (a) present, or attempt to present, as his, her
24 or its own, the license number of another;

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

27 (c) falsely represent themselves to be a licensed consumer debt
28 collector;

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

30 (e) offer to perform or perform any collection of consumer debts with-
31 out having a current license as is required under this article; or

32 (f) represent in any manner that his, her or its license constitutes
33 an endorsement of the quality of workmanship or competency of the
34 consumer debt collector.

35 § 298. Surety bond required. 1. (a) A consumer debt collector shall be
36 required to file and maintain in force a surety bond, issued by a domes-
37 tic insurer, as a condition precedent to the issuance or renewal and
38 maintenance of a license under this article.

39 (b) The bond shall be for the benefit of creditors who obtain a judg-
40 ment from a court of competent jurisdiction based on the failure of the
41 consumer debt collector to remit money collected on account and owed to
42 the creditor. The bond shall also be for the benefit of consumer
43 debtors or the attorney general seeking restitution for consumer debtors
44 when such consumer debtor or the attorney general obtains judgment from
45 a court of competent jurisdiction based on a violation by the consumer
46 debt collector of the federal Fair Debt Collection Practice Act or any
47 other New York law or federal law regulating consumer debt collection
48 which is applicable to the consumer debt collector if such judgment has
49 not been paid within six months, except if the decision is under appeal.

50 (c) The bond shall be in a form prescribed by the superintendent in a
51 sum based on the gross profit reported to the Internal Revenue Service
52 for the previous year by such consumer debt collector as follows:

53 (i) ten thousand dollars for consumer debt collectors that reported a
54 gross profit of less than two hundred fifty thousand dollars;

55 (ii) twenty-five thousand dollars for consumer debt collectors that
56 reported a gross profit of two hundred fifty thousand dollars or more;

1 (iii) fifty thousand dollars for consumer debt collectors that
2 reported a gross profit of five hundred thousand dollars or more;
3 (iv) seventy-five thousand dollars for consumer debt collectors that
4 reported a gross profit of seven hundred fifty thousand dollars or more;
5 (v) one hundred thousand dollars for consumer debt collectors that
6 reported a gross profit of one million dollars or more.

7 (d) The bond shall be continuous in form and run concurrently with the
8 original and each renewal license period unless terminated by the insur-
9 ance company. An insurance company may terminate a bond and avoid
10 further liability by filing a notice of termination with the department
11 sixty days prior to the termination and at the same time sending the
12 same notice to the consumer debt collector.

13 2. A license shall be automatically cancelled on the termination date
14 of the bond unless either (a) a new bond is filed with the department to
15 become effective at the termination date of the prior bond, or (b) the
16 licensed entity provides the superintendent a refundable deposit in lieu
17 of the bond while the consumer debt collector pursues a new bond.

18 3. If a license has been cancelled under this section, the consumer
19 debt collector must file a new application to obtain a license and will
20 be considered a new applicant if it obtains a new bond.

21 4. For the purposes of this section the term "domestic insurer" shall
22 have the same meaning as given in section one hundred seven of the
23 insurance law. If a bond required by this section is not reasonably
24 available from a domestic insurer the superintendent may, in his or her
25 discretion, permit, on a case by case basis or by order, consumer debt
26 collectors to obtain the bond required by this section from such other
27 entities licensed by the department as the superintendent deems appro-
28 priate.

29 § 299. Examination; books and records; reports. 1. For the purpose of
30 enforcing the provisions of this article and for ensuring the safe and
31 sound operation of the consumer debt collector business, the superinten-
32 dent may at any time, and as often as may be determined, either
33 personally or by a person duly appointed by the superintendent, investi-
34 gate the loans, business, business practices, and business methods of
35 any consumer debt collector, and examine the books, accounts, records,
36 and files used therein of every licensee.

37 2. The superintendent and duly designated representatives and law
38 enforcement officials whose presence is requested by the superintendent
39 shall have free access to the offices and place of business, books,
40 accounts, papers, records, audio recordings, files, safes and vaults of
41 all such licensees wherever located. The superintendent shall have
42 authority to require the attendance of and to examine under oath all
43 persons whomsoever whose testimony may be required relative to such
44 consumer debts, including the purchase, sale and collection thereof, as
45 well as payment processing on such consumer debts, and related business.

