



NEW YORK STATE SENATOR

Jose Peralta

Senator Peralta, New Yorkers for Responsible Lending Push for Passage of Consumer Credit Fairness Act

JOSE PERALTA May 17, 2012

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With third-party debt buyers taking advantage of the courts and consumers to extract hundreds of millions of dollars a year from the lowest income New Yorkers, State Senator Jose Peralta introduced legislation to prevent debt buyers from exploiting gaps in state laws.

Consumer debt buyers have filed hundreds of thousands of debt collection lawsuits over the past few years in New York State. They buy consumer debts for pennies on the dollar and aggressively pursue payment through the courts—often suing the wrong people or consumers who paid back their debt years before. Even in cases where a consumer may owe money, debt buyers often sue for grossly inflated amounts, padding the debts with unauthorized fees and interest.

“We’ve all heard the horror story about someone hounded relentlessly for years by debt collectors for bills that were paid off long ago, or for payments that were never owed, or for wildly high fees that would make a loan shark proud,” said Senator Peralta. “The thuggish tactics described are so abusive, it’s hard to imagine that sort of harassment is allowed to happen in the United States.

“Well, it is allowed—at least to the extent that there are enough gaps and loopholes in the law that they make the abuse possible,” added Senator Peralta. “And make no mistake: The debt collection horror story you may have heard or read about is not an isolated incident. This is a widespread problem.”

Senator Peralta also said that “abusive debt collection lawsuits have become an epidemic in New York State.” He pointed out that debt buyers routinely file frivolous lawsuits against low- and moderate-income New Yorkers, even though they have no evidence to prove the debts are owed.

Most of the people being sued don't receive any notice. And because they're unaware that they're being sued, they don't appear in court and the debt buyers easily win default judgments without ever having to produce legitimate proof of the debts.

Debt buyers enforce default judgments by freezing people's bank accounts and garnishing their wages.

"The consequences of default judgments can be devastating," said Carolyn Coffey, supervising attorney at MFY Legal Services, a member of New Yorkers for Responsible Lending, a state-wide coalition of 162 organizations. "Without access to savings or employment income, low- and moderate-income New Yorkers and their families then cannot pay for basic needs, including housing, utilities and food. The judgments appear on credit reports, making it much more difficult to find housing, obtain employment or take out a loan."

A 2010 study of lawsuits filed by debt buyers in New York City found that:

- Debt buyers won 94.3% of the lawsuits, usually by obtaining default judgments.

- More than 70% of the people sued were either not served or were improperly served notice.
- Only 1% of people sued were represented by counsel.
- Nearly all—95%—of the people with default judgments entered against them by debt buyers resided in low- or moderate-income neighborhoods. (A separate analysis found that more than two-thirds of those sued were black or Latino).

Many of the debts pursued in the lawsuits filed by consumer debt buyers are too old to be sued on, have already been paid or discharged in bankruptcy, or result from identity theft or mistaken identity.

Senator Peralta's Consumer Credit Fairness Act will close gaps in state laws that allow this abuse to take place. One way it will do that is by requiring the complaint in a consumer credit action include basic information about a debt so that New Yorkers will be better able to identify the debt or account for which they are being sued. Among other information, the bill would require complaints to provide the name of the original creditor, the last four digits of the original account number, a chain of title of the account and a breakdown of the amount that the plaintiff seeks to collect.

The bill would also reduce the statute of limitations on consumer credit actions from six years to three years. In addition, to prevent the entry of default judgments on claims without merit, Senator Peralta's bill would require applications for default judgment in consumer credit suits to include an affidavit by the original creditor of the facts of the debt and the amount due at the time of the sale or assignment of the debt.