Nevada Collectors Association
8860 West Sunset Road
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May 10, 2021

Assembly Commerce and Labor Committee
Honorable Sandra Jauregui, Chair
Honorable Maggie Carlton, Vice Chair
Honorable Venicia Considine
Honorable Bea Duran
Honorable Edgar Flores
Honorable Jason Frierson
Honorable Susie Martinez
Honorable Elaine Marzola
Honorable Jill Dickman
Honorable Melissa Hardy
Honorable Heidi Kasama
Honorable P.K. O'Neill
Honorable Jill Tolles

Re: Opposition to Senate Bill 248 (prohibitions on collection of medical debt)

To Chair Jauregui and Members of the Assembly Commerce and Labor Committee:

My name is Tim Myers, President of the Nevada Collectors Association. The Nevada Collectors Association is comprised of 30 licensed collection agencies all located within the state of Nevada. We are not debt buyers, but rather professionally licensed, brick & mortar agencies who employ on average 500 Nevadans and work on behalf of 2,500 Nevada small businesses. The Nevada Collectors Association is made up of collection agencies who are all licensed and fully regulated by the Nevada Financial Institutions Division, and subject to the Fair Debt Collection Practices Act, which is enforced by the Federal Trade Commission.

Many of our members' clients are Nevada medical providers ranging from dentists, optometrists, chiropractors, small family practitioners to specialty practice groups and even hospital facilities. They use our members' services to help them collect their valid medical debts because we are properly licensed and regulated professionals who follow the debt collection laws. These medical providers rely on us to help them collect on their accounts receivable at no up-front cost to the medical providers. Senate Bill 248 is clearly aimed at harming collection agencies – but in the process it also harms these small medical providers who utilize collection agencies because Section 8 forces agencies into small claims court for less than cost, which in turn forces medical providers to collect their own debts or incur the direct out-of-pocket expense of hiring debt collection attorneys.

Assembly Committee: Commerce and Labor
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Submitted by: Kristina Kleist

We have tried to work with the bill sponsor and its proponents, and we understand they are proposing another amendment – but that amendment does not address our many concerns and we must still oppose the bill as written. While we of course understand the good intentions of the bill (to help protect consumers from a few bad actors), this bill simply goes way too far.

In addition to the concerns expressed above and in our prior opposition, our specific legal concerns include the following:

1. The term "any action to collect a medical debt" is undefined and extremely vague, and will be subject to a legal challenge on that basis alone.

2. Section 7 of the bill bars credit reporting during the 60-day period because credit reporting is generally understood to be a collection activity under federal law. To that extent, the 60-day restriction is a prior restraint on speech because it prohibits a furnisher of information from communicating a debt to a consumer reporting agency, and likely subject to strict scrutiny. A constitutional challenge would probably not be governed by the commercial speech standard because credit reporting does not propose a commercial transaction and does not refer to a particular product. Even under a lesser commercial speech standard, the 60-day prohibition in Section 7 will likely fail a legal challenge, as the total suppression of "concededly truthful information about lawful activity" is unconstitutional. *Virginia State Bd. Of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976) (ban on pharmacist from advertising prescription drug prices ruled unconstitutional). The 60-day restriction could not survive under a time, place, manner standard because it is unquestionably content based. *See Berger v. City of Seattle*, 569 F.3d 1029, 1036 (9th Cir. 2009).

3. To the extent the 60-day ban prevents credit reporting, the bill may be preempted by the Fair Credit Reporting Act (the "FCRA"). The FCRA contains a detailed statutory scheme governing credit reporting, including duties of furnishers of information. *See* 15 U.S.C. § 1681s-2. The FCRA expressly preempts any state law relating to the responsibilities of furnishers of information. 15 U.S.C. § 1681t(b)(1)(F). In addition, the doctrine of implied preemption may very well apply, because the prohibition "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" or when it "interferes with the methods by which the federal statute was designed to reach [its] goal." *Arellano v. Clark County Collection Serv., LLC*, 875 F.3d 1213, 1216 (9th Cir. 2017) (Nevada execution statute interferes with and is preempted by FDCPA). Accurate reporting of the payment of debt is clearly one of the main purposes of the FCRA, and Section 7 interferes with and undermines that purpose because it prohibits creditors from seeing the true status of a borrower's payment history.