46 3. The superintendent may also address to a licensee, or the officers,
47 employees or agents thereof, any inquiry in relation to its trans-
48 actions, operations, or conditions, or any matter connected therewith.
49 Every person so addressed shall reply in writing to such inquiry prompt-
50 ly and truthfully, and such reply shall be, if required by the super-
51 intendent, subscribed by such individual, or by such officer or officers
52 of a corporation, as the superintendent shall designate, and affirmed by
53 them as true under the penalties of perjury.

54 4. Each licensee shall keep and use in its business such books,
55 accounts, and records as will enable the superintendent to determine
56 whether such licensee is complying with the provisions of this article

1 and with the rules and regulations promulgated hereunder. Every licen-
2 see shall keep recordings of consumer collection calls and make such
3 recordings available to the superintendent upon request. Every licensee
4 shall preserve such books, accounts, and records, for at least five
5 years after making the final entry regarding a consumer debt. Preserva-
6 tion of photographic reproduction thereof or records in photographic
7 form, including an optical disk storage system and the use of electronic
8 data processing equipment that provides comparable records to those
9 otherwise required and which are available for examination upon request
10 shall constitute compliance with the requirements of this section.

11 5. Each licensee shall annually, on or before April first, file a
12 report with the superintendent giving such information as the super-
13 intendent may require concerning the business and operations during the
14 preceding calendar year of each licensed place of business conducted by
15 such licensee within the state under authority of this article. Such
16 report shall be subscribed and affirmed as true by the licensee under
17 the penalties of perjury and shall be in the form prescribed by the
18 superintendent.

19 6. In addition to annual reports, the superintendent may require such
20 additional regular or special reports as may be deemed necessary to the
21 proper supervision of licensees under this article. Such additional
22 reports shall be in the form prescribed by the superintendent and shall
23 be subscribed and affirmed as true under the penalties of perjury.

24 7. The expenses of every examination of the affairs of a consumer debt
25 collector subject to this section shall be borne and paid by the licen-
26 see.

27 § 300. Prohibited acts. 1. No consumer debt collector that is required
28 to be licensed under this article shall engage in unfair, unconsciona-
29 ble, deceptive, false, misleading, abusive, or unlawful acts or prac-
30 tices.

31 2. Without limiting the general application of the prohibited acts in
32 subdivision one of this section, it shall be unlawful for any consumer
33 debt collector to:

34 (a) engage in any act or practice which would be a material violation
35 of the federal Fair Debt Collection Practices Act, any other New York
36 law or federal law regulating consumer debt collection, or any act or
37 practice which would be prohibited under section six hundred one of the
38 general business law if the consumer debt collector was a principal
39 creditor or his or her agent;

40 (b) engage or retain the services of any person who, being required to
41 be licensed under this article, does not have a valid license issued by
42 the department; or

43 (c) cause any act to be done which violates this section.

44 3. No consumer debt collector licensed under this article shall:

45 (a) without the prior written or recorded consent of the consumer
46 debtor given directly to the creditor or consumer debt collector or the
47 express permission of a court of competent jurisdiction, a consumer debt
48 collector may not communicate with a consumer debtor in connection with
49 the collection of any consumer debts:

50 (i) at any unusual time or place or a time or place known or which
51 should be known to be inconvenient to the consumer debtor. In the
52 absence of knowledge of circumstances to the contrary, a consumer debt
53 collector shall assume that the convenient time for communicating with a
54 consumer debtor is after eight o'clock antemeridian and before nine
55 o'clock postmeridian, local time at the consumer debtor's location.
56 Unless the consumer debtor is known to be in another time zone, the

1 consumer debt collector can rely on the local time of the area code
2 dialed in determining the convenient time for communication;

3 (ii) if the consumer debt collector knows the consumer debtor is
4 represented by an attorney with respect to such consumer debt and has
5 knowledge of, or can readily ascertain, such attorney's name and
6 address, unless the attorney fails to respond within a reasonable period
7 of time to a communication from the consumer debt collector or unless
8 the attorney consents to direct communication with the consumer debtor;

9 (iii) at a place known to be the consumer debtor's place of employment
10 unless the consumer debtor is self-employed;

11 (iv) more than two times by telephone in a seven day period unless
12 returning a call made at the consumer debtor's request;

13 (v) by voicemail on to any telephone that is known or which reasonably
14 should be known may be received by someone other than the consumer
15 debtor; or

16 (vi) by means of electronic communications, including but not limited
17 to SMS text message, messaging applications on mobile telephones, elec-
18 tronic mail, Facebook, and other forms of social media, except as
19 authorized by 12 CFR Part 1066 or by the superintendent in regulations.

