



Legislation Text

File #: Int 0409-2003, **Version:** A

Proposed Int. No. 409-A

By The Speaker (Council Member Miller) and Council Members Boyland, Gioia, Baez, Brewer, Clarke, Comrie, Gerson, Jackson, Katz, Koppell, Liu, Martinez, Nelson, Perkins, Quinn, Recchia, Reed, Sears, Serrano, Stewart, Vann, Weprin, Yassky, DeBlasio, Espada, Lopez, Reyna, Avella, Rivera and Barron

A Local Law to amend the administrative code of the city of New York, in relation to the practices of debt collection agencies that collect child support payments.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. Existing federal, state and local consumer protection laws do not generally regulate private child support collection agencies. Furthermore, current industry practices, as reflected in consumer complaints and litigation, raise significant questions about the implications of the lack of such regulation. Specifically, the Council finds that alleged practices, including, but not limited to, charging exorbitant and excessive fees, threats and abusive telephone calls directed at both custodial and non-custodial parents, signing custodial parents to contracts with unclear terms, collecting fees for payments of child support collected primarily by a government agency, and utilizing unclear accounting practices that lead to the designation of current payments of child support as arrears in order to prevent parents from ever satisfying their obligations to such agencies, necessitate the creation of basic consumer protections for consumer-parents interacting with these agencies. The Council also finds that current, timely and/or on-going payments of orders of child support are part of a family's income needed to meet basic needs. Therefore, the Council finds that private child support collection agencies should be regulated by New York City's consumer protection laws, and that the fees collected by such agencies should be reasonably related to the work and services provided.

§2. Subdivisions b and c of section 20-489 of the administrative code of the city of New York are

relettered as subdivisions c and d, and a new subdivision b is added to read as follows:

b. The term “child support” means a sum to be paid by either or both parents pursuant to court order or decree or pursuant to a valid agreement between the parties for care, maintenance and education of a child.

§3. Relettered subdivision d of section 20-489 of the administrative code of the city of New York is amended to read as follows:

[c.] d. The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment, or any obligation or alleged obligation arising out of a judgment or valid agreement for the payment of child support.

§4. Subchapter 30 of chapter two of title 20 of the administrative code of the city of New York is amended by adding a new subdivision c to section 20-492 to read as follows:

c. Any debt collection agency subject to the provisions of section 20-494.1 shall furnish to the commissioner a [compleand]current copy version of the disclosure form required under section 20-494.1(e) together with a copy of such agency’s standard contract for child support payment debt collection services to the commissioner upon applying for a debt collection agency license or renewal thereof. Any contract for child support payment debt collection services shall not be considered revocable deemed validr or in force and effect until the department has completed a review of and approved a debt collection agency’s standard contract, which review shall take place be completed and approval or disapproval provided within ninety days after submission of such contract to the department. Any amendment or modification of such standard contract or disclosure form shall be provided to the commissioner within sixty days following such amendment or modification.

§5. Section 20-494 of subchapter 30 of chapter two of title 20 of the administrative code of the city of

New York is amended to read as follows:

§ 20-494 Penalties. a. Any person who, after notice and hearing shall be found guilty of violating any provision of this subchapter, shall be punished in accordance with the provisions of chapter one of this title and shall be subject to a penalty of not less than seven hundred dollars nor more than one thousand dollars for each violation.

b. In addition to any other penalties, if a person is found to have committed [, repealed] repeated, multiple or persistent violations of any provision of this subchapter, [he] such person may be responsible for the cost of the department's investigation.

§6. Subchapter 30 of chapter two of title 20 of the administrative code of the city of New York is amended by adding a new section 20-494.1 to read as follows:

§20-494.1 Prohibited and required practices relating to the collection of child support payments. a. For purposes of this section the following terms shall have the following meanings:

1. “Current payment of child support” shall mean a payment made pursuant to a schedule arising out of a judgment or valid agreement for the payment of child support which is made within thirty days of such payment's due date.

2. “Potential client” shall mean a person seeking child support debt collection services from a debt collection agency.

b. Any agreement or contract for the collection of child support payments shall be in writing and shall not extend beyond twelve consecutive months. Renewal of such contracts shall not be automatic and shall require the consent in writing of all parties to the contract.

c. No debt collection agency that collects child support payments shall:

1. charge interest or otherwise impose a charge or fee for its services that exceeds fifteen percent of each child support payment collected.

2. charge interest or otherwise impose a charge or fee with respect to child support payments collected

primarily through the efforts of a governmental entity.

3. charge interest or otherwise impose a charge or fee for a current payment of child support.

4. impose a charge or fee for the costs of an application.

5. impose a charge or fee for legal services unless paid to an independent firm, practitioner or agency for actual costs incurred and unless agreed upon in writing by the potential client.

6. impose a charge or fee for the termination of a contract for the collection of child support.

7. impose a charge or fee that does not bear a reasonable relationship to the amount of child support actually collected.