4. Section 7 also presents preemption problems under the Fair Debt Collection Practices Act (the "FDCPA").

First, the FDCPA requires a "mini-Miranda" warning with every communication (i.e., this is an attempt to collect a debt). The Section 7 notice, however, is a mere notification that a debt exists and prohibits the debt collector from engaging in collection activity from that moment until 60 days later. In contrast, the FDCPA's mini-Miranda warning specifically requires the debt collector to notify the debtor that the communication is an attempt to collect a debt. Section

7 seems to prohibit the inclusion of a mini-Miranda warning, effectively mandating a FDCPA violation.

Second, setting aside the "pick your poison" problem of having to decide whether to violate the state rule or the FDCPA's mini-Miranda rule, many consumers receiving this notice with a mini-Miranda warning will be prompted to contact the debt collector. However, the debt collector not only cannot take a payment under the rule, they cannot discuss the debt in any fashion with the debtor because it would be deemed an "action to collect a medical debt." Here too is an obvious First Amendment problem.

Third, the FDCPA prohibits a debt collector from threatening any action it cannot take. Section 7 requires a notice be sent to the consumer that clearly implies a threat to collect, but also prevents further activity by the debt collector for 60 days. This is exactly the kind of conduct the FDCPA proscribes. *See* 15 U.S.C. § 1692e(5). As a result, debt collectors will be subject to FDCPA lawsuits for simply trying to comply with Section 7.

Fourth, the FDCPA requires that a validation notice be sent within five days after an initial communication with the debtor. 15 U.S.C. § 1692g(a). While the validation notice could theoretically be combined with a Section 7 notice, Section 7 nevertheless interferes with a debt collector's express right under the FDCPA to continue to engage in debt collection and communicate with the debtor during the 30-day period after validation. *See* 15 U.S.C. § 1692g(b) ("Collection activities and communications that do not otherwise violate this subchapter ***may continue*** during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor…").

Fifth, if the debtor requests verification of a debt as allowed under the FDCPA, a debt collector must provide verification of the debt. As written, Section 7 prohibits the debt collector from providing that verification for up to 60 days, creating another potential preemption problem, and most certainly creating another prior restraint on speech.

For the foregoing reasons, we respectfully urge you to vote NO on SB 248. The NCA remains committed to continue to work with the bill sponsor and proponents to try and find a reasonable solution that will protect all stakeholders.

Very truly yours,

Tim Myers
President
Nevada Collectors Association

Vegas Valley Hearing
HEARING AIDS • HEARING PROTECTION • AUDIOLOGY

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5/7/2021

To Whom It May Concern:

Opposition to SB248

My name is Ashley Romero and I am the hearing aid provider and current owner of Vegas Valley hearing. I started my career as the front office medical biller for an Audiology clinic and over the years I became a hearing aid specialist and took over the practice.

We have always been a small practice and we have always utilized a collection agency. We rely on the fact that we do not have to pay for their service.

Our practice often times has to provide the hearing aid prior to insurance reimbursement at our expense. Most insurances will pay the insured and we must rely on them to pay us.

I don't agree with what you are proposing in SB248. You are telling us we have to eat the cost of a patient who doesn't pay for our service and not allowing us to recover the entire cost of collection. You are making us wait an additional 60 days to recover our money when we have already waited on average 6 months. Last, you are taking the ability of our collection agency from suing in justice court with a lawyer. I need them to have every tool at their disposal to recovery what is owed to me.

If this bill passes, I will have to start making our patients pay up front to eliminate the additional cost and or potential loss. This bill directly increases our costs while decreases our income.

Please vote NO on this bill.

Respectfully submitted,

Ashley Romero, BC-HIS
Hearing Instrument Specialist

BOX CANYON
PRIMARY CARE

Robert S. Roth, M.D Robert P. Chiascione, M.D.
Kevin M. Dunsmoor, M.D. Thomas Miller P.A.C.
Kristal Nessa, MS. P.A.C. Cathaline L. Pearson P.A.C.

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May 5, 2021

Senator Marilyn Dondero Loop
9811 W. Charleston Boulevard, Suite 2-420
Las Vegas, NV 89117-7528

RE: SENATE BILL NO.248 – Collection of Medical Debt

Dear Senator Dondero Loop,

We here at Box Canyon Primary Care are very concerned with the unintentional consequences of SB 248 and the effect it will have on our organization's revenue. We are a small healthcare facility and this Bill will create a hardship on us and the consequences will greatly impact not only us, but also our patients.

We use our collections agency to collect unpaid debts for services rendered.

We are a small practice and rely on prompt payments from our patients. This enables us to give the best treatments and keep our patients healthy and happy.

We are not opposed to reform however we are fiercely opposed to this bill.

