
Judiciary Committee

HB 1031

Title: An act relating to collection of debts by attorneys.

Brief Description: Concerning the collection of debts by attorneys.

Sponsors: Representatives Stanford and Nealey.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Amends the list of exceptions to the definition of "collection agency" in the Collection Agency Act (CAA).
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Hearing Date: 1/16/13

Staff: Omeara Harrington (786-7136).

Background:

Collection agencies are regulated by both state and federal law. Collection agencies must be licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting on consumer debt.

The CAA defines "collection agencies" as persons (including entities) that are directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person. The CAA exempts any person who carries on collection activities in his or her own name where the collection activities are directly related to the operation of a business that is not a collection agency, and expressly includes attorneys in a list of examples. However, courts that have examined the scope of the attorney exception from the CAA generally conclude that attorneys are not categorically exempt from regulation.

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.

Attorneys may be deemed debt collectors for purposes of the FDCPA when regularly engaged in debt collection activities.

Both the CAA and the FDCPA permit and prohibit certain practices. Examples of prohibited practices under both acts include publishing or threatening to publish "bad debt lists," purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things. The CAA prohibits performance of any acts, either directly or indirectly, constituting the practice of law.

Summary of Bill:

For purposes of the CAA, the definition of "collection agency" does not include attorneys while engaged in activities related to litigation, or foreclosures and evictions concerning claims, and attorneys whose primary professional activities are devoted to matters unrelated to collecting or attempting to collect claims. The existing exception to the definition of collection agency for any person who carries on collection activities in their own name where the collection activities are directly related to the operation of a business that is not a collection agency, including attorneys, is retained.

The CAA's prohibited practice list is amended to prohibit the "unauthorized" practice of law, rather than the formerly prohibited practice of law, in general.

Appropriation: None.

Fiscal Note: Available.

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