

Amendment No. CA28

First Conference Committee Amendment to (BDR 54-1049)
Assembly Bill No. 127 First Reprint

Proposed by: First Conference Committee

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

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.

MSN/RBL



Date: 6/3/2007

A.B. No. 127—Revises provisions relating to interception of wire communications.
(BDR 54-1049)



ASSEMBLY BILL NO. 127—ASSEMBLYMEN SMITH, PARKS, LESLIE, KOIVISTO, CONKLIN, ATKINSON, BOBZIEN, BUCKLEY, CLABORN, DENIS, HOGAN, HORNE, KIHUEN, KIRKPATRICK, MANENDO, MCCLAIN, MORTENSON, OCEGUERA, OHRENSCHALL, PARNELL, PIERCE, SEGERBLOM AND WOMACK

FEBRUARY 20, 2007

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to ~~interception of wire communications;~~ **the collection of debts by collection agencies.** (BDR 54-1049)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 ~~communications;~~ **collection agencies;** clarifying ~~that a person may record certain telephone calls made by~~ **when** collection agents and collection agencies ~~after providing notice that the call is being recorded and making a statement to that effect on the recording;~~ **may record telephone calls; providing that violations of the provisions of the federal Fair Debt Collection Practices Act are deemed violations of certain provisions governing collection agencies; requiring a collection agency which collects a debt on behalf of a hospital to provide certain notice to a debtor; specifying the manner in which a collection agency must verify a debt; making various other changes concerning collection agencies and collection agents;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally requires two-party consent before a person may record a telephone conversation. (NRS 200.620) The Nevada Supreme Court has interpreted existing law to prohibit a person from recording his own telephone conversations unless the other party to the conversation gives prior consent to the recording. (*Lane v. Allstate Ins. Co.*, 114 Nev. 1176 (1998)) Existing law also prohibits the surreptitious listening, monitoring or recording of private conversations engaged in by other persons. (NRS 200.650)

Section 4 of this bill provides that, after providing notice to the collection agency or collection agent that the telephone call is being recorded and making a statement to that effect on the recording, a person may record any telephone call concerning a debt which is owed or asserted to be owed by the person if the telephone call is initiated by a collection agency or collection agent and received by the person who owes or is alleged to owe the debt.

Section 5 of this bill provides that a violation of any provision of the federal 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 chapter 649 of NRS governing collection agencies.

Section 6 of this bill 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 6 also requires a collection agency that is collecting a debt on behalf of a hospital to provide certain information to a debtor not later than 5 days after the initial communication with the debtor in connection with the collection of the debt.

Existing law exempts certain persons from obtaining a collection agency license in Nevada if certain conditions are met. (NRS 649.075) Section 7 of this bill removes that exemption and requires all such persons to either register as a foreign collection agency or obtain a license.

Existing law requires each applicant for a license as a collection agency or collection agent to submit proof of certain information to the Commissioner of Financial Institutions, including, without limitation, proof that the applicant will maintain one or more offices in this State for the transaction of the business of his collection agency. (NRS 649.085) Section 8 of this bill allows the applicant to satisfy this requirement by submitting proof that the applicant will maintain one or more such offices in another state.

Section 9 of this bill removes the requirement that a person must hold a license in another state in order to be registered as a foreign collection agency in Nevada. Section 9 also limits the activities of a registered foreign collection agency to collecting from residents of this State on behalf of residents of another state. (NRS 649.171)

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 3.5. Chapter 649 of NRS is hereby amended by adding thereto the provisions set forth as sections 4, 5 and 6 of this act.

Sec. 4. ~~Chapter 649 of NRS is hereby amended by adding thereto a new section to read as follows:~~

1. After providing notice that the telephone conversation will be recorded, a person may record any telephone call that:

- (a) Concerns a claim which is owed or asserted to be owed by the person;
- (b) Is made by a collection agency or collection agent; and
- (c) Is received by the person.

2. A person who records a telephone call pursuant to this section is required to make a statement immediately after the recording begins that the telephone call is being recorded.

3. As used in this section, "record" means the acquisition of the contents of a wire communication through the use of a recording device.

Sec. 5. A violation of any provision of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1682 et seq., or any regulation adopted pursuant thereto, shall be deemed to be a violation of this chapter.

Sec. 6. 1. 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.

2. When collecting a debt on behalf of a hospital, within 5 days after the initial communication with the debtor in connection with the collection of the 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 acknowledgement 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.

3. As used in this section, "hospital" has the meaning ascribed to it in NRS 449.012.

Sec. 7. NRS 649.075 is hereby amended to read as follows:

649.075 1. Except as otherwise provided in this section, a person shall not conduct within this State a collection agency or engage within this State in the business of collecting claims for others, or of soliciting the right to collect or receive payment for another of any claim, or advertise, or solicit, either in print, by letter, in person or otherwise, the right to collect or receive payment for another of any claim, or seek to make collection or obtain payment of any claim on behalf of another without having first applied for and obtained a license from the Commissioner.

2. ~~[A person is not required to obtain a license if:~~

~~(a) The collection agency he works for is located outside of this State;~~

~~(b) His activities in this State are limited to the collection of claims from residents of this State on behalf of residents of another state; and~~

~~(c) His contact with persons in this State is limited to interstate communications by telephone, mail or facsimile.~~

~~3.]~~ A person is not required to obtain a license if the person holds a certificate of registration as a foreign collection agency issued by the Commissioner pursuant to NRS 649.171.

Sec. 8. NRS 649.085 is hereby amended to read as follows:

649.085 Every individual applicant, every officer and director of a corporate applicant, and every member of a firm or partnership applicant for a license as a collection agency or collection agent must submit proof satisfactory to the Commissioner that he:

1. Is a citizen of the United States or lawfully entitled to remain and work in the United States.

2. Has a good reputation for honesty, trustworthiness and integrity and is competent to transact the business of a collection agency in a manner which protects the interests of the general public.

3. Has not had a collection agency license suspended or revoked within the 10 years immediately preceding the date of the application.

4. Has not been convicted of, or entered a plea of nolo contendere to:

(a) A felony relating to the practice of collection agencies or collection agents;

or
(b) Any crime involving fraud, misrepresentation or moral turpitude.

5. Has not made a false statement of material fact on his application.

6. Will maintain one or more offices in this State or one or more offices in another state for the transaction of the business of his collection agency.

7. Has established a plan to ensure that his collection agency will provide the services of a collection agency adequately and efficiently.

Sec. 9. 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)~~ (b) 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)~~ (c) 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; ~~for~~

(2) Respond to a bid, proposal or invitation for the right to collect or receive payment for another of any claim, unless the bid, proposal or invitation is for the collection of claims owed by residents of another state; or

(3) 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)~~ (d) 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) Limit his activities and those of his employees and agents to the collection of claims from residents of this State on behalf of residents of another state; and

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

~~(f)~~ (e) 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)~~ (f) 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)~~ (g) 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)~~ (h) 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.

1 4. The Commissioner may take disciplinary action pursuant to NRS 649.385,
2 649.390 and 649.395 against a person who holds a certificate of registration as a
3 foreign collection agency for any act or omission that would be grounds for taking
4 such disciplinary action under those sections.

5 5. The Commissioner shall adopt:

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

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

10 **Sec. 10. 1. This section and sections 3.5 to 6, inclusive, 8 and 9 of this**
11 **act become effective upon passage and approval.**

12 **2. Section 7 of this act becomes effective on January 1, 2008.**