Thank you for your support.

Holly Spicer

Practice Administrator
Box Canyon Primary Care
Las Vegas, NV 89128



Nevada Business Consulting Firm LLC
702-277-6996
nvfirm@outlook.com

To Whom it May Concern,

I am writing to you today in opposition of SB248. Our company has many clients that are physicians, chiropractors, PA's, medical billing, and Psychiatrists. All of the accounts they send to collections are below $10,000.00 and this bill will restrict them from being able to properly care for their patients. If our medical clients are unable to pursue other avenues, specifically third-party collections, to obtain payment for services rendered then they lose revenue. If our clients lose revenue, they will have no other choice than to raise the cost of service which in turn harms the patients that need them the most. SB248 is hurting consumers, patients, and healthcare providers!

Sincerely,

Melissa Cunningham
CEO
Nevada Business Consulting Firm LLC
702.277.6996
nvfirm@outlook.com

ENDODONTICS
RYAN C. SHIPP, DMD, MS

5/7/21

Dear Senator Dondero Loop,

We here at Shipp Endodontics are very concerned with the unintentional consequences of SB 248 and the effect it will have on our organization's revenue. We are a small dental facility, and this Bill will create a hardship on us, and the consequences will greatly impact not only us, but also our patients.

As a medical provider, we have an obligation to our patients to remain diligent in their care. Collection agencies also help reduce our overhead. We feel collection agencies have more insight in helping patients resolve their outstanding balances.

In situations when a patient does not think or feel they must pay their outstanding balance, an agency has the power of the law on their side as well as attorneys with our consent. Oftentimes, without the ability to litigate a due balance, patients will never pay their balance, which will decrease our overall revenue.

We are not opposed to reform however we are fiercely opposed to this bill.

Thank you for your support.

Ryan Shipp

Owner

Shipp Endodontics

9053 S. Pecos Rd. St. 3000

Henderson, Nevada

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Practice limited to endodontics

ACA INTERNATIONAL
The Association of Credit and Collection Professionals

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Honorable Jill Tolles

OPPOSE SB 248

Dear Chair Jauregui and Members of the Assembly Commerce and Labor Committee:

On behalf of ACA International, the Association of Credit and Collection Professionals (ACA), I respectfully write this letter in opposition of Senate Bill 248. The legislation would disrupt the ability of medical providers to serve Nevada consumers. If enacted, this bill would harm all Nevada consumers by eroding access to critical medical procedures and increasing the cost of these services.

ACA International was founded in 1939, and is the nation's largest trade association for the accounts receivable industry representing approximately 2,500 members across the country. These members include credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 125,000 worldwide.

The accounts receivable industry and in particular the collection of medical debt is already heavily regulated. ACA members are required to comply with applicable federal and state laws and regulations governing the collection of consumer debt, along with the ethical standards and guidelines established by ACA. Specifically, the collection activities of ACA members are regulated primarily by the Federal Trade Commission ("FTC") and Consumer Financial Protection Bureau ("CFPB") and fall under the

purview of the Fair Debt Collection Practices Act ("FDCPA"),[1] the Fair Credit Reporting Act (as amended by the Fair and Accurate Credit Transactions Act),[2] Telephone Consumer Protection Act (TCPA) and the Gramm-Leach-Bliley Act ("GLBA"),[3] in addition to other federal, state and local laws and numerous federal and state regulators and law enforcement agencies.

The majority of ACA's member companies are small businesses. According to a recent survey, 44% of members have fewer than nine employees. Additionally, 85% of members have 49 or fewer employees and 93% of members have 99 or fewer employees.

ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services. The businesses which include small, rural, one and two doctor practices and small medical clinics, contract out their accounts receivable needs the same way many small businesses contract out custodial, maintenance, legal or accounting services.

The collection industry is made up of highly trained professionals who are skilled at amicably resolving accounts and helping to restore consumers' financial good standing. An effective collection process to recover rightfully owed consumer debt enables organizations to survive and helps prevent job losses.

ACA International would like to echo the concerns the Nevada Collectors Association has brought before this committee including:

- The term "any action to collect a medical debt" is undefined and extremely vague and will be subject to a legal challenge on that basis alone.

    - Section 7 of the bill bars credit reporting during the 60-day period because credit reporting is generally understood to be a collection activity under federal law.

