
Commerce & Labor Committee

HB 2524

Brief Description: Concerning prohibited practices of collection agencies.

Sponsors: Representatives O'Brien and Angel.

Brief Summary of Bill

- Modifies provisions related to collection agency contacts with debtors.
- Defines what is and is not a "communication."
- Adds provisions related to a collection agency's calls to a debtor's cellular phone.

Hearing Date: 1/29/10

Staff: Rebecca Jones (786-5793) and Joan Elgee (786-7106).

Background:

Collection agencies are regulated by both state and 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.

Federal Law.

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 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A collection agency may not engage in harassment, oppression, or abuse. This includes calling the debtor's telephone repeatedly or continuously while intending to annoy, abuse, or harass a person at the dialed number and, with certain exceptions, making telephone calls without disclosing the caller's identity.

A collection agency may not cause charges to be made to any person by concealment of the true purpose of the communication, including but not limited to, collect calls and telegram fees.

State Law.

When a collection agency sends the first notice to a debtor or if the collection agency is attempting to collect a different amount than indicated in the first notice, it must contain an itemization of the claim asserted including:

- the amount owing on the original obligation; and
- any interest, service charge, collection costs, late payment charges, or other charge or fee added to the original obligation.

A collection agency may inform a credit reporting bureau 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 credit reporting bureau.

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 such a way as to harass, intimidate, threaten, or embarrass 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.

Collection agencies may not send any telegram or make any telephone calls to a debtor or regarding a debt where the charges are payable by the addressee or person to whom the call is made.

Summary of Bill:

Changes are made to the prohibited practices of collection agencies, including: (1) modifying provisions related to collection agency contacts with a debtor; (2) defining terms; and (3) adding provisions related to a collection agency's calls to a debtor's cellular phone.

Modified Provisions.

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 must itemize only those portions of the claim that are different from the first notice, but if the

difference in amount is due to interest accrued or a judgment against the debtor, no itemization is required.

If the collection agency informed the credit reporting bureau of the existence of a claim and the debtor disputes the claim, the collection agency must notify the credit reporting bureau of the dispute, rather than forwarding a written copy of the dispute to the bureau.

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

Written communications sent through the United States Postal Service are omitted from the types of communications toward a debtor that could be considered harassment. The types of communications that could be considered harassment due to being made between the hours of 9:00 p.m. and 7:30 a.m. are limited to telephone calls.

The prohibition against incurring telegram or telephone call charges is limited to those situations where there is concealment of the purpose of the communication and communicating with a debtor through a debtor's cellular phone or wireless device is not prohibited.

Definitions.

The terms "communicate" or "communication" are defined as any contact with a debtor or spouse initiated by the licensee, in person, by telephone, or in writing, including electronic mail, text messages, and other electronic writing, regarding the collection of a claim. Communication is also a telephone contact initiated by a debtor where substantive discussion of the debt with the licensee occurs.

Communications do not include:

- contact while a debtor is physically present in the licensee's place of business;
- a telephone call that is not answered by a person and no message is left, other than a caller ID, unless the call is made between the hours of 9:00 p.m. and 7:30 a.m.;
- a letter to the debtor that includes initial disclosures required by federal, state, or local law;
- a pleading, document, or notice served or provided in connection with a legal proceeding, mediation, or arbitration;
- contact responding to a communication from a debtor or spouse;
- contact with an attorney for a debtor or spouse;
- telephone contact initiated by a debtor where substantive discussion of the debt with the licensee occurs at the place of employment of the debtor;
- telephone contact initiated by a debtor where substantive discussion of the debt with the licensee occurs in excess of the third communication in a week; or
- telephone contact initiated by a debtor asking the collection agency to return the debtor's call.

A "week" is defined as a series of seven consecutive days beginning on a Sunday.

Added Provisions.

Provisions are added relating to cellular phones. A call to a debtor's cell phone is presumed to be received in the time zone in which the area code is assigned for landline numbers, unless the collection agency reasonably believes the cell phone is not located in that time zone. If the area code is not assigned to landline numbers, the call is presumed to be received in the time zone of the debtor's last known residence, unless the collection agency reasonably believes the cell phone is not located in that time zone. A call to a debtor's cell phone does not constitute a communication with a debtor at the debtor's place of employment.

Appropriation: None.

Fiscal Note: Not requested.

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