
Business & Financial Services Committee

SB 5956

Brief Description: Concerning the prohibited practices of collection agencies.

Sponsors: Senators Harper, Pflug and Kline.

Brief Summary of Bill

- Clarifies the ability for a collection agency to make a call requesting payment or information to a phone that is not a cellular phone.

Hearing Date: 5/17/11

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. The state Collection Agencies Act provides a regulatory framework for the collection of debt. Collection agencies are also regulated by federal law. The federal Fair Debt Collection Practices Act (FDCPA) permits 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.

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.

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

Prior to Chapter 57, Laws of 2011 (SSB 5574 referred to subsequently as 2011 Legislation).

Collection agencies were prohibited from making phone calls or sending telegrams that sought payment or information about a debtor and caused a recipient to incur charges. This clearly applied to collect phone calls and to telegrams where the addressee had to pay to receive the telegram. Often, a person receiving a call on a cellular phone has a contract with their cellular phone service provider to pay for a limited amount of minutes. The application of the language regarding the incurring of charges to a cellular telephone with a fixed amount of minutes was not clear.

After the 2011 Legislation.

Defined standards applying to cellular phones and wireless devices were established. A collection agency is allowed to call or text a cellular phone or wireless device. A licensee is not allowed to attempt to communicate with a cellular phone or wireless device more than three times in a week. A collection agency may not call, text, or send an electronic message to a cellular phone or wireless device more than twice in a day. There are standards for when a licensee knows or reasonably should know that the number belongs to a cellular or wireless device.

Also in the 2011 legislation, language that prohibited charges being incurred by the debtor was struck. The result is instead of cellular phone calls being excepted from a general prohibition on calls that incur charges, the exception for cellular phone calls is for any calls or telegrams requesting payment or seeking information about the debtor. In other words, while cellular phone calls are allowed if conditions are met, a call that seeks payment or information about a debtor to a phone that is not a cellular phone may be prohibited.

Summary of Bill:

An intent section finds that there was a drafting error in the 2011 legislation that resulted in the inadvertent deletion of a number of words. The stated intent of the bill is to remedy that error at the time of the effective date of the 2011 legislation.

Previous statutory language concerning calls and telegrams that cause a recipient to incur charges is restored. The limitations regarding calling cellular phones are an exception to the provisions that prohibited a collection agency from making phone calls or sending telegrams that seek payment or information about a debtor and caused a recipient to incur charges unless certain conditions are met. The ability of a collection agency to call a phone that is not a cellular phone is clarified.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect on July 22, 2011.