    To that extent, the 60-day restriction is a prior restraint on speech because it prohibits a furnisher of information from communicating a debt to a consumer reporting agency, and likely subject to strict scrutiny. A constitutional challenge would probably not be governed by the commercial speech standard because credit reporting does not propose a commercial transaction and does not refer to a particular product. Even under a lesser commercial speech standard, the 60-day prohibition in Section 7 will likely fail a legal challenge, as the total suppression of "concededly truthful information about lawful activity" is unconstitutional. *Virginia State Bd. Of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976) (ban on pharmacist from advertising prescription drug prices ruled unconstitutional). The 60-day restriction could not survive under a time, place, manner standard because it is unquestionably content based. *See Berger v. City of Seattle*, 569 F.3d 1029, 1036 (9th Cir. 2009).

- To the extent the 60-day ban prevents credit reporting, the bill may be preempted by the Fair Credit Reporting Act (the "FCRA"). The FCRA contains a detailed statutory scheme governing credit reporting, including duties of furnishers of information. *See* 15 U.S.C. 1681s-2. The FCRA expressly preempts any state law relating to the responsibilities of furnishers of information. 15 U.S.C. 1681t(b)(1)(F). In addition, the doctrine of implied preemption may

[1] 15 U.S.C. § 1692 *et seq.*
[2] 15 U.S.C. § 1681 *et seq.*
[3] 15 U.S.C. § 6801 *et seq.*

very well apply, because the prohibition "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" or when it "interferes with the methods by which the federal statute was designed to reach [its] goal." *Arellano v. Clark County Collection Serv., LLC*, 875 F.3d 1213, 1216 (9th Cir. 2017) (Nevada execution statute interferes with and is preempted by FDCPA). Accurate reporting of the payment of debt is clearly the main purpose of the FCRA, and a strong argument can be made (and a lot of legislative history cited) that Section 7 interferes with and undermines that purpose because it prohibits creditors from seeing the true status of a borrower's payment history.

- Section 7 also presents the following preemption problems under the Fair Debt Collection Practices Act (the "FDCPA").

    1. The FDCPA requires a "mini-Miranda" warning with every communication (i.e., this is an attempt to collect a debt). The Section 7 notice, however, is a mere notification that a debt exists and prohibit the debt collector from engaging in collection activity from that moment until 60 days later. In contrast, the FDCPA's mini-Miranda warning specifically requires the debt collector to notify the debtor that the communication is an attempt to collect a debt. Section 7 seems to prohibit the inclusion of a mini-Miranda warning, therefore mandating a FDCPA violation.

    2. Setting aside the "pick your poison" problem of having to decide whether to violate the state rule or the FDCPA's mini-Miranda rule, many consumers receiving this notice with a mini-Miranda warning will be prompted to contact the debt collector. However, the debt collector not only cannot take a payment under the rule, but they also cannot discuss the debt in any fashion with the debtor because it would be deemed an "action to collect a medical debt." Here too is an obvious First Amendment problem.

    3. The FDCPA prohibits a debt collector from threatening any action it cannot take. Section 7 requires a notice be sent to the consumer that clearly implies a threat to collect, but also prevents further activity by the debt collector for 60 days. This is exactly the kind of conduct the FDCPA proscribes. *See* 15 U.S.C. 1692e(5). As a result, debt collectors will be subject to FDCPA lawsuits for simply trying to comply with Section 7.

    4. The FDCPA requires that a validation notice be sent within five days after an initial communication with the debtor. 15 U.S.C. 1692g(a). While the validation notice could be combined with a Section 7 notice, Section 7 nevertheless interferes with a debt collector's express right under the FDCPA to continue to engage in debt collection and communicate with the debtor during the 30-day period after validation. *See* 15 U.S.C. 1692g(b) ("Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor…").

    5. If the debtor requests verification of a debt as allowed under the FDCPA, a debt collector must provide verification of the debt. As written, Section 7 prohibits the debt collector from providing that verification for up to 60 days, creating another potential preemption problem, and most certainly creating another prior restraint on speech.

ACA member companies are sympathetic to health and financial concerns that American families face and that continues to be further amplified because of COVID-19. ACA understands medical bills present added difficulty because they are often unexpected, but hardship programs and payment plan resources equally apply to these accounts.

For eight decades, ACA members have worked with consumers to help them find solutions to financial challenges that will allow them to continue to access credit and services in the future. ACA members are compassionate and empathetic people who pride themselves on offering a variety of commonsense solutions, including hardship programs.

We support Nevada's medical providers and the consumers they serve therefore I would encourage this committee to vote NO on SB 248.

Sincerely,

Andrew Madden
VP Government & State Affairs