

Amendment No. 678

Senate Amendment to Assembly Bill No. 88 First Reprint (BDR 54-630)

Proposed by: Senate Committee on Commerce and Labor**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) **blue bold italics** is new language in the original bill; (2) **green bold italic underlining** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

JRS/TMC



Date: 5/8/2007

A.B. No. 88—Revises provisions governing the collection of debts by collection agencies. (BDR 54-630)



ASSEMBLY BILL NO. 88—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE OFFICE FOR CONSUMER HEALTH ASSISTANCE)

FEBRUARY 12, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the collection of debts by collection agencies. (BDR 54-630)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to collection agencies; providing that ~~{certain violations}~~ **a violation** of the Fair Debt Collection Practices Act ~~{are}~~ **is** a violation of certain provisions governing collection agencies; ~~{requiring a collection agency to send a written notice to a debtor within a certain period after the initial communication with the debtor; requiring a collection agency to verify a debt by obtaining or attempting to obtain certain documents;}~~ **prohibiting a collection agency, or a manager, agent or employee of a collection agency, from collecting or attempting to collect a debt under certain circumstances;** providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section ~~{1-5}~~ 1 of this bill provides that a violation of ~~{certain provisions}~~ **any provision** of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ ~~{1692g and 1692h}~~ **1692 et seq., or any regulation adopted pursuant thereto**, shall be deemed to be a violation of chapter 649 of NRS governing collection agencies.

~~{Section 2 of this bill requires a collection agency, within 5 days after the initial communication with a debtor in connection with the collection of a debt, to send to the debtor a written notice setting forth a statement indicating that the payment or agreement to pay the debt may be construed as an acknowledgment of the debt and as a waiver of the statute of limitations applicable to the collection of the debt. Section 2 also provides that, to verify a debt, a collection agency is required to obtain certain documents from the creditor and mail those documents to the debtor.}~~

Section 5 of this bill makes the provisions of ~~{sections 1.5 and 2}~~ **section 1** of this bill applicable to a foreign collection agency.

Section 7 of this bill **prohibits a collection agency, or a manager, agent or employee of a collection agency, from collecting or attempting to collect a debt or any portion of a debt if an applicable statute of limitations regarding the debt has expired. Section 7 also prohibits a collection agency, or the manager, agent or employee of a collection agency,**

from obtaining or attempting to obtain from the debtor an acknowledgement of the debt or a promise to pay the debt.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 649 of NRS is hereby amended by adding thereto ~~the provisions set forth as sections 1.5 and 2 of this act,~~ a new section to read as follows:

A violation of any provision of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., or any regulation adopted pursuant thereto, shall be deemed to be a violation of this chapter.

~~Sec. 1.5. A violation of any provision of section 809 or 810 of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692g and 1692h, or any regulation adopted pursuant thereto, shall be deemed to be a violation of this chapter.~~
(Deleted by amendment.)

~~Sec. 2. 1. Within 5 days after the initial communication with a debtor in connection with the collection of a debt, a collection agency shall, unless the following information is included in the initial communication, send a written notice to the debtor that includes a statement indicating that:~~

~~(a) If the debtor pays or agrees to pay the debt or any portion of the debt, the payment or agreement to pay may be construed as:~~

~~(1) An acknowledgment of the debt by the debtor; and~~

~~(2) A waiver by the debtor of any applicable statute of limitations set forth in NRS 11.190 that otherwise precludes the collection of the debt; and~~

~~(b) If the debtor does not understand or has questions concerning his legal rights or obligations relating to the debt, the debtor should seek legal advice.~~

~~2. To verify a debt, a collection agency shall:~~

~~(a) Obtain or attempt to obtain from the creditor any document that is not in the possession of the collection agency and is reasonably responsive to the dispute of the debtor, if any; and~~

~~(b) If such a document is obtained, mail the document to the debtor.~~
(Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 649.171 is hereby amended to read as follows:

649.171 1. A person who is not licensed in this State as a collection agency may apply to the Commissioner for a certificate of registration as a foreign collection agency.