20 (b) communicate with a consumer debtor by postcard;

21 (c) continue communication with a consumer debtor after the consumer
22 debt collector's first communication if the consumer debt collector
23 fails to send the consumer debtor a notice in writing within five days
24 of that first communication, which such notice shall be promulgated by
25 the superintendent;

26 (d) continue to communicate with a consumer debtor about a consumer
27 debt that the consumer debtor disputes without providing the consumer
28 debtor with data or documents that verify the disputed consumer debt; or

29 (e) utilize a service or technology that intentionally causes the
30 telephone network to indicate to the receiver of a call that the origi-
31 nator of the call is a station other than the true originating station
32 for the purpose of collecting a consumer debt.

33 § 301. Regulations; minimum standards. The superintendent may promul-
34 gate rules and regulations giving effect to the provisions of this arti-
35 cle. Such rules and regulations may include but shall not be limited to
36 the establishment of minimum standards to be observed by consumer debt
37 collectors acting within this state and further defining acts and prac-
38 tices which are unfair, unconscionable, deceptive, false, misleading,
39 abusive, or unlawful under section three hundred of this article.

40 § 302. Application for acquisition of control of a consumer debt
41 collector. 1. No person shall acquire control of a licensee under this
42 article without the prior approval of the superintendent.

43 2. Any person desirous of acquiring such control shall make written
44 application to the superintendent, such application shall be in such
45 form and shall contain such information, including the information
46 required under section two hundred ninety-seven of this article, as the
47 superintendent may require and such person, at the time of making such
48 application if not licensed, shall pay to the superintendent an investi-
49 gation fee as prescribed pursuant to section eighteen-a of this chapter.

50 3. In determining whether to approve or deny an application under this
51 section, the superintendent shall consider:

52 (a) whether the financial responsibility, experience, character, and
53 general fitness of the person seeking to acquire control, and of the
54 members thereof if such person be a partnership or association, and of
55 the officers, directors and controlling stockholders thereof if such
56 person be a corporation, are such as to command the confidence of the

1 community and to warrant belief that the business will be operated
2 honestly, fairly, and efficiently within the purpose of this article;

3 (b) the effect the acquisition may have on competition; and

4 (c) whether the acquisition may be hazardous or prejudicial to consum-
5 er debtors or creditors in this state.

6 4. If no such application has been made prior to the acquisition of
7 control, the license for each place of business maintained and operated
8 by the licensee shall, at the discretion of the superintendent, become
9 null and void and each such license shall be surrendered to the super-
10 intendent.

11 § 303. Suspension and revocation. 1. In addition to any other power
12 provided by law, the superintendent may suspend or revoke the license of
13 a consumer debt collector, if after notice and an opportunity to be
14 heard, the superintendent finds that a consumer debt collector has:

15 (a) committed any fraud, engaged in any dishonest activities or made
16 any misrepresentation;

17 (b) materially violated any provisions of this chapter or any regu-
18 lation issued pursuant thereto, or has materially violated any other law
19 in the course of its or his or her dealings as a consumer debt collec-
20 tor;

21 (c) made a false statement or material omission in the application for
22 or renewal of a license under this article or failed to give a true
23 reply to a question in such application; or

24 (d) demonstrated incompetency or untrustworthiness to act as a consum-
25 er debt collector.

26 2. The department shall before revoking or suspending any license and
27 at least fifteen days prior to the date set for the hearing, and upon
28 due notice to the complainant or objector, notify in writing the holder
29 of such license, of any charge made and shall afford such licensee an
30 opportunity to be heard in person or by counsel in reference thereto.
31 Such written notice may be served personally to the licensee, or by
32 certified mail to the last known business address of such licensee.

