

**ASSEMBLY BILL**

**No. 1977**

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**Introduced by Assembly Member Harman**

February 9, 2006

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An act to amend Sections 1788.11, 1788.17, and 1788.32 of the Civil Code, relating to debt collection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1977, as introduced, Harman. Debt collection.

(1) Existing state and federal law regulate the activities of debt collectors, as defined. Existing state law prohibits debt collectors from collecting debts by placing telephone calls without disclosing their identities, except that employees of licensed collection agencies may identify themselves by using registered alias names as long as the employees correctly identify the licensed employing agencies they represent.

This bill would revise the state provisions described above to permit employees of any debt collector to collect a debt by telephone without disclosing the caller's identity if the employees identify themselves by using personally identifiable business aliases and they correctly identify their debt collector employers or provide a call-back number to their employers' debt collection office where their activities are conducted. The bill would require employers, if the employees use these aliases, to maintain records to identify the employees with the business aliases used in telephone calls.

(2) Existing state law requires a debt collector collecting or attempt to collect a consumer debt to comply with specified with specified provisions of the federal Fair Debt Collection Practices Act, thus providing a cause of action under state law for violations of these provisions. Existing federal law regulating debt collection defines a

debt collector as, among other things, a person who uses the mails or interstate commerce in any business the principal purpose of which is the collection of debts or who regularly collects or attempts to collect debts owed to another, with specified exceptions.

This bill would provide that the provisions described above do not apply to a debt collector who is subject to the provisions of the federal act.

(3) Existing state law regarding debt collection practices provides that its remedies are cumulative and are in addition to any other procedures, rights, or remedies under any other provision of law.

This bill would provide that the state law remedies described above are not cumulative with respect to a claim for damages against a debt collector who is subject to the provisions of federal Fair Debt Collection Practices Act. The bill would require a person entitled to relief under the state and the federal act to elect damages remedies, and would prohibit that person from receiving damages under state law for any claim or right to damages asserted under the federal act.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1788.11 of the Civil Code is amended  
 2 to read:  
 3 1788.11. No debt collector shall collect or attempt to collect a  
 4 consumer debt by means of the following practices:  
 5 (a) Using obscene or profane language;  
 6 (b) Placing telephone calls without disclosure of the caller's  
 7 identity, provided that an employee of a ~~licensed collection~~  
 8 ~~agency~~ *debt collector* may identify himself or herself by using  
 9 ~~his registered~~ *a personally identifiable business alias name as*  
 10 ~~long as he~~ *and the employee either correctly identifies the agency*  
 11 ~~he represents;~~ *his or her debt collector employer or provides a*  
 12 *call-back number to the debt collector's office from which the*  
 13 *employee's debt collection activities are conducted. If the*  
 14 *employee uses a business alias, the debt collector employer shall*  
 15 *maintain records to identify the business alias name used in the*  
 16 *telephone call with that specific employee.*  
 17 (c) Causing expense to any person for long distance telephone  
 18 calls, telegram fees or charges for other similar communications,

1 by misrepresenting to such person the purpose of such telephone  
2 call, telegram or similar communication;

3 (d) Causing a telephone to ring repeatedly or continuously to  
4 annoy the person called; or

5 (e) Communicating, by telephone or in person, with the debtor  
6 with such frequency as to be unreasonable and to constitute an  
7 harassment to the debtor under the circumstances.

8 SEC. 2. Section 1788.17 of the Civil Code is amended to  
9 read:

10 1788.17. (a) Notwithstanding any other provision of this  
11 title, every debt collector collecting or attempting to collect a  
12 consumer debt shall comply with the provisions of Sections  
13 1692b to 1692j, inclusive, of, and shall be subject to the remedies  
14 in Section 1692k of, Title 15 of the United States Code.  
15 However, subsection (11) of Section 1692e and Section 1692g  
16 shall not apply to any person specified in paragraphs (A) and (B)  
17 of subsection (6) of Section 1692a of Title 15 of the United  
18 States Code or that person's principal. The references to federal  
19 codes in this section refer to those codes as they read January 1,  
20 2001.

21 (b) *This section shall not apply to a debt collector who is*  
22 *subject to the provisions of federal Fair Debt Collection*  
23 *Practices Act (15 U.S.C. 1692 et seq.).*

24 SEC. 3. Section 1788.32 of the Civil Code is amended to  
25 read:

26 1788.32. ~~The~~(a) *Except as provided in subdivision (b), the*  
27 *remedies provided herein are intended to be cumulative and are*  
28 *in addition to any other procedures, rights, or remedies under any*  
29 *other provision of law. The enactment of this title shall not*  
30 *supersede existing administrative regulations of the Director of*  
31 *Consumer Affairs except to the extent that those regulations are*  
32 *inconsistent with the provisions of this title.*

33 (b) *The remedies provided by this title are not cumulative with*  
34 *respect to a claim for damages against a debt collector who is*  
35 *subject to the provisions of federal Fair Debt Collection*  
36 *Practices Act (15 U.S.C. 1692 et seq.). A person entitled to relief*  
37 *under this title and the federal Fair Debt Collection Practices*  
38 *Act shall elect the damages remedies under either this title or*  
39 *that federal act, and that person shall not be entitled to damages*

- 1 *under this title if any claim or right to damages is asserted under*
- 2 *the federal act.*

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