



MEMORANDUM IN OPPOSITION

May 25, 2021

**A.6254 Weinstein (On Assembly Codes Committee Agenda 5/25/21)
S.1234 Gianaris (Referred to Senate Consumer Protection)**

AN ACT to amend the general business law, in relation to allowing a private right of action for improper debt collection

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association (NYBA). NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard \$2 trillion in deposits, and extend nearly \$70 billion in home and small business loans. NYBA members also support their communities through an estimated \$200 million in community donations and 500,000 employee volunteer hours.

This legislation adds an additional remedy to those already available to debtors under the General Business Law for violations of the State's Fair Debt Collection Practices Act. This private right of action would be in addition to remedies already available and would likely be no more effective than remedies currently available.

Currently, engaging in prohibited practices under the law could result in criminal penalties or could result in either the Attorney General or a County District Attorney seeking an injunction to prohibit such conduct. It is unlikely that a party engaging in such conduct despite the prospect of a criminal penalty or of action by the Attorney General or a County District Attorney will be deterred by private rights of action.

In addition, this legislation could have the consequence of promoting frivolous lawsuits by unscrupulous parties, as it would authorize class actions, punitive damages and attorney's fees, but only for the debtor. Creditors would have no such recourse, even against debtors attempting to "game the system" by using the threat of legal action to prevent legitimate debt collection efforts. Creditors could not even collect attorney's fees from debtors who had wrongly alleged that the creditor engaged in improper debt collection.

For these reasons, the New York Bankers Association **opposes** this legislation and urges that it be **held**.

Respectfully Submitted,

SHENKER RUSSO & CLARK LLP