2. To be issued and to hold a certificate of registration as a foreign collection agency, a person:

(a) Must hold a license or permit to do business as a collection agency in another state;

(b) Must meet the qualifications to do business as a collection agency in this State;

(c) Must not have any employees or agents present in this State who engage in the collection of claims and must not maintain any business locations in this State as a collection agency;

(d) Must submit proof to the Commissioner, upon application and upon each annual renewal of the ~~certification~~ certificate of registration, that the person and his employees and agents will not, in this State:

(1) Engage in the business of soliciting the right to collect or receive payment for another of any claim; or

(2) Advertise or solicit, either in print, by letter, in person or otherwise, the right to collect or receive payment for another of any claim;

(e) When collecting claims against debtors who are present in this State, must:

(1) Limit his activities and those of his employees and agents to interstate communications by telephone, mail or facsimile; and

(2) Comply with the requirements of NRS 649.305 to 649.375, inclusive, ~~and sections 1-5 and 2,~~ section 1 of this act, with regard to his activities and those of his employees and agents;

(f) Must pay:

(1) A fee to apply for a certificate of registration of not less than \$200 and not more than \$600, prorated on the basis of the registration year as determined by the Commissioner; and

(2) An annual renewal fee of not more than \$200;

(g) Must deposit and maintain a bond or an appropriate substitute for the bond in the same manner as an applicant or licensee pursuant to NRS 649.105, 649.115 and 649.119;

(h) Must maintain his accounts, books and records in accordance with generally accepted accounting principles and in accordance with the requirements of subsection 1 of NRS 649.335; and

(i) Must pay any fees related to any examination of his accounts, books and records conducted by the Commissioner pursuant to subsection 3.

3. The Commissioner may conduct an annual examination and any additional examinations pursuant to NRS 649.335 of the accounts, books and records of each person who holds a certificate of registration as a foreign collection agency.

4. The Commissioner may take disciplinary action pursuant to NRS 649.385, 649.390 and 649.395 against a person who holds a certificate of registration as a foreign collection agency for any act or omission that would be grounds for taking such disciplinary action under those sections.

5. The Commissioner shall adopt:

(a) Regulations establishing the amount of the fees required pursuant to this section; and

(b) Any other regulations as may be necessary to carry out the provisions of this section.

Sec. 6. (Deleted by amendment.)

Sec. 7. NRS 649.375 is hereby amended to read as follows:

649.375 A collection agency, or its manager, agents or employees, shall not:

1. Use any device, subterfuge, pretense or deceptive means or representations to collect any debt, nor use any collection letter, demand or notice which simulates a legal process or purports to be from any local, city, county, state or government authority or attorney.

2. Collect or attempt to collect any interest, charge, fee or expense incidental to the principal obligation unless:

(a) Any such interest, charge, fee or expense as authorized by law or as agreed to by the parties has been added to the principal of the debt by the creditor before receipt of the item of collection;

(b) Any such interest, charge, fee or expense as authorized by law or as agreed to by the parties has been added to the principal of the debt by the collection agency and described as such in the first written communication with the debtor; or

(c) The interest, charge, fee or expense has been judicially determined as proper and legally due from and chargeable against the debtor.

3. Assign or transfer any claim or account upon termination or abandonment of its collection business unless prior written consent by the customer is given for the assignment or transfer. The written consent must contain an agreement with the customer as to all terms and conditions of the assignment or transfer, including the name and address of the intended assignee. Prior written consent of the Commissioner must also be obtained for any bulk assignment or transfer of claims or accounts, and any assignment or transfer may be regulated and made subject to such limitations or conditions as the Commissioner by regulation may reasonably prescribe.

4. Operate its business or solicit claims for collection from any location, address or post office box other than that listed on its license or as may be prescribed by the Commissioner.

5. Harass a debtor's employer in collecting or attempting to collect a claim, nor engage in any conduct that constitutes harassment as defined by regulations adopted by the Commissioner.

6. Advertise for sale or threaten to advertise for sale any claim as a means to enforce payment of the claim, unless acting under court order.

7. Publish or post, or cause to be published or posted, any list of debtors except for the benefit of its stockholders or membership in relation to its internal affairs.

8. Conduct or operate, in conjunction with its collection agency business, a debt counseling or prorater service for a debtor who has incurred a debt primarily for personal, family or household purposes whereby the debtor assigns or turns over to the counselor or prorater any of his earnings or other money for apportionment and payment of his debts or obligations. This section does not prohibit the conjunctive operation of a business of commercial debt adjustment with a collection agency if the business deals exclusively with the collection of commercial debt.

9. If an applicable statute of limitations for commencing an action regarding a debt has expired:

(a) Collect or attempt to collect the debt or any portion of the debt; or

(b) Obtain or attempt to obtain from the debtor an acknowledgement of the debt or a promise to pay the debt.