33 § 304. Bad actors. 1. In addition to any other power provided by law,
34 the superintendent may require any licensee to remove any director,
35 officer or employee or to refrain from engaging or retaining any inde-
36 pendent contractor or service provider if such director, officer,
37 employee, independent contractor or service provider has themselves had
38 a license under this chapter suspended or revoked, or has caused the
39 licensee to violate any provision of this chapter or regulations promul-
40 gated thereunder.

41 2. No person that is the subject of an order under this section remov-
42 ing them as a director, officer or employee or preventing a licensee
43 from engaging or retaining them as an independent contractor or service
44 provider, shall become engaged with any licensee without obtaining the
45 prior written approval of the superintendent. Nor shall such person fail
46 to disclose that it is the subject of an order under this section to any
47 licensee for which it is acting or seeking to act as a director, offi-
48 cer, employee, independent contractor or service provider.

49 3. Any consumer debt collector or entity claiming to be a consumer
50 debt collector that is not licensed pursuant to this article and know-
51 ingly conducts business involving consumer debt collection shall be
52 required to pay a civil penalty to the department of not more than the
53 lesser of five hundred dollars per attempt to collect a consumer debt or
54 one hundred thousand dollars in total damages in violation of this arti-
55 cle.

1 § 305. Penalties. 1. In addition to such penalties as may otherwise be
2 applicable by law, including but not limited to the penalties available
3 under section forty-four of this chapter, the superintendent may require
4 a person operating as a consumer debt collector without a license to pay
5 a civil penalty to the department a sum not to exceed five hundred
6 dollars per attempt to collect a consumer debt in violation of this
7 article.

8 2. Whenever it appears to the attorney general, either upon complaint
9 or otherwise, that any person has engaged in any of the acts or prac-
10 tices stated to be unlawful under this article, the attorney general may
11 bring an action or special proceeding in the name and on behalf of the
12 people of the state of New York to enjoin any violation of this article,
13 to obtain restitution of any moneys or property obtained directly or
14 indirectly by any such violation, to obtain disgorgement of any profits
15 obtained directly or indirectly by any such violation, and to obtain
16 civil penalties of not more than the lesser of five hundred dollars per
17 attempt to collect a consumer debt or one hundred thousand dollars in
18 total damages in violation of this article.

19 3. Nothing in this article shall limit any statutory or common-law
20 right of any person to bring any action in any court for any act, or
21 the right of the state to punish any person for any violation of any
22 law.

23 § 306. Preemption. The provisions of this article shall exclusively
24 govern the licensing of consumer debt collectors in the state of New
25 York notwithstanding the provisions of any other law to the contrary
26 and further, no local law shall be enacted which shall require any fee
27 or license for the licensure or registration of consumer debt collec-
28 tors.

29 § 2. Subdivision 10 of section 36 of the banking law, as amended by
30 section 2 of part L of chapter 58 of the laws of 2019, is amended to
31 read as follows:

32 10. All reports of examinations and investigations, correspondence and
33 memoranda concerning or arising out of such examination and investi-
34 gations, including any duly authenticated copy or copies thereof in the
35 possession of any banking organization, bank holding company or any
36 subsidiary thereof (as such terms "bank holding company" and "subsidi-
37 ary" are defined in article three-A of this chapter), any corporation
38 or any other entity affiliated with a banking organization within the
39 meaning of subdivision six of this section and any non-banking subsid-
40 iary of a corporation or any other entity which is an affiliate of a
41 banking organization within the meaning of subdivision six-a of this
42 section, foreign banking corporation, licensed lender, licensed cashier
43 of checks, licensed mortgage banker, registered mortgage broker,
44 licensed mortgage loan originator, licensed sales finance company,
45 registered mortgage loan servicer, licensed student loan servicer,
46 licensed insurance premium finance agency, licensed transmitter of
47 money, licensed budget planner, licensed consumer debt collector, any
48 other person or entity subject to supervision under this chapter, or the
49 financial services law or the insurance law, or the department, shall be
50 confidential communications, shall not be subject to subpoena and shall
51 not be made public unless, in the judgment of the superintendent, the
52 ends of justice and the public advantage will be subserved by the publi-
53 cation thereof, in which event the superintendent may publish or author-
54 ize the publication of a copy of any such report or any part thereof in
55 such manner as may be deemed proper or unless such laws specifically
56 authorize such disclosure. For the purposes of this subdivision,

