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**Business & Financial Services Committee**

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**HB 1745**

**Brief Description:** Concerning collection agencies.

**Sponsors:** Representative Goodman.

**Brief Summary of Bill**

- Makes a number of changes related to the prohibited practices of collection agencies.
- Prohibits the assertion of a certain statute of limitations against a collection agency collecting a public debt.
- Applies the provisions related to the collection of public debt to causes of action begun on or after the effective date of the act, regardless of when the cause of action arose.

**Hearing Date:** 2/8/11

**Staff:** Jon Hedegard (786-7127).

**Background:**

The Department of Licensing licenses collection agencies. No person may act as a collection agency unless licensed or exempt from licensing.

Federal Law.

Collection agencies are also regulated by federal law. The federal Fair Debt Collection Practices Act (FDCPA) permits and prohibits certain practices. The state collection agencies law also regulates and prohibits certain practices. Where there is an inconsistency with state law, the FDCPA supersedes state law, unless there is an exemption for the class of debt collection practices at issue. A state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA.

Under the FDCPA, "communication" is defined as the conveying of information regarding a debt directly or indirectly to any person through any medium. A collection agency may not

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communicate with a debtor at a time or place that is inconvenient and the collection agency is to assume that the convenient time for communicating is between 8:00 a.m. and 9:00 p.m.

Communicating with the debtor at the debtor's place of business is prohibited if the collection agency knows or has reason to know that the debtor's employer does not allow the debtor to engage in such communication at work.

#### Prohibited Practices Under State Law.

When a collection agency sends a first notice to a debtor about a claim or a subsequent notice attempting to collect a different amount than indicated in the first notice, the collection agency must include:

- the name and address of the collection agency;
- the name of the original creditor if known; and
- an itemization of the claim asserted including (1) the amount owing on the original obligation; and (2) any interest charge or fee added to the original obligation.

A collection agency may inform a consumer reporting agency (CRA) of the existence of a claim, but if the debtor disputes the claim by written notice, the collection agency must forward a copy of the dispute notice to the CRA.

A collection agency may not threaten a debtor with impairment of the debtor's credit rating if a claim is not paid.

Collection agencies are prohibited from communicating with a debtor in a way that harasses, intimidates, threatens, or embarrasses a debtor. Harassment is presumed if the collection agency:

- contacts a debtor or spouse in any form, manner, or place, more than three times in a single week;
- contacts a debtor at the debtor's place of employment more than one time in a single week; or
- contacts the debtor or spouse at the debtor's place of residence between 9:00 p.m. and 7:30 a.m.

A collection agency may not threaten to take any action the collection agency cannot legally take at the time the threat is made.

A collection agency may not make collect phone calls or send collect telegrams.

#### Assignment of Public Debts.

A state or local governmental entity may contract with a licensed collection agency to collect public debts owed by any person, including any restitution that is being collected on behalf of a crime victim. The governmental entity may add a reasonable collection agency fee to the outstanding debt owed by the debtor.

A governmental entity may not assign debt to a collection agency unless:

- there has been an attempt to advise the debtor of the existence of the debt and that the debt may be assigned to a collection agency if the debt is not paid; and
- at least 30 days have elapsed from the time notice was attempted.

A collection agency that is assigned public debts has the same remedies and powers as a collection agency that is assigned the debt of a private creditor.

### **Summary of Bill:**

#### Prohibited Practices Under State Law.

Several changes are made to the prohibited practices of collection agencies.

A collection agency is not required to provide the information required in notices to debtors when providing information to debtors through proper legal action, process, or proceedings.

When a collection agency gives or sends a subsequent notice to a debtor and is attempting to collect a different amount than indicated in the first notice to the debtor, the collection agency is not required to itemize the different amount if the difference concerns a judgment against a debtor. Post-judgment interest, however, must be itemized if it is claimed.

If a collection agency informed a CRA of the existence of a claim and the debtor disputes the claim, the collection agency must provide the CRA with notice of the dispute by written or electronic means and create a record of the notification. The collection agency is no longer required to forward the debtors's written notice of the dispute.

The prohibition on threatening a debtor with impairment of the debtor's credit rating is limited to those situations where the threats are deceptive.

A collection agency's response to a communication from a debtor does not count against the number of allowed communications in a week.

A call to a telephone is presumed to be received in the time zone for the area code of the number. If an area code is not assigned to any specific geographic area, the time zone is presumed to be the local time zone of the debtor's last known place of residence. The presumptions do not apply if the collection agency reasonably believes the telephone is located in a different time zone.

A collection agency may not cause charges to be incurred for a telegram or make any telephone calls to a debtor concerning a debt for the purpose of demanding payment of a claim or seeking information about a debtor by concealment of the true purpose of the communication. A collection agency is not prohibited from calling a debtor's cellular telephone or other wireless device. This does not require a collection agency to disclose information regarding a claim to a third party.

A collection agency may not bring an action or initiate arbitration on a debt when the collection agency knows, or reasonably should know, that the suit or arbitration is barred by the applicable statute of limitations.

#### Assignment of Public Debts.

A statute of limitation cannot be asserted against a collection agency unless the same statute of limitation could be asserted against the governmental entity that assigned the claim.

#### Limited Retroactive Application.

The changes related to the assignment of public debt apply to causes of action begun on or after the effective date of the act, regardless of when the cause of action arose. The changes related to prohibited practices are excepted from the retrospective application of the act.

Other.

A number of language changes, including gender-neutral changes, are made.

**Appropriation:** None.

**Fiscal Note:** Requested on 02/04/11.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.