

# WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

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## MEMORANDUM IN OPPOSITION

June 10, 2011

**A6674 Jeffries (ON ASSEMBLY CODES COMMITTEE AGENDA)  
S4238 Gianaris (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. The Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 250,000 New Yorkers and hold more than \$9 trillion in assets.

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. It provides no additional substantive limitations on debt collection practices. This private right of action would be in addition to remedies already available, is seriously one-sided, 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 seems to us 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 is seriously biased in favor of the debtor. The threat of class action can often bring businesses that have not in fact violated any law to agree to settlements. This legislation 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,**

**WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**