1 "reports of examinations and investigations, and any correspondence and
2 memoranda concerning or arising out of such examinations and investi-
3 gations", includes any such materials of a bank, insurance or securities
4 regulatory agency or any unit of the federal government or that of this
5 state any other state or that of any foreign government which are
6 considered confidential by such agency or unit and which are in the
7 possession of the department or which are otherwise confidential materi-
8 als that have been shared by the department with any such agency or unit
9 and are in the possession of such agency or unit.

10 § 3. Paragraph (a) of subdivision 1 of section 44 of the banking law,
11 as amended by section 4 of part L of chapter 58 of the laws of 2019, is
12 amended to read as follows:

13 (a) Without limiting any power granted to the superintendent under any
14 other provision of this chapter, the superintendent may, in a proceeding
15 after notice and a hearing, require any safe deposit company, licensed
16 lender, licensed casher of checks, licensed sales finance company,
17 licensed insurance premium finance agency, licensed transmitter of
18 money, licensed mortgage banker, licensed student loan servicer, regis-
19 tered mortgage broker, licensed mortgage loan originator, registered
20 mortgage loan servicer, licensed consumer debt collector or licensed
21 budget planner to pay to the people of this state a penalty for any
22 violation of this chapter, any regulation promulgated thereunder, any
23 final or temporary order issued pursuant to section thirty-nine of this
24 article, any condition imposed in writing by the superintendent in
25 connection with the grant of any application or request, or any written
26 agreement entered into with the superintendent.

27 § 4. The opening paragraph of subdivision (a) of section 3218 of the
28 civil practice law and rules, as amended by chapter 311 of the laws of
29 1963, is amended to read as follows:

30 Except as provided in section thirty-two hundred one of this article
31 and subdivision (e) of this section, a judgment by confession may be
32 entered, without an action, either for money due or to become due, or to
33 secure the plaintiff against a contingent liability in behalf of the
34 defendant, or both, upon an affidavit executed by the defendant;

35 § 5. Section 3218 of the civil practice law and rules is amended by
36 adding a new subdivision (e) to read as follows:

37 (e) Prohibition on certain judgments by confession. 1. No judgment of
38 confession may be entered on: (i) any amount due from one or more indi-
39 viduals for personal, family, household, consumer, investment or non-bu-
40 siness purposes;

41 (ii) any amount under two hundred fifty thousand dollars due from any
42 person for any purpose; or

43 (iii) any amount due from any person that either: (A) is currently not
44 a resident of the state, (B) was not a resident of the state at the time
45 the affidavit authorizing the entry of the judgment of confession was
46 executed, or (C) if not a natural person, does not have a place of busi-
47 ness in the state or did not have a place of business in the state at
48 the time the affidavit authorizing the entry of the judgment of
49 confession was executed.

50 2. Paragraph one of this subdivision shall not apply to a judgment by
51 confession entered or sought to be entered by the state, a domestic
52 municipal corporation or any public officer acting in their official
53 capacity.

54 § 6. The civil practice law and rules is amended by adding a new
55 section 5022 to read as follows:

1 § 5022. Judgments obtained from unlicensed consumer debt collectors.
2 Any judgment obtained against a consumer debtor by, or on behalf of, a
3 consumer debt collector acting without a license from the superintendent
4 of the department of financial services, when such license is required,
5 in violation of section two hundred ninety-six of article seven of the
6 banking law, shall be null and void.

7 § 7. This act shall take effect on the one hundred eightieth day after
8 it shall have become a law; provided, however that sections one, two and
9 three of this act shall take effect January 1, 2025. The superintendent
10 of financial services shall allow any consumer debt collector which
11 submits an application prior to January 1, 2025 to operate pending the
12 approval or denial of the application. Effective immediately, the addi-
13 tion, amendment and/or repeal of any rule or regulation necessary for
14 the implementation of this act on its effective date are authorized to
15 be made and completed on or before such effective date. This act shall
16 not affect the validity of any civil actions or arbitrations commenced
17 or judgments entered prior to January 1, 2025.