

Monday, February 04, 2013
TO: HOUSE OF REPRESENTATIVES
COMMITTEE ON HUMAN SERVICES
HUStestimony@capitol.hawaii.gov



Rep. Mele Carroll, Chair repcarroll@capitol.hawaii.gov 808-586-6779
Rep. Bertrand Kobayashi, Vice Chair repkobayashi@capitol.hawaii.gov 808-586-6311
Rep. Della Au Belatti repbelatti@capitol.hawaii.gov
Rep. Dee Morikawa repmorikawa@capitol.hawaii.gov 808-586-6281
Rep. Rida T.R. Cabanilla repcabanilla@capitol.hawaii.gov 808-586-6081
Rep. Justin H. Woodson repwoodson@capitol.hawaii.gov 808-586-6211
Rep. Jo Jordan repjordan@capitol.hawaii.gov
Rep. Beth Fukumoto repfukumoto@capitol.hawaii.gov

LATE TESTIMONY

CO-SPONSORS

Rep Cindy Evans repevans@capitol.hawaii.gov
Rep John M. Mizuno repmizuno@capitol.hawaii.gov 808-586-6051
Rep Joseph M. Souki repsouki@capitol.hawaii.gov 808-586-6101

FROM: DANIEL ROBINSON, Chief Operating Officer
Revenue Cycle Management LLC
3221 Waiialae Ave #338
Honolulu HI 96816
808-447-3232

RE: HB 173 RELATING TO DEBT COLLECTION PRACTICES.
Prohibits contacting a person at the workplace in debt collection practices.

HEARING DATE: Tuesday, February 05, 2013, 9:30 AM Conference Room 329

Dear Committee Chair and Members,

I strongly urge you to vote NO on this proposal, HB 173.

Please consider the following when evaluating this proposal for changes to HRS Sections 443B-16 & 480D-3.

I. Federal Law already adequately addresses contact and disclosure that protect consumers who receive collection calls at their place of employment.

The follow excerpt from the THE FAIR DEBT COLLECTION PRACTICES ACT shows that the Federal Law adequately protects consumers from harassment or unwanted calls to their place of employment.

These provisions delineate the protections afforded consumers regarding contact by Debt Collections Agencies at their place of employment while regulating when such communications must stop and how consumers communicate to the Collections Agency. Specifically, please see: Section 805(a); (a)3.; (c);(c)1.;(c)2.; (c)3.; (SOURCE: <http://www.ftc.gov/os/statutes/fdcpa/fdcpact.shtml>)

Federal Law
THE FAIR DEBT COLLECTION PRACTICES ACT FDCPA
§ 805. Communication in connection with debt collection 15 USC 1692c

(a) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) **COMMUNICATION WITH THIRD PARTIES.** Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) **CEASING COMMUNICATION.** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

II. Creditors' rights to recovery of debt and consumer access to facilitate repayment of debt

It is a common and prudent business practice when extending credit to consumers for business to ask the consumer for valid contact phone numbers. This will include the place of employment phone number that may be used to verify employment as well as an alternate point of contact. It is common for businesses that extend credit to consumers to use that employer phone number to contact the consumer when they have not paid timely.

Collections agencies act as an extension of the original creditors to recover unpaid debt and will use available contact information provided by the creditors to the Collection Agency that the consumer provided to the original creditor to give the consumer every opportunity to repay their debt before it may be reported to the Credit Bureaus or result in other undesirable consequences.

III. Creditors' rights to recovery of debt and consumer access to facilitate repayment of debt

This proposal to prohibit a Collections Agency from contacting consumers at their place of employment therefore will interfere with and delay the creditors' ability to recover money owed through the highly regulated collections process and interferes with the consumer's access to a formal, regulated process through which they may repay debt before the debt is reported to the Credit Bureaus.

Further it is common for consumer credit applications to contain language that offers the consumer the option to be contacted at their place of employment, "OPT IN" or not, "OPT Out". When signing a contract or credit application the consumer is granting the creditor and by extension the Collections Agency permission to contact the consumer at their place of employment; HB 173 will interfere with the consumer's choice in providing an alternate means of contact with the agency.

Upon contact with the consumer via their mobile phone or place of residence it common for consumers to provide and request contact by the Collection Agency at their place of employment due to their availability during business hours. HB 173 will result in a consequence whereby the consumer is disallowed from offering the Collections Agency the option of contacting them at their place of employment where they are most conveniently available to receive such calls during business hours.

There is no benefit to the consumer who wishes to pay their debt nor to the creditor wishing to recover unpaid debt by prohibiting contact by the Collection Agency with the consumer at their place of employment. In practice if this proposal becomes law the added provision would cause added harm to consumers by making the Collection Agency report the debt to credit bureaus that may have been paid if contact had been made. Once contact is made at the consumer's place of employment, in a timely manner, this allows for payment prior to negative Credit Bureau reporting.

IV. Portability of mobile phones into places of employment

It is commonplace for employees to bring their personal means of communication to their place of employment. The proposed changes of HB 173 would place an unworkable burden on Collections Agencies to determine the physical location of a consumer prior to initiating collections calls to the consumer mobile phone. Federal Law 47 CFR 64 Telephone Consumer Protection Act of 1991 (TCPA) already determines the protections afforded to consumers with respect to cell phone use and contact by creditors and collections agencies. Regulations under this continue to be revised in recognition of the expanding use of cell phones and reduced use of land line by consumers in general.

SOURCE: <https://www.federalregister.gov/articles/2012/06/11/2012-13862/telephone-consumer-protection-act-of-1991>

LATE TESTIMONY



Hawaii Credit Union League

Your Partner For Success

1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org



Testimony to the House Committee on Human Services
February 5, 2013

Testimony in Opposition to HB 173, Relating to Debt Collection Practices

To: The Honorable Mele Carroll, Chair
The Honorable Bertrand Kobayashi, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state. We are opposed to HB 173, Relating to Debt Collection Practices.

This bill would prohibit a lender from contacting a borrower at their workplace. This prohibition may work against the borrower. Credit unions may regularly contact their members, for any number of reasons, many of which may be beneficial to the member. Credit unions often have close relationships with their members, and do everything they can to ensure the member's financial health. This often includes offering loan modifications, or simply offering assistance during a period of financial distress. Also, the current federal Fair Debt Collection Practices Act already provides many protections for borrowers, including contacting a borrower at work at their request.

Further, this bill could prevent lenders from contacting borrowers anytime on a wireless phone, as there is no way to know if the borrower is at work with their wireless phone. As many people today only have wireless phones, this could effectively end phone contact between borrowers and lenders.

Thank you for the opportunity to provide comments.



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Federal Law

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