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Bill Proposes Expanded Debt Collection Oversight

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Citing the mounting financial pressure confronting New Yorkers in the face of a nationwide recession, advocacy groups gathered yesterday at City Hall to urge local lawmakers to pass a measure that would expand the definition of "debt collection agency" to cover buyers of consumer debt who hire third parties, including attorneys, for collection.

In the absence of tougher regulation, unlicensed debt collectors will continue to prey upon vulnerable consumers and "clog our courts with bogus cases," New York City Councilman Daniel R. Garodnick said in a statement.

Proposed by Mr. Garodnick, [Introductory Bill Number 660](#) would close a loophole in the current law by giving the city's Department of Consumer Affairs the power not only to license "active" debt collectors, but so-called "passive" debt collectors who employ third-party agencies to collect the debt.

Increasingly, debt buyers purchase debts in bulk for pennies on the dollar and then outsource their collection to other entities, including debt collection law firms, which are not regulated by the consumer affairs agency.

According to a 2007 report by the Urban Justice Center, creditors obtained an estimated \$800 million in judgments in 2006 alone, approximately 80 percent of which were entered against unrepresented defendants in the city who failed to appear in court ([NYLJ, Dec. 11, 2007](#)).

"That's enough to build a new stadium for the New York Mets every year," Mr. Garodnick said to a room packed with consumer protection attorneys and city residents who had been targeted by unlicensed debt collectors.

The current law, New York City Administrative Code §20-489, defines a debt collection agency as a person whose principal business is "to regularly collect or attempt to collect debts owed or due or asserted to be owed or due to another." Those agencies have to be licensed.

Under the proposed legislation, the definition would be broadened to include debt buyers

who "refer such debt to another for collection or to an attorney-at-law for litigation in order to collect such debt." Those debt buyers also would need to be licensed.

The bill would carve out an exception for attorneys or law firms "filing and prosecuting" lawsuits or engaging in other legal activities to reduce debts to judgments.

However, lawyers or firms that "regularly" engage in traditional debt collection activities, including sending demand letters and making phone calls, would be considered debt collection agencies under the proposed law and would need to be licensed.

The proposal would allow the city to "hold rogue debt collectors responsible," Mr. Garodnick said at yesterday's press conference.

Supporters of the bill include attorneys from MFY Legal Services, the Urban Justice Center, the New York City Bar Association and the Legal Aid Society.

Debt collection has become "so cookie-cutter and mechanized and computer driven" that law firms are "basically just banging out the paper work," consumer attorney Brian L. Bromberg said in an interview.

"There are these huge companies around the country, some of which are publicly traded, and buy huge portfolios of debt, millions of dollars at a time," he said. They also purchase "very bare-boned information," including the amount allegedly due and the address of the debtor, which is often years old, Mr. Bromberg said.

After trying to collect in-house, Mr. Bromberg said, companies farm out the debt to collection agencies, which in turn refer it to a local law firm, whose computer will "eventually spit out [a] summons and complaint." Many of these lead to default judgments against consumers, who find their wages garnished and bank accounts frozen, he added.

Civil Court Process

In a Feb. 23 letter to the City Council's legislative advisor, Judge Fern A. Fisher, the administrative judge for the city Civil Court, wrote that when a defendant fails to answer in a collection case, a plaintiff can request the entry of a default judgment.

"If the plaintiff is an original creditor, it is clear that no licensing is required. But when it is not, the clerk must search for either a licensee number or a statement explaining the reason for the lack of license number," a process which the judge noted can be time-consuming and result in errors in entry of these judgments.

Removing the distinction between passive and active debt collectors will assist the Civil Court, which "processes approximately 300,000 of these cases yearly," Judge Fisher wrote. She added that the distinction is meaningless to the public.

In a hearing following yesterday's press conference, Andrew Eiler, the Department of Consumer Affairs' legislative director, told the City Council Committee on Consumer Affairs that the agency "strongly supports the objective of including debt buyers as collection agencies regardless of how they seek to collect debts, be it directly or indirectly, by litigation or otherwise."

But Jonathan Mintz, commissioner of the Department of Consumer Affairs, said in an interview that while the agency welcomes the City Council's offer to "strengthen the city's hand," the bill's language could be modified so that it does not apply to purchasers of debt that "was not necessarily in arrears."

In his testimony, Mr. Eiler also suggested revising the law to eliminate practices that create problems for consumers, including mandating that computer-generated calls from debt collectors leave a phone number where a person can be reached, and prohibiting the sale or assignment of fully satisfied debts.

As for the proposal to regulate lawyers who engage in debt collection, Mr. Mintz said in an interview, "Our position has always been that if you are collecting debts, you are a debt collector, whether you are a lawyer or manicurist or locksmith."

However, it is "a very different question" whether a lawyer "engaged in legal activities and helping a client who is trying to collect debt," should be regulated as a debt collector.

"When a lawyer is acting like a lawyer," he should be regulated as a lawyer, not a debt collector, Mr. Mintz said.

Arthur Sanders, managing member at collection law firm Mel S. Harris & Associates, agreed.

"Most of the collection attorneys that I am familiar with here in New York don't just make phone calls. They sue," he said.

"If an attorney abuses someone, there is a lot of redress," he said. Regulating the conduct of local attorneys, is not a New York City function, he added.

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