8. designate a current payment of child support as arrears.

9. prohibit the termination of a contract for the collection of child support payments until arrears are paid.

10. include any terms in a contract for the collection of child support that conflict or are inconsistent with the terms set out in this subchapter.

d. an agreement for the collection of child support shall terminate automatically if no payment of child support has been collected by such debt collection agency for a period of six consecutive months.

e. Any debt collection agency that collects child support payments shall provide to a potential client a written disclosure form at the same time as such agency first furnishes such potential client with any informational or promotional materials, application or contract for services, regardless of the manner in which such materials are provided including, but not limited to, in-person contact, fax, regular mail, or internet or other electronic means, containing, but not limited to, at a minimum the following information prominently disclosed in a meaningful sequence:

1. No obligation. A potential client shall be advised that such client is under no obligation to hire a debt collection agency to collect child support payments on behalf of such client and that:

(i) New York city's office of child support enforcement (OCSE) provides child support enforcement

services at no cost to families regardless of income and (ii) OCSE's powers include, but are not limited to, garnishments against wages, liens on bank accounts and property, tax refund intercepts and the initiation of incarceration proceedings. 2. Fees.

(i) Application fees. A potential client shall be advised that child support debt collection agencies are prohibited by law from charging a fee for the costs of an application.

(ii) Prohibition against collection fees for child support payments that are not in arrears. A potential client shall be advised that debt collection agencies are prohibited by law from collecting fees for child support payments that are not in arrears and that it is unlawful for such an agency to designate a current payment of child support as arrears. (iii) Legal fees. A potential client shall be

advised that child support debt collection agencies are prohibited by law from charging for legal services unless such fees are paid to an independent firm, practitioner or agency for actual costs incurred and unless agreed upon in writing by the potential client. (iv)

Early termination penalty. A potential client shall be advised that child support debt collection agencies are prohibited from imposing a charge or fee for the termination of a contract.

(v) Additional fees. A potential client shall be advised regarding any additional fees or potential additional fees, including but not limited to, the services for which such fees may be imposed, how such fees are calculated and when such fees are billed. A potential client shall also be advised that any fees must bear a reasonable relationship to the amount of child support actually collected.

(vi) A potential client shall be advised that child support debt collection agencies are prohibited by law from imposing any contract terms that conflict or are inconsistent with the provisions specified in the required disclosure form required under section 20-494.1(e). 3. Contract terms and renewals.

(i) A potential client shall be advised that, by law, contracts for the collection of child support payments shall not be entered into for periods of longer than twelve consecutive months. (ii) A potential client

shall be advised that renewal of such contracts shall not be automatic and shall require the written consent of all parties to the contract. (iii) A potential client shall be provided a summary of all contract termination provisions, including, but not limited to, the specific date on which such contract shall terminate. If no specific date is provided in the contract, the debt collection agency shall describe how and when such contract will terminate.

(iv) A potential client shall be advised that, by law, a contract cannot be renewed if, upon the renewal date, there has been no collection activity for the immediately preceding six consecutive months.

f. Any debt collection agency that collects child support payments shall furnish to the commissioner a current copy version of the disclosure form required under section 20-494.1(e) together with a copy of such agency's standard contract for child support payment debt collection services within sixty days following the effective date of the local law that added such section.

g. As a condition to the issuance of a license to provide child support payment debt collection services, each applicant shall furnish to the commissioner a surety bond in the sum of five thousand dollars, payable to the city of New York, executed by such applicant and a surety approved by the commissioner. Such bond shall be conditioned upon the applicant's compliance with the provisions of this subchapter and any rules or regulations promulgated hereunder, and upon the further condition that such applicant will pay to the city any fine, penalty or other obligation within thirty days of its imposition, or any final judgment recovered by any person who received child support payment debt collection services from a licensee thereunder and was damaged thereby. The commissioner may, by rule, increase the amount of the surety bond required by this section to an amount not to exceed twenty-five thousand dollars. The commissioner may by rule authorize an applicant to, in lieu of a bond, deposit cash to satisfy the requirements of this section in an amount equal to the sum of the surety bond required by this section.

h. The commissioner may by rule establish a fund to be administered by the comptroller and authorize an applicant for a license to provide child support payment debt collection services to, in lieu of a bond or cash equivalent, make contributions to such fund to satisfy the requirements of subdivision g of this section. The commissioner may promulgate such rules or regulations as

are necessary for the administration of such fund including, but not limited to, rules setting forth the conditions for participation in the fund, the contributions required to be made to the fund and the circumstances under which disbursements will be made from the fund. i. The commissioner may promulgate such rules as may be necessary to carry out the provisions of this section.

§7. Effect of invalidity; severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§8. Effective date. This local law shall take effect ninety days after its enactment into law, and shall apply to contracts entered into on or after such date.

LS# 2009, #2215
BK/LCG/DB/LP